



*Justices of the California Supreme Court*

## **CAL SUPREME COURT PUTS POLITICS AHEAD OF LAW**

On March 4, 2012 the California Supreme Court, in what many observers felt was a predictable but regrettable decision, ruled against petitioner Michael D. Vicks in his challenge of those portions of Marsy's Law that have allowed the Board of Parole Hearings to deny parole hearings for up to 15 years. The decision was unanimous.

Vicks' challenge to Marsy's Law rested on the premise that long-term denials of parole hearings are a method of inflicting more severe punishment and longer incarceration that meted out by the courts. The court disagreed that exposing prisoners convicted and sentenced years, often decades before the 2008 passage and enactment of the law exposed those inmates to "ex post facto," or after the fact penalties not in place and therefore not applicable to them at the time of their conviction. While ex post facto laws are generally considered unconstitutional, the California court has decided that Marsy's Law is not an ex post facto situation, and therefore valid.

From the decision:

*"Even if an intent to increase punishment were sufficient to establish a violation of the ex post facto clause, the terms of Marsy's Law do not evince an intent to increase punishment or to deny inmates parole. The measure's Findings and its statement of purposes reflect that the Law's principal goals are to grant victims of crime the rights to notice and to be heard in the criminal process; to promote adequate funding of the justice system so that criminals will be prosecuted and punished in a manner that is timely and commensurate with their crimes; and to spare victims the ordeal and taxpayers the expense of parole hearings when there is no current likelihood that the prisoner will be paroled. (Prop. 9, West's Ann. Cal. Const., supra, at p. 9.)"*

Additional comments in the decision clearly point to the judges putting the “impact” of parole hearings (which the court assumes there is little chance of success) on victims and the purse of the state rather than on the liberty interests of inmates. Rather incredibly the justices proclaimed the intent of the Marsy’s Law was not “a desire to extend incarceration despite a prisoner’s suitability for parole.” The law, said the court, “merely states in general terms the change to parole procedures proposed by the voter initiative, and does not reflect an intent to deny parole to any prisoner who is suitable for parole under the law.”

While the court rationalized their decision on the ability of prisoners presented with long denials to petition the Board to hold a hearing earlier than the denial term laid out at a hearing (Petition to Advance, CDCR form 1045) this remedy holds little relief for lifers, as the petitions can only be filed every three years and the majority of the requests are denied. The opinion noted “Marsy’s Law affords prisoners an opportunity to have their suitability for parole considered when there is a reasonable likelihood they are suitable.” That seemed to be enough for the judges to assuage their consciences in upholding Marsy’s.

On the question of whether applying the standards of Marsy’s Law to prisoners convicted and sentenced years, often decades before the 2008 passage and enactment of the law exposed those inmates to “ex post facto,” or after the fact penalties not in place and therefore applicable to them at the time of their conviction the court declined to become involved, claiming Vicks did not raise that question and provided no evidence for the court to consider this aspect. Their short and not-so-sweet pronouncement on this issue said simply “[W]e decline to undertake an analysis of whether Marsy’s Law violates ex post facto principles as it is being applied to life prisoners whose commitment offenses occurred before the passage of Marsy’s Law.”

In a separate but concurring opinion Justice Liu, joined by Justice Werdergar, noted the “limited nature” of the decision and acknowledged that while “the court speculates on a variety of ways the Board of Parole Hearings may exercise its discretion to mitigate the risk of prolonged incarceration,” these possibilities are “highly speculative.” Indeed, Liu notes, “The Attorney General stated at argument that she was not aware of any Board policy or practice of exercising its authority to advance a hearing or to direct staff to monitor or internally review parole eligibility. Today’s opinion acknowledges that no such policy or practice appears in the record before us.”

In other words, while the Board may direct staff to conduct interim reviews prior to the next scheduled parole hearing for an individual inmate, there is no evidence that such a policy or practice is in fact in place. However, the mere fact that the Board may, at its discretion, institute such a policy, is enough to uphold application of Marsy’s Law.

