THE PAROLE HEARING STRATEGY GUIDE

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I. INTRODUCITON

The Parole Hearing Strategy Guide was prepared by the **Law Office of Benjamin Ramos** and is intended only for persons serving indeterminate sentences for a conviction under California law.

This Guide will assist parole candidates with parole hearing preparation by increasing their knowledge of the process, answering common questions and providing information on important legal issues.

The Guide was written for prisoners and their families, so the terms "prisoner," "inmate" and "you" will be used interchangeably.

The Guide is not intended to provide legal advice for any particular person, case or situation. Readers are advised to consult with their attorney before relying on any comments, suggestions or opinions expressed herein. Also, before relying on legal principles stated below, readers should consult with their attorney to verify that any references to cases, statutes, title 15 regulations or any other source of law are current and valid.

II. OVERVIEW

This Guide provides a comprehensive analysis of parole Board practices and procedures along with my own recommendations for improving one's chances for receiving parole. My recommendations are based on my own legal experience with the Board. The reader is free to

accept or reject all or part of my recommendations and opinions. I will explain my opinions and explore the alternatives and leave the choice to you. I cannot provide any guarantee that if my recommendations are followed, parole will be granted. But I will say this: If my recommendations are followed, I believe chances for parole will have improved, as will chances for winning in court against the Board or Governor.

I'll provide an overview of the parole process beginning with the initial parole consideration hearing, followed by discussion of subsequent hearings.

Knowing the Board's current policies will enable the inmate to anticipate the results of his or her hearing, and help assess whether any rights may have been violated.

This discussion also provides my answers to the top 10 questions asked about the Board, 12 rules for parole suitability hearings, 20 true or false questions to test your knowledge, a sample question and answer session to prepare the inmate to answer Board questions more effectively and my concluding remarks concerning the politics and future of the parole process. Once you have read the Guide, studied the top 10 questions and answers, learned the 12 rules, completed the true/false test, and assimilated the information, I think you or your family members will have a better

understanding of the process and will be better able to prepare for the initial or next parole suitability hearing.

III. Introduction to the Parole Board

Penal Code Section 3041 establishes the Board's obligation to set parole dates for indeterminately sentenced prisoners unless consideration of public safety requires a more lengthy period of incarceration. California Code of Regulations, title 15, Division 2, section 2402 subsections (c) and (d) set forth parole suitability and unsuitability factors for the Board's consideration. The Board, however, is not limited to consideration of these factors. Sections (a) and (b) provide:

§ 2402. Determination of Suitability.

> (a) General. The panel shall first determine whether the life prisoner is suitable for release on parole. Regardless of the length of time served, a life prisoner shall be found unsuitable for and denied parole if in the judgment of the panel the prisoner will pose an unreasonable risk of danger to society if released from prison.
>
> (b) Information Considered. All relevant, reliable information available to the panel shall be considered in determining suitability for parole. Such information shall include the circumstances of the prisoner's social history; past and present mental state; past criminal history, including involvement in other criminal misconduct which is reliably documented; the base and other commitment offenses, including behavior before, during and after the crime; past and present attitude toward the crime; any conditions of treatment or control, including the use of special conditions under which the prisoner

> may safely be released to the community; and any other information which bears on the prisoner's suitability for release. Circumstances which taken alone may not firmly establish unsuitability for parole may contribute to a pattern which results in a finding of unsuitability.

Notice subsection (b) permits the Board to consider all "relevant, reliable information." Litigation is ongoing to define what information is "relevant and reliable," and legal and constitutional due process issues frequently arise in connection with information considered by or submitted to the Board during parole suitability hearings. This will be discussed more below.

The inmate's first parole hearing, called the initial hearing, will be held at whatever location the inmate is housed at the time set for his or her initial hearing. Most likely, one commissioner and one deputy commissioner will attend the hearing. In previous years, Board panels had one commissioner and two deputy commissioners, but the Legislature passed emergency legislation permitting hearings with one commissioner and one deputy in order to help with the backlog of hearings. The Board may return to one commissioner and two deputy commissioner panels in the future.

