

# PAROLE MATTERS

Published by Charles Carbone, Esq.

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For California Life Prisoners, Their Families and Supporters.

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## PAROLE MATTERS. Psychological reports: Use them to your advantage.

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First, you have to know the background of how and why these reports are generated. We tell you

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Next, lifers need to know how to prepare for meeting with the Board psychologist to ensure that the report is as favorable as possible. There are no tricks. The psych meeting takes thorough preparation, and maximum

Many lifers express confusion around how to deal with the Board's psychologists, and many lifers mistakenly believe that all Board psychologists are inclined not to give favorable reports. Amidst this confusion, Parole Matters offers some clarity.

BPH psychologists are like any professional. Some are thorough and unbiased, and some are sloppy and quite prejudicial in their views. Do not though make the mistake of thinking that the psychologist you interview with is "out to get you" or all lifers. This is simply not true. If you believe this, the psychologist will sense your defensiveness, and this will not serve you in the interview. You can and should be able to use the psychological report to show why you are suitable for parole. Simply put, use the report to your advantage.



# You must participate in the psychological interview or otherwise risk a report being written without your involvement.

**The best strategy is honesty with preparedness**

Here is the essential background on the Board's reports.

1. Know that you are due a new psychological evaluation once every three years. This fact is often critical when deciding whether to waive your parole hearing when you are facing a bad psychological evaluation and when you may need to wait another year or two so that you are given an evaluation with a lower overall risk assessment.

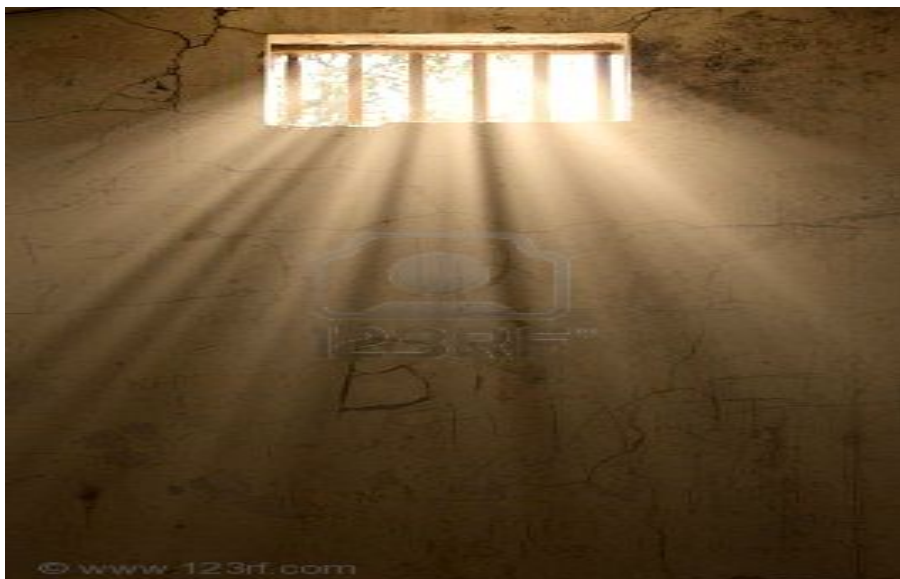
2. Several areas of the report will matter to the Board. One is whether you have an active Antisocial Personality Disorder. Being diagnosed with this disorder means that you are actively defiant and oppositional to authority and normal social norms. Often times, the diagnosis plagues persons whose youth contained violence and crime. If you were given this diagnosis in the past, the psychologist needs to differentiate between whether it is improving, or no longer an active diagnosis. This differentiation in the report may be vital to you when you go before the Board.

3. If you have substance abuse issues, the psychologist will want to know how intact is your sobriety. Be ready to articulate your sobriety work in detail (12 steps, etc.), your triggers, and be ready to identify the character defects which led to your addition to begin with. Be ready to discuss your relapse prevention plan as well.

4. Your overall risk assessment for general recidivism and for violence must be either low or low-to-moderate. If you get an overall risk assessment that is anything but these two, ask the doctor whether the higher risk assessment is based more on historical rather than current or what are called "clinical factors." Ask the psychologist to make it known in their report whether any heightened risk assessment is due to historical rather than current risk factors.