Although the justices went to great lengths (60 page decision) to lay a legal basis for their decision, many observers felt the chances of success on the Vicks case were diminished by the political realities that might have come into play had the justices ruled in favor. Although the March 4<sup>th</sup> decision specifically stated it was applicable to Vicks only and did not address the issue of ex post facto application, had the ruling sided with the Vicks position on any issue, it would undoubtedly have been used by other inmates in pursuing reviews of long term denials.

Any decision that would have given the nod to such reviews could have potentially opened a flood gate of review petitions and could theoretically have led to the BPH experiencing an overwhelming backlog of hearings, much as was the case several years ago. In the not-too-distant past, lifer parole hearings were often years late, a situation the BPH has remedied in recent years and relentlessly maintains. There is more than idle speculation that the State Supreme Court, for once casting an eye to the future, was loathe to be the venue that opened that possibility. Once again, politics and political expediency may have won the day over justice and legal exactitude.

With this ruling it appears the only relief for those given long term denials at a hearing is to indeed file a 1045A Petition to Advance, submit evidence of changed circumstances relative to the factors on which the denial was based and roll the dice as to whether or not the BPH will deign to approve an advanced hearing. LSA will keep our readers apprised of any changes.

## GOVERNOR REVERSES GRANT FOR HIGH-PROFILE LIFER

As we reported previously, there are several particulars of a crime that appear to trigger Gov. Jerry Brown to reverse the parole grants of lifers. Among these are high notoriety crimes, elements of torture and instances in which the victims' families contact the governor to oppose the release.

All these factors came into play recently when Brown reversed the parole grant of Bruce Davis, a former Manson Family member who, for a second time, was granted a parole date last October. LSA had an observer in attendance at the Davis hearing and, knowing the victims' representatives who appeared at the hearing would appeal to the governor, we urged our members to write to Brown taking the opposite tack: supporting Davis' release.

Many of our supporters responded to our request and we did indeed mount a credible campaign in support of Davis. However, the combination of the above factors and the possibility, if not probability, that had Brown allowed Davis to be released the howl from victims groups would have shaken the capitol dome, proved too much for the Governor's fortitude.

After the usual recitation of the details of the crime Brown, while acknowledging Davis "has made efforts to improve himself while incarcerated," concluded the "negative factors demonstrate he remains unsuitable for parole." Those "negative factors" for Brown boiled down to his conclusion that Davis does not take full responsibility for his part in the crimes.

Brown noted the most recent BPH panel, chaired by Commissioner Jeff Ferguson (who has the lowest grant rate percentage of the currently sitting commissioners) found Davis suitable "based on his remorse and insight, educational achievements and self-help programming, vocational training, age, discipline-free behavior, psychological reports and parole plans" [Editor's note: it appears there was nothing the parole board found unsatisfactory]. That, however, extensive and comprehensive as it was, was not enough to placate the Governor.

In the closing paragraph of his 6 page letter of reversal Brown pontificated that "the evidence I have discussed shows why he currently poses a danger to society if released from prison." This, despite the fact that the only evidence discussed dealt with the 30+ year old crime; very little evidence of Davis' rehabilitation and remarkable gains while in prison were discussed by Brown.

While Democrat Brown has reversed far fewer lifer parole grants than his Republican predecessor Schwarzenegger, the circumstances of many of those reversals call into question the ultimate fairness of the Governor's actions and show once again why we must be continually vigilant and persistent in seeking fair consideration for lifers.



## VICTIMS SERVICES NO LONGER ACCPETING APOLOGY LETTERS

Until recently lifers, as part of their rehabilitation efforts and in line with making amends, were encouraged by the Board of Parole Hearings to write a letter of apology to their victims' family members. Since it is never a good idea for a prisoner to attempt to contact the victims' family, lifers were directed to send their apology letters to the Office of Victims' Services (OVS) in Sacramento.