The simple truth, unfortunately, is that parole is virtually never granted at initial hearings. Having conducted approximately 700 hearings

myself, parole has never been granted to any of my clients at an initial hearing. I don't mean to discourage anyone, but those are the facts. This trend appears to be changing slowly.

I am aware of one individual who was granted parole at his initial hearing in about 1990. He was convicted by a jury of second-degree murder. There were two other defendants involved, and of the three, he participated the least in the crime. He had no prior juvenile or adult criminal record, no 115s (serious disciplinary write-ups), a substantial record of self-help and therapy participation and, most important, the trial judge and deputy district attorney who prosecuted him both wrote multiple-page letters to the parole Board supporting his release. Having both the trial judge and the prosecuting attorney write letters to the parole Board supporting parole is extraordinarily rare. Additionally, I believe that none of the victim's relatives attended his initial hearing to oppose parole. His parole date was subsequently rescinded by the Board, and he was required to attend many more parole suitability hearings. He was eventually found suitable for parole several more times, but the Governor reversed each subsequent parole grant. Eventually, however, after 10 or more years of litigation, he won in federal court on the basis that the Board's original rescission of his initial parole grant was

unlawful. He was ordered released from prison by a federal judge and has been doing very well now ever since his release.

It is possible to be granted parole at the initial hearing but, currently, it happens seldom.

So why should anyone bother to prepare for the initial hearing if there is virtually no chance of being granted parole? Here are my opinions: (1) Wouldn't it be better to be prepared and make a good impression in your first hearing rather than being unprepared, making a poor impression and receiving a lengthy denial? (2) There's always the possibility that the Board's policy will change in the future as a result of court decisions, pressure from the public, the addition of new commissioners with more liberal views on parole, or practical considerations, such as prison overcrowding. Maybe the Board's policies will have changed by the time of the inmate's initial hearing. (3) Isn't doing something better than doing nothing? Isn't it possible that self-help courses, education and independent study will provide a variety of benefits, some of which may be the key to receiving parole someday? I think the benefits of preparation far outweigh the costs.

The initial hearing is the inmate's first formal contact with the Board and is an important learning experience. Additionally, the initial hearing creates the foundation for future hearings. At the second parole suitability

hearing (or first subsequent parole suitability hearing as it is called by the Board) the panel is likely to refer to the transcripts of the initial hearing for facts and information. If the inmate was unprepared at the initial hearing and made careless statements or allowed incorrect information to go uncorrected, that information may be repeated in the second hearing. If this information is not corrected at the second hearing, it will be repeated at the third hearing, and so on. Therefore, it is very important to make sure all facts are documented properly at the initial hearing and that no improper information is put on the record—at least not without an objection by the inmate's attorney. If the Board allows improper information, it is important to attempt to clarify that information or place an objection on the record. Otherwise, it leaves the impression that the improper information is either true or not that important if it's not cleared up promptly.

It is also important to make a good impression at the initial hearing, as the inmate may see the same commissioner and deputy commissioner again in the future. If, because the inmate is unprepared at the initial hearing, and conflicts arises with the commissioner and/or deputy commissioner, not only is the inmate likely to pay for the lack of preparation with a longer initial denial, but may pay again if he or she receives the same commissioner or deputy commissioner at the next hearing, as they may recall the inmate from

the first hearing and the poor first impression, and make the inmate pay a second time with another lengthy denial. Or a different commissioner may read the initial hearing transcript and become biased against the inmate if he feels that the inmate was unduly confrontational at the initial hearing. Just like anyone else, commissioners and deputy commissioners are not above the possibility of bias or prejudice. Being prepared to participate in the hearing and provide expected information will help avoid conflicts with the commissioners and will lessen the possibility of causing a commissioner to become biased.