5. Don't argue with the psychologist. That will get you nowhere even when they are wrong. The best you can do is to politely correct them when they are wrong about a basic historical fact in your background.

6. The psychological testing tools – the HCR-20, the LS/CMI and the PCLR – are not the best tools for testing lifers. We all know that the psychological tools used by the Board are controversial because they are arguably not designed for testing on the lifer population. The Board knows this as does the Forensic Assessment Division of the BPH, but unfortunately, right now, no amount of protestations against these tools will help you in your immediate task of getting a good evaluation. For now, let the parole lawyers deal with this issue.



The psych. report is the Board's impression of you before you enter the room.

7. Another critical area is demonstrating your remorse and understanding why the crime occurred. With only about an hour for the evaluation, your time is limited insofar as the time you have to discuss why you are remorseful and your understanding of why the crime occurred. With limited time, make sure you know what you are going to say on these topics ahead of time. Here is where it may be especially helpful to talk with an attorney, counselor, friend, or family member about these topics before you meet with the Board's psychologist so that you can make certain your understanding is in-depth and insightful.

8. You can't control the outcome of their report, but you can control how you present. Even though it is the psychologist who determines the ultimate content of the report, you are in some sense the author of the report as well. You provide the content. If you are guarded, and defensive, that will go in the report. If you are open, honest, and forthcoming, that too will be reflected in the psychologist's findings.

9. Consider using the services of a retained attorney prior to your meeting with the psychologist to go over key areas of your insight including how you will present on the life crime. This could save you from a bad report.

10. If you decided not to talk to the psychologist about the facts of your life crime, but are capable of speaking about your acceptance of responsibility, do so. The doctor is usually less concerned about "What happened, exactly," and more interested in knowing whether you accept responsibility for the life crime. If you don't talk about the facts of your crime, make sure you cover whether you are responsible for those undiscussed facts. Plus remember, if you don't talk about the facts of your crime, the psychologist is forced to look at what you said in the past (i.e. before past panels, or in previous counselor's reports or psych evals).

11. If you hire your own psychologist, make certain of several things: (a) that the psychologist is respected by the Board. Don't hire a psychologist who has a long-standing riff with the Board or whose opinion is immediately discounted because of an on-going feud; (b) make certain your psychologist uses the same testing tools used by the Board.

(continued)

The process of being evaluated is your chance to show how much progress you made correcting your past character defects, and how you are now planning the particulars of your life on the outside.

(c) Make certain that your psychologist uses the same formatting used in the Board's report so that your report has the same "look and feel" of the reports regularly read by the Board; (d) make certain to have your psychologist focus the findings of the report to address a specific area of past concern (lacking insight, substance abuse, relationships with women, etc.) so that even if the Board discounts the psychologist's opinion, the Board will see that you are serious about addressing and correcting a problem the Board previously identified; and (e) remember that just because you are paying for an independent psychological evaluation you do not get to determine the outcome. The psychologist has to be free to come to their own conclusions. Otherwise, you compromise the integrity of their findings. You can not dictate the findings of the report.

12. The best corrections to any report to seek are mistakes regarding factual inaccuracies rather than contesting opinions that you disagree with. California's Inspector General this year discovered an alarming rate of psychological reports containing factual errors. Make sure to read over your report to see if there are any factual errors. Distinguish factual errors from disagreement over the doctor's conclusions. Factual errors must be corrected while disputes over the doctor's opinions are just differences of opinion.

13. Make sure you get either an updated or new evaluation once every three years. Because your period of parole denial under Marsy's Law may be longer than three years, it is imperative that you request an updated or new evaluation once every three years regardless of whether or not you are going to Board. Getting a new evaluation may be vital to support an Application for a Change in Circumstances to Advance your Hearing Date, and for maximizing the number of evaluations you are entitled to receive. It is best to contact the "Forensic Assessment Division" of the Board to get a new evaluation.

14. Because you may not know when your appointment with the Board's psychologist will happen, make sure to have a "kit" ready at all times which may include parole plans, letters of support, certificates or chronos book reports, 5 year plans, a budget, relapse prevention plans, and or legal documents. You should be ready to present these documents regardless of when the appointment occurs.