The OVS would, in turn, send a letter of acknowledgement to the lifer which he/she could include in his/her parole packet. This letter was proof for the board that the lifer had made an attempt to make amends, all the while protecting both prisoner and victims' family from unwanted and ill-advised direct contact. The apology letters themselves were forwarded to victims only if they were registered with OVS and had indicated they would be receptive to receiving such communication.

Now, however, due to budget cuts, this avenue has been closed. LSA spoke with an OVS representative recently after hearing reports that lifers were no longer getting the acknowledgement letters. As reported to us, OVS had been using 6 student interns to process the apology and acknowledgement letters. Due to recent budget cuts all those intern positions were eliminated, leaving OVS with only 3 non-paid interns who have remained working on a volunteer basis.

That trio of volunteers is now spending their time returning apology letters from lifers to the senders, with a letter stating the service is no longer available. Reportedly, the letter also suggests the lifer include the letter in their parole packet to the board.

Our suggestion is to be wary of doing so and consult your legal counsel. Apology letters which have come into the hands of the participating DAs and/or parole panel have often been used against the prisoner, with opposing parties criticizing the language, statements and content of such letters. Whatever the individual's decision regarding including apology letters in the packet, please be aware the acknowledgement process is no longer available to lifers.

## 4000 LIFERS ARE NOT GOING HOME UNDER COLEMAN

In recent weeks LSA has been inundated with calls, text messages, emails and letters asking about 'new developments' in the Coleman case and **supposedly** when and who will be the '4,000 lifers who will be going home soon' under these 'new developments.' As we reported in last month's Lifer-Line and want to reiterate here, **there is no plan underway** to summarily release any prisoners, lifers or otherwise, under **any** new developments in the Coleman lawsuit.

We reported last month that the Prison Law Office, counsel for the plaintiffs in the Coleman case, released a statement in support of their position prepared by Dr. James Austin, a noted expert in corrections issues. Austin's statement addressed the state's claims that it is unable to reach the court-mandated population cap without endangering public safety. As part of his declaration Austin made two points: he maintained the state has already settled on one method of identifying any prisoners who might become part of an "early release" program. That method being it's much ballyhooed, scientifically validated risk assessment instrument (California Static Risk Assessment or CSRA) to identify low-risk prisoners who could be safely released if the state is forced to do so by the courts.

Austin also noted ""There are some 9,000 Lifers with the possibility of parole who are low risk and are past their Minimum Eligible Parole Date (MEPD)." He continued that based on CDCR's own information and statistics, including the low recidivism rate of lifers, that perhaps 4,000 lifers who are both low-risk and past their MEPD

could be released on parole with no impact on public safety and a savings to the state of some \$742,271,700 in annual costs, even accounting for increased parole costs to monitor them.

Specifically, Dr. Austin noted, "Release low risk lifers past their minimum parole eligibility date. There are some 9,000 Lifers with the possibility of parole who are low risk and are past their Minimum Eligible Parole Date (MEPD). This class of inmates by far poses the lowest risk to public safety based on recidivism studies completed by the CDCR. Based on the CDCR data there are approximately 9,315 prisoners who are past their MEPD. Virtually all of them (96%) are low risk."

And as we reported last month and repeat again, **it is important to note: the recommendation that lifers be included in consideration for early release is a recommendation from Dr. Austin and is not currently under consideration by CDCR. CDCR has not officially identified any group of prisoners or criteria as under consideration for early release and the state is, in fact, challenging the population cap.**

So please, if someone tells you 4,000 lifers are being granted early release under Coleman, shut down that bogus rumor.

## **LIFER FAMILY SEMINAR PLANNED FOR NORTHERN CAL**

Hot on the heels of a successful seminar for lifer families in Southern California, LSA is now in the midst of putting together a similar gathering for the Central/Northern California area. Scheduled for May 18<sup>th</sup> in Sacramento. The seminar is geared toward providing education and networking to families and friends of life term inmates.