The initial hearing is also important because it will be the inmate's first opportunity to hear the opposition to parole from the District Attorney's Office and, quite possibly, the victim's family members. Typically, a representative from the DA's office relies primarily on the crime and any prior criminal history to oppose parole, although the deputy DA may also carefully review the inmate's postconviction record and criticize his or her prison record, lack of programming, 115s (serious disciplinary write-ups), poor parole plans and so on. The district attorney may also submit police reports for the Board to review or may cite statements the prisoner made to the probation officer, the prisoner's trial testimony, or statements to the prison psychologist. The prisoner should be familiar with his or her trial

record and central file, including all police reports, probation officers' reports, the prisoner's trial testimony, if any, statements about the crime given to psychologists or others, and any other pertinent information in the central file.

In all hearings, including the initial hearing, the Board generally uses the Board Report, sometimes called a Life Prisoner Evaluation, as a road map for the hearing. The Board starts the hearing by identifying the prisoner and the life crime then asking everyone in the room to identify himself/herself by stating first and last name and spelling the last name. The prisoner is asked to add his CDCR number after his name.

The Board then addresses the Americans With Disabilities Act (ADA) to make sure the prisoner has no disabilities that require accommodation for the hearing. If the prisoner needs things like glasses or hearing aids in order to participate in the hearing, the ADA requires the Board to provide that accommodation. Also, if the prisoner needs an interpreter for the hearing, the Board will provide one. The inmate's prison counselor should also determine whether the prisoner has any disabilities that require accommodation for the initial hearing.

The Board will also announce whether it intends to rely on any confidential information in the prisoner's central file. The Board's reliance

on confidential information may pose a problem for the inmate, because the Board will not disclose the substance of the confidential information. Therefore, the prisoner may be denied parole based on various allegations of prison misconduct, such as trafficking narcotics or gang involvement, but the content of the confidential information will not be disclosed, and the prisoner will not know what the confidential allegations say or who made them.

Under California Code of Regulations, title 15, section 2235, subdivision (b), if the Board relies on confidential information to deny parole, the Board must provide the inmate with notice of the confidential reports on which the Board panel relied. As mentioned, the Board will not disclose the content of the reports, but the identity of the report(s) may provide a clue to the basis for the confidential allegations.

If any confidential information is used by the Board, the inmate should consult with his or her attorney to determine whether such use may have violated the inmate's due process rights. It may be necessary to file a petition for writ of habeas corpus to challenge the Board's reliance on confidential information. The issue is difficult to discuss in general, because without knowing the particular facts and circumstances of an inmate's background and prison record, it is difficult to assess whether the Board's

use of confidential information may have violated the inmate's due process rights. However, for example, if an inmate has an extensive history of gang involvement, he or she may have confidential information in his or her central file pertaining to various gang-related issues. On the other hand, if an inmate has no prior criminal history, no prior gang involvement and no record of prison misconduct, but the Board relies on confidential information to deny parole, the inmate probably has little or no idea what the confidential allegations concern. In such a case, the inmate should consult with his or her attorney and consider whether a petition for writ of habeas corpus would be appropriate to challenge the Board's reliance on confidential information. Whether a petition for writ of habeas corpus should be filed depends on a complete evaluation of all facts and circumstances of the prisoner's crime, prior criminal history, social history and postconviction record, among other possible factors.

Early during the initial parole consideration hearing, the Board will ask the inmate's attorney if the prisoner will be discussing the crime. Under Penal Code section 5011 subsection (b), the Board shall not require, when setting parole dates, an admission of guilt to any crime for which an inmate was committed. Additionally, title 15, section 2236 provides: "The facts of the crime shall be discussed with the prisoner to assist in determining the

extent of personal culpability. The board shall not require an admission of guilt to any crime for which the prisoner was committed. A prisoner may refuse to discuss the facts of the crime in which instance a decision shall be made based on the other information available and the refusal shall not be held against the prisoner. Written material submitted by the prisoner under section 2249 relating to personal culpability shall be considered."

There is much debate whether one should discuss the crime. Many individuals feel that they have no hope of receiving parole if they don't discuss the crime. This is not true. I and other attorneys have seen clients granted parole that chose not to discuss the crime.