15. Realize that you only have about an hour or an hour and a half to present yourself. Given the time crunch, don't warm up over time. If you are going to be open and forthcoming, do so right away. Don't wait until the end of the interview to get real.

16. It's okay to admit having faults to the psychologist. We all have them. The best course is to admit to flaws, character defects, and faults but then discuss how you are addressing these issues rather than running away from them.

17. Discuss those relationships in your life which are now healthy and constructive. If you had a tough childhood or a bad upbringing, be prepared to discuss how you now settled into healthier relationships with (which are now mature, open and honest ) friends, family or spouses.

18. Be able to articulate why your crime occurred whether it was a culmination of bad choices, drug abuse or an inability to deal with conflict. Whatever the reasons, be able to discuss why the crime occurred and what you have done to address those underlying causes.

19. Don't be afraid to show emotions. We are all human, and the fact that we can often times feel intense emotions – particularly shame and regret over having done something wrong in the past is natural, even healthy. Don't be a stone. If you are feeling bad about your crime, say so.

20. Be consistent. Don't tell the Board one version of the life crime and the psychologist another. The Board will pick up on any inconsistency and punish you for it. Be certain you get your story straight even on minor details.

21. If the psychologist points out factors which may increase your risk to reoffend, focus on decreasing those risk factors when you go to Board. Those risk factors can act as a nexus to a present risk of danger. For example, if the doctor says that financial insecurity may increase your risk to reoffend, focus on making sure your finances and employment are in order upon parole.

22. Strongly consider taking a postponement, waiver or stipulation if you are facing an atrocious and unfavorable psychological report. Ultimately, to be found suitable, you need a supportive psychological report. If yours is not supportive, there may be no point in going to Board until the report improves.

23. Lastly, have realistic expectations. You will undoubtedly get better reports as time goes on, and as you seen by more psychologists. The overarching trend is that lifers get better reports as time goes by. If it is your first or second psychological evaluation, you may need to temper your expectations especially if you haven't programmed well.

**THIS NEWSLETTER MAY BE CONSTRUED AS A  
LEGAL ADVERTISEMENT.**

**PAROLE CASES: Because filing an appeal is so critical to your freedom, we keep you informed on the latest important parole cases:**

**Lam v. Hartley** 2010 WL 3747674 (USDC for Central Dist. Of CA) This is a poor case finding that the lifer's inability to explain why he committed an unprovoked attack on the victims was evidence to deny parole.

**Lamas v. Allison** 2010 WL 3715644 (USDC for the Central Dist. Of CA) This is part of progeny of cases out of the Central District which are a cautionary tale against inmates incurring serious rules violations – even ones that are quite old. This case found that a 10 year old mutual combat was evidence of unsuitability along with a 2007 riot participation.

**Lagadia v. Curry** 2010 WL 3910361 (USDC for Northern Dist. Of CA) This is a bad case which found the lifer unsuitable because he did not understand how he was responsible for murder even though he was not the triggerman. This is a reminder to lifers to focus on THEIR responsibility and how they contributed to the victim's demise rather than focusing on a crime partner who may have done more damage.

**Glasper v. Allison** 2010 WL 3943652 (USDC for Eastern Dist. Of CA) This is a bad case where the parole denial was upheld because of an extreme crime involving the killing and torture of an 18 month old baby. Plus the psychological risk assessment was low to moderate; the lifer had a 128 for tobacco in 2006 and a 115 for sexual misconduct in 2007.

**Granillo v. Clark** 2010 WL 3504762 (USDC for Eastern Dist. Of CA) This is a bad case finding that the 2007 psych. report was not supportive of release because the lifer was a greater risk than the average citizen; the lifer partially blamed the victim for the crime; and hadn't given enough thought to the events of the life crime.

**In re Powell** (2010) 188 Cal.App. 4th 1530. This is a good case that reaffirms that the proper remedy for a governor reversal is to order the lifer released rather than sending it back to the Governor. Plus, the court took notice of the life's supportive psychological exams since 1989, his "mastery" over sobriety issues, and that the lifer did not blame drugs or alcohol for the life crime. The lifer also had planned out his "major activities" once on parole.