Topics to be discussed include a presentation from a well-known lifer attorney, how the parole process works, what families and friends can do to help their prisoner become hearing-ready and how to write an effective support letter. And because more lifers are now coming home and facing the issues of parole conditions and restrictions, we will also provide information on those issues.

In addition to a lifer attorney and other presenters, recently paroled lifers will speak on the challenges of waiting through the review period, what it takes to be successful before the Board and the challenges of reentry.

More information will be forthcoming. Those interested in signing up to attend may contact LSA by letter, email or phone at the contacts below.

Our Southern California confab was well received and played to a full house. We expect the same in Sacramento. Family and friends can check out the previous seminar on our Facebook page at Life Support Alliance.

Contact information:

Email us at: [lifesupportalliance@gmail.com](mailto:lifesupportalliance@gmail.com)

Write us at: LSA, PO Box 277, Rancho Cordova, CA. 95741

Phone us at: (916) 402-3750



## NEWEST WARDENS ANNOUNCED

Gov. Jerry Brown's office recently announced a trio of newly-appointed wardens. Though they may be new to their respective posts, most are well known faces and entities in the system. All new wardens come in to a salary of \$130,668 per year and no longer require Senate confirmation.

KVSP- Martin Biter, 48, of Bakersfield, acting Warden at KVSP since 2010 was officially appointed to the post Chief deputy warden there since 2009, Biter held multiple positions at Wasco State Prison from 1991 to 2009, and was a correctional officer at the California Correctional Institution in Tehachapi from 1986 to 1991. Biter is a Republican.

CSATF—Ralph Diaz, 43, of Woodlake, acting warden since 2011 is now officially Warden. Diaz served in many positions at the CSATF from 2000 to 2011. Diaz began his career at Wasco State Prison in 1991, where he served until 1993, working at Corcoran State Prison from 1993 until 2000. Diaz is registered as Decline-to-State.

CCI—Kimberly Holland, 53, of Bakersfield, has been appointed warden, having served as acting warden since 2012 and chief deputy warden since 2009. She worked at the California Substance Abuse Treatment Facility and State Prison as a correctional administrator from 2006 to 2009 and a correctional lieutenant from 2000 to 2004 and at North Kern State Prison from 1993 to 2000. She began her career as a C/O at Avenal in 1989. Holland is a Republican.

## THAT'S NOT OUR BUSINESS.....

In an effort to clear up some confusion here again are the parameters of what **Life Support Alliance** and **Life Support Alliance Education Fund** can provide to prisoners. We provide support, education for lifers and their families, advocacy both in the legislature and with the CDC. We publish California Lifer Newsletter every other month and Lifer-Line newsletter every month.

**We do not** exchange stamps for cash; we are not Cash for Stamps. Nor do we sell copies of DOM or Title 15, legal paper or provide legal services. We do not order packages for prisoners, provide pen pal service or contact prisoners' relatives in their behalf.

**We do** lobby for and against proposed laws and regulations, depending on their impact to the lifer population. We observe parole hearings, speak at parole commissioner confirmation hearings, meet with legislators and department officials regarding a myriad of issues.

**We do not** write individual support letters, do research on an inmate's individual issue, file or advise on how to file petitions to advance hearings or for sentence reduction under three strikes. We are not attorneys and provide no legal representation or advice.

**We do** provide lifers and their families with free information on lifer attorneys and university law schools offering legal help, make suggestions on actions to take to further chances of being found suitable for parole and other similar information. We strive to publish all information in Lifer-Line and/or California Lifer Newsletter, but prisoners and family members are welcome to contact us by phone, email or letter with questions and concerns.