Discussing the crime is a crucial decision that should be made after consulting an attorney. (This topic is addressed thoroughly below under discussion of "insight.") There are an infinite number of issues that may potentially arise when discussing the crime that are important to address with an attorney. For example, in many cases, the prisoner's version of the crime is contradicted or challenged by other evidence. If no attempt is made to explain contradictions in the evidence, the Board most likely will *not* believe the prisoner's version of the crime and will probably even say that the prisoner's account of the crime is not believable, citing the contrary evidence. Under the California Supreme Court's decision in *In re Shaputis*

(2011) 53 Cal.4th 192, *Shaputis II*, the "plausibility" of the prisoner's denial of guilt is crucial. As the *Shaputis II* court explained, “We note, however, that an *implausible* denial of guilt may support a finding of current dangerousness, without in any sense requiring the inmate to admit guilt as a condition of parole. In such a case it is not the failure to admit guilt that reflects a lack of insight, but the fact that the denial is factually unsupported or otherwise lacking in credibility.” (*In re Shaputis II*, *supra*, 53 Cal.4th at p. 216.)

In some cases, there may be nothing the attorney can do to reconcile the differences between the prisoner’s account of the crime with other facts. In other cases, however, the attorney may be able to analyze the evidence and find additional grounds to support the prisoner’s version of the crime and enhance his credibility and the plausibility of his or her version of the crime. In either case, it's always better, in my opinion, to have an attorney evaluate the facts and circumstances of the case and provide his or her opinion and evaluation concerning the advantages and disadvantages of discussing the crime.

Additionally, if the prisoner has discussed the crime with the Board at prior hearings, discussing the crime again leaves the inmate potentially vulnerable to impeachment by the Board or District Attorney's Office. If

anything said about the crime during the current hearing is inconsistent with what the inmate said about the crime during a prior hearing, the Board or deputy district attorney is likely to point out the discrepancy. If the prisoner's account of the crime changes over time, or there are several conflicting accounts in police reports, trial testimony, parole hearing testimony and so on, the prisoner's credibility will be called into question and work against his or her chances for parole. Therefore, I recommend that prisoners thoroughly discuss the advantages and disadvantages of talking about the crime with the appointed or privately-retained attorney. After consulting with your attorney, you may decide that not discussing the crime is the better choice.

If you choose not to discuss the crime with the Board, you may submit a written statement addressing the facts of the crime and expressing remorse and insight. Case law has acknowledged that a prisoner's written or prior statements to the Board may establish sufficient evidence of remorse and insight:

> In this case, Pugh did not refuse to participate in the hearing at all, but only declined to discuss the circumstances of the crime. He discussed the circumstances of the crime in his parole hearing the year before, in 2007, and the record contains psychological evaluations prepared for the Board in 2007 and 2008. There was no issue here of ignoring newer, inconsistent evidence because it was submitted by Pugh. To the extent appellant argues the inmate's decision to refrain from

> discussing the circumstances of the offense gives the Governor carte blanche to ignore later evidence and rely only on the earliest psychological evaluations and the inmate's earliest statements about the crime, we disagree."

(*In re Pugh* (2012) 205 Cal.App.4th 260 at p. 274, fn. 5.)

In another case, the Court of Appeal found evidence of insight in the prisoner's seven-page written statement:

> Morganti elaborated on the causes of his drug dependency, and its relationship to his crime, on numerous occasions, but did so in greatest detail in his seven-page handwritten "Personal Statement."

(*In re Morganti* (2012) 204 Cal.App.4th 904 at p. 924.)

After the prisoner's attorney informs the Board whether the inmate will discuss the crime, the Board will proceed to read the facts of the crime from the Board report, probation officer's report or Court of Appeal's decision, if one exists. If the prisoner agrees to discuss the crime, the Board's first question will likely be, "Mr. Jones, did you commit this crime?" The best answer is a simple yes or no. There will be plenty of opportunity to explain the extent of the prisoner's involvement.

The next question the Board will likely ask is, "Why did you commit this crime?" Many people stumble with this question, so I'll provide my best recommendations for dealing with it. Be honest and direct. If the inmate truly does not know why the crime was committed, then he or she should say

so. Nevertheless, I recommend that anyone in this situation make an effort to examine his or her life before the crime and look for contributing causes such as drugs and alcohol, mental and emotional abuse, prolonged stress and so forth. Be careful *not* to *blame* the crime on any such factors, but be able to explain the cause-and-effect relationship between drugs and alcohol and the subsequent deterioration of social values, thinking, and behavior. The prisoner cannot blame the crime on substance abuse, but it can be pointed out that substance abuse often results in poor decisions and impulsive actions that lead to regrettable behavior. Give examples of how stress or substance abuse affected your work performance, judgment, social relations, hobbies, personal pursuits, and so on. Discuss with your attorney how this should be handled.

Questions of intent should also be discussed with an attorney if the prisoner feels uncertain or uncomfortable discussing any aspect of the crime, including intentions before, during or after the crime. It may be in the inmate's best interest not to discuss the crime. Additionally, if the inmate has an appeal or writ pending challenging the conviction at the time of the initial hearing, the crime, almost definitely, should not be discussed, and this decision should be addressed with an attorney.

After discussing the facts of the crime, the Board usually asks, "How do you feel about having committed this crime?" This is the inmate's opportunity to express sincere remorse, which I discuss in more detail below. For now, let me just say that any statements of remorse should be absolutely genuine. I never recommend that anyone follow a script or put on a show for the Board. It will not be effective and they will see through it.

At some point during questioning, the Board will ask, "How have you changed since committing the crime?" Or, "How are you different now, compared to when the crime was committed?" In my opinion, this is the *most important* question the Board asks. The inmate absolutely must be prepared to answer this question effectively. If the inmate stumbles and can't express how he or she has changed and has become a different person from the person who committed the crime, the Board will conclude that the prisoner lacks insight into the causative factors of the crime, hasn't changed any since the crime occurred, and will deny parole.

If the prisoner is prepared for this question, he or she will easily be able to explain to the Board what changes have occurred and how the prisoner has become a different person. This is where the prisoner can explain things learned in self-help therapy, including AA and NA, anger management, conflict resolution, and so on. Contrast the values, attitudes,

skills and capacities held when the crime was committed with the values, attitudes, skills and capacities held today, such as, religious faith, improved problem-solving abilities, anger management skills, work or vocational skills, education, new relationships and commitment to sobriety. I can't stress enough how important it is to be prepared to answer this question. Even if the inmate is not granted parole, if this question is answered effectively, the Board most likely will not indicate that the prisoner lacks insight as a basis for its denial.

After the Board has completed its review of the crime, it will move to pre-conviction factors.[1] The Board usually reads from the Board report for this part of the hearing. This covers social history, siblings, parents, prior criminal history, prior military, educational and work history.

Next, the Board will review the inmate's prior criminal history, if any. I advise that the individual review the probation officer's report and Board report thoroughly and be prepared to discuss all prior criminal convictions. On the other hand, it may be advisable not to discuss prior convictions. The prisoner should consult an attorney about this decision, and this topic is addressed more fully later.

[1] Some panels may address topics in a different order, e.g., starting with social history then later addressing the commitment offense.

Frequently, corrections and clarifications need to be made. Advance preparation will assist in achieving this goal. Consult with an attorney concerning any mistakes in the Board or psych reports, or anywhere else in the central file.

After pre-conviction factors have been covered, the Board usually moves to postconviction factors. The Board usually covers the inmate's placement and movement in CDCR, all job assignments, work supervisor reports, 115s (serious discipline reports), 128, cronos (informational reports), and self-help and therapy participation. Typically, if the prisoner has completed self-help programs, the Board will ask what was learned and how the prisoner can apply the principles. Additionally, if the prisoner participated in AA or NA, the Board will most likely ask the steps. If one participates in AA or NA, I recommend knowing all the steps and being able to explain their meaning and application to the Board. A special note regarding substance abuse programming: If the inmate's crime involved drugs or alcohol, or if you have any significant drug or alcohol history, even if it's unrelated to the crime, the Board will insist that you either participate continuously in AA or NA or some other form of continuous substance abuse program. This is absolutely non-negotiable with the Board.

Many prisoners have done NA and AA for decades, and the Board still denies parole. I would urge these individuals to consider doing some alternative form of substance abuse programming, if not continuing with NA or AA.

After post conviction factors are completed, the Board will move to parole plans and will consider support letters. Prisoners may parole to any location in California as long as the Board feels the inmate has good chances for successful parole in that location.

After parole plans, the Board moves to questions. If the Board members have any further questions, they will ask them at this time. After they have completed their questions, they will ask if the District Attorney's representative has any questions. The prisoner is not required to answer the District Attorney's questions. I would discuss this option with your attorney before the hearing.

Your attorney will also have the opportunity to ask you questions. He or she may ask some questions to clarify matters addressed earlier in hearing or to cover topics such as remorse and acceptance of responsibility for the crime.

After questions, the District Attorney's representative will make his or her closing statement. Usually, they oppose parole. After the District

Attorney's representative completes his or her statement, your attorney will have the opportunity to make his or her closing statement on your behalf. After your attorney finishes, you have the opportunity to make your own statement to the Board. The Board will probably advise you to limit your comments to why you are suitable for parole. Generally, short statements (under ten minutes) concerning your parole suitability are more effective than long statements.

After you have finished your statement, the victim or victim's next of kin, if any are present, will have the opportunity to speak. Victim's next of kin are, understandably, usually filled with grief and anger. They usually oppose your parole vehemently and may insult you or make derogatory comments about you to the Board. There is very little you can do about this, particularly after the adoption of Marsy's Law (Penal Code Section 3041.5 and following sections) which amended the penal code and gave victim's next of kin the right to "express his, her, or their views concerning the prisoner and the case, including, but not limited to the commitment crimes, determinate term commitment crimes for which the prisoner has been paroled, any other felony crimes or crimes against the person for which the prisoner has been convicted, the effect of the enumerated crimes on the victim and the family of the victim, the person responsible for these

enumerated crimes, and the suitability of the prisoner for parole." (Pen. Code section 3043 subd. (b)(1).) Furthermore, "The board, in deciding whether to release the person on parole, shall consider the entire and uninterrupted statements of the victim or victims, next of kin, immediate family members of the victim, and the designated representatives of the victim or next of kin,. . ." (Pen. Code section 3043 subd. (d).)

Victim impact statements may pose constitutional due process issues, because they frequently go far outside the record and introduce hearsay evidence accusing the prisoner of other crimes or misconduct. For example, victim's family members sometimes tell the Board that the prisoner committed other crimes for which no charges were ever brought, and this may include prior serious criminal conduct, including allegations of sexual abuse, threats, prior physical abuse, substance abuse and so on. However, the introduction of unsworn, uncharged and unproven allegations may effectively prejudice the Board against the inmate and may violate due process principles or other constitutional rights. These issues need to be resolved by the courts. Consult with your attorney concerning the implications of victim impact statements. If you know that the victim's relatives will attend the hearing and make allegations of prior uncharged criminal conduct, tell your attorney. He or she may place an objection on the

record at the beginning of the hearing to any statements by next of kin containing allegations of uncharged criminal conduct or any other conduct not reliably established or outside the record.

After the victim or victim's next of kin have made their statements, the Board will declare a recess, clear the hearing room and call everyone back when it has reached a decision. After everyone returns to the room, the Board will read its decision and provide a copy of the denial to the inmate. The prisoner will receive a transcript of the hearing usually within 45-60 days.

If the Board denies parole, the inmate has the right to challenge the decision in court on a habeas corpus petition. Board decisions denying parole are required to be supported by "some evidence" of "current dangerousness." Consult with your attorney whether you have grounds to challenge the Board's denial.

IV. Building a Resume

After the prisoner’s initial parole suitability hearing, he or she typically enters a phase that might be called a building stage, where the inmate essentially builds a resume by following the Board’s recommendations to remain disciplinary free, upgrade vocationally and

educationally, participate in self-help and therapy and obtain a GED, for example.

As mentioned, however, current Board policies may change at any time due to court decisions, legislative action or internal changes, resulting in many more parole grants. Therefore, in the future, the Board may grant parole more frequently at initial and subsequent hearings, so the inmate may not have to go through a building stage. Therefore, I encourage everyone to do his or her best at all times to meet the parole suitability criteria and become attractive candidates for parole.

V. The glass ceiling

At some point, prisoners may reach a frustrating phase I call the "glass ceiling." At this point, many individuals are told by the Board that they are close to receiving parole and are doing well but continue to receive denials. When you reach the glass ceiling, the Board is usually relying on the crime and/or prior criminal history to deny parole. Often, the Board can find no reason in the individual's post-conviction record to deny parole, so it uses the crime and any other pre-conviction factor it can find over and over to deny parole.

Individuals in this situation have two choices: continue the process of Board hearings hoping that the Board will grant parole, thereby breaking the

glass ceiling, or take the Board to court to challenge the denial on due process grounds. I know that many are taking the Board to court with or without the representation of an attorney. I encourage everyone to enforce his or her rights in court to the extent possible.

On the other hand, the inmate may be receiving parole denials due to 115s (serious disciplinary reports), lack of parole plans, inadequate programming or other reasons.

If the inmate has any serious 115s in the past few years, it is possible to overcome them: however, it will take some time. Generally speaking, the Board wants to see a span of disciplinary-free behavior before it grants parole. I rarely, if ever, see parole granted unless there has been a five-year span of disciplinary-free behavior since the last 115. Once again, however, this is based only on my experience, and is not necessarily written in stone. Consider all post-conviction factors, including periods of discipline-free behavior before the last 115. If you've been set back by a 115, I recommend that you immerse yourself in self-help and therapy programming until your next hearing. You may not be granted parole at your next hearing, but the Board will see that you are making progress.

That covers, in general, the parole hearing process. Next are the top 10 questions about the Board. These questions apply to all hearings.

VI. TOP 10 QUESTIONS ABOUT THE BOARD

1. Should I discuss the crime?

Discussing the crime is advisable only if you are relatively comfortable doing so and have something to gain, such as clarifying your limited role in the crime (without minimizing your choices or behavior), pointing out mitigating factors (such as long-term stress,) explaining your insight and understanding of the causative factors, or when you have the support of the victim's family and/or District Attorney's Office. Absent these benefits or others, discussing the crime merely gives the Board and District Attorney the opportunity to ask questions that usually are intended to elicit unfavorable information and/or make you look untruthful and unsuitable for parole. Extended discussion of the facts of the case should be avoided if it will lead to impeachment by the Board or District Attorney with prior inconsistent statements or contrary eye-witness or expert testimony. As mentioned above, under the California Supreme Court's ruling in *Shaputis II*, an "implausible" denial of guilt alone may support a finding of current dangerousness.

As mentioned, you have the right *not* to discuss the facts of the crime and the Board is prohibited by law from holding that decision against you. Unfortunately, the Board often interprets a refusal to discuss the crime as a

failure to demonstrate remorse and insight. However, admitting the facts of the crime and expressing remorse and insight are separate matters, and remorse and insight can be expressed without discussing the facts of the crime. Therefore, it is particularly important for those who choose not to discuss the crime to do at least one of the following: (1) discuss remorse and insight through your attorney, so that the Board does not conclude that you lack remorse or fail to understand why the crime occurred, (2) advise your attorney to convey your remorse and insight to the Board, (3) submit a written statement to the Board expressing