**In re Jenkins** – Cal. Rptr. 3d -- , 2010 WL

4238825. This is a horrible decision from the California Supreme Court ruling that prisoners can be denied good time credits once CDCR denies the inmate of a job at the prison. The Court held that prisoners (who because of overcrowding) are denied access to jobs or the mainline are not a suspect class protected by the constitution and that they do not possess a fundamental interest in earning credits.

**In re Hare** -- Cal.Rptr. 3d --, 2010 WL 4056076. This is another bad case ruling that the Governor could reverse parole when the inmate still minimized a CDC 115 that was over 22 years old (possession of a modified toothbrush).

**In re Taplett** (2010) 188 Cal. App.4th 440. This is a bad decision allowing the Board to deny parole because the lifer denied her intent to kill even though she was convicted of murder. This in combination with poor risk assessments was evidence of a present risk. Plus, the lifer's version of the crime was inconsistent with versions from witnesses.

**In re Macias** – Cal.Rptr. 3d --, 2010 WL 4457309. **This is a great case litigated by Charles Carbone** and Parole Matters. It sets the new standard for Insight. It ruled that "one always remains vulnerable to a charge that he or she lacks sufficient insight into some aspect of past misconduct even after meaningful self-reflection and expressions of remorse." "The very concept of insight is inherently vague and . . . often in the eye of the beholder." Concerns over insight are often "based on intuition or undefined criteria that are impossible to refute." A lack of insight is only present then when a lifer manifests a "blindness concerning the nature of his or her conduct and/or the very pressures, circumstances, and impulses that triggered it." Any lack of insight must be based on a "factually identifiable deficiency in perception and understanding, the deficiency by itself or together with the commitment

offense had some rational tendency" to show a present danger. Finally, any concern over insight must not be contradicted by "undisputed evidence" which shows that the "inmate has acknowledged the material aspects of his or her conduct an offense, shows an understanding of its causes, and demonstrated remorse."

**In re Ross** (2010) 185 Cal. App. 4th 636, is a bad case that permits the Governor to review evidence generated after a parole grant by the Board because of the overarching concern for public safety. The new evidence related to a 2010 psychological report. Lastly, the court also scolded Michael Satris, Esq. for bringing "frivolous claims."

**In re McDonald** – Cal.Rptr.3d--, 2010 WL 4296703. This is a good case ruling that the Governor cannot reverse based on an inmate's insistence that he is innocent. The Second Appellate District affirmed the inmate's right under Penal Code 5011 not to admit the life crime as a condition of parole. Plus the proper remedy was release not remand back to the Governor.

This photograph is Charles Carbone, Esq. with his client Debra Mattie at her welcome home party after 31 years in prison. Congratulations Debra!



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CAN BE YOUR BEST  
BET TO  
GOING HOME.**



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**Parole Matters.** To maximize having great legal representation, a lifer has to make sure they are doing their best in prison. Even a great parole lawyer can't fix bad facts. If your record in prison is impeccable, then hire the best parole lawyer you can. You've earned it.

**No cell phones in prison.** We all love gadgets especially those we can use to call loved ones or to surf the web. But getting caught with a cell phone is not worth your freedom or the prison's safety. Don't jeopardize your freedom by using or owning a cell phone. You will get caught and it will impact your ability to go home. Don't make a foolish mistake that leads to a multi-year denial.

**Book Reports.** The Board now recommends "bibliotherapy" which is a fancy word for using reading and book reports for rehabilitation. Do it. It is especially helpful to read self-help books on topics related to your life crime or past criminality such as domestic violence, substance abuse, gangs, or crimes against women.

**Governor Brown!** Now that California's next governor will be Jerry Brown, we can all be thankful that Meg Whitman is not. She would have been a reincarnated version of Governor Wilson on parole issues. While we don't know exactly where Brown will be on lifer topics because as AG he has not been favorable, we do know that he has to be better than the final year of Schwarzenegger, who grew increasingly bad for lifers.

**[Recipient]**

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