**California Lifer Newsletter** is available by subscription at a rate of \$30 per year for prisoners. We accept money orders, checks, trust withdrawals or stamps in payment for subscriptions. All payments for CLN should be sent to PO Box 277, Rancho Cordova, Cal. 95741. Those paying by stamps should remit 4 full books of Forever stamps. Lifer-Line newsletter is available every month. If you have a friend or relative on the outside who can receive Lifer-Line by email to print and mail to you, that is our preferred method of deliverance.

At present we have more requests for Lifer-Line than we have volunteers to accommodate the printing and mailing, so there is currently a waiting list. If you are presently receiving the newsletter from someone other than a friend or family member and it is possible for you to receive it from family, please request they email us at [lifesupportalliance@gmail.com](mailto:lifesupportalliance@gmail.com), notify us they will be taking over the responsibility of getting the newsletter to you; we will add their name and email to our list and remove your name from our volunteers' lists. Thank you.

## STATE APPOINTED ATTORNEY SURVEY

As reported previously in **Lifer-Line** and **California Lifer Newsletter**, and to the Board of Parole Hearings, **Life Support Alliance** is engaged in surveying the performance of state-appointed attorneys at lifer parole hearings. A few months ago we submitted to the BPH our first report, naming the 4 attorneys who received the highest number of unsatisfactory reports.

If you were represented at your latest hearing by a state appointed attorney, whether you feel the attorney performed well or poorly, we would like your input. On the following page is the survey form; however, it is not necessary to use the form, a detailed letter will do. Please note, however, there are certain items of information we must have to make use of your report.

First and foremost, the name of the attorney. Yes, obvious as it seems, we have received several reports that totally fail to include the name of the attorney. Secondly, your name, CDCR # and date of the hearing. This information will not be passed along to any other entity; we simply use it to obtain copies of hearing transcripts so that we may verify and delineate the performance in question. Individual details of the hearing are not used, but generalized circumstances are cited. Please be as detailed as possible in your comments. If your attorney made comments in consultation with you, failed to keep appointments, failed to include documents sent to him/her or similar events, those will not be reflected in the hearing transcripts but are an important part of the legal performance that we need to know.

Also please be aware, **LSA**, **Lifer-Line** and **CLN** are not criticizing these attorneys, we are merely collecting, collating and reporting on what our readers, and those attorneys' clients, report to us. We do this to make the BPH aware of problems and issues with certain attorneys in particular and the lack of accountability in the state attorney system in general.

ATTORNEY SURVEY

Life Support Alliance is seeking information on the performance and reliability of state appointed attorneys in the lifer parole hearing process. Please fill out the form below in as much detail as possible, use extra sheets if needed. Please include your name, CDC number and date of hearing, as this will allow us to request and review actual transcripts; your name will be kept confidential if you desire. Details and facts are vital; simple yes or no answers are not probative. Mail to PO Box 277, Rancho Cordova, CA. 95741. We appreciate your help in addressing these issues.

NAME\* \_\_\_\_\_ CDC #\* \_\_\_\_\_ HEARING DATE\* \_\_\_\_\_

COMMISSIONER \_\_\_\_\_ GRANTED/DENIED(YRS) \_\_\_\_\_

INITIAL/SUBSEQUENT \_\_\_\_\_ EVER FOUND SUITABLE/WHEN \_\_\_\_\_

ATTORNEY \_\_\_\_\_ HRG. LOCATION \_\_\_\_\_

MEET BEFORE HRG? \_\_\_\_\_ TIME SPENT CONSULTING \_\_\_\_\_

OBJECT TO MARSY'S LAW? \_\_\_\_\_ OBJECT TO PSYCH EVAL? \_\_\_\_\_

LANGUAGE PROBLEMS? \_\_\_\_\_ WAS ATTORNEY PREPARED? \_\_\_\_\_

Please provide details regarding attorney's performance, or lack of, including interaction with parole panel and/or any DAs present. Was attorney attentive during hearing, did s/he provide support/advice to you? Was s/he knowledgeable re: your case and/or parole process?

\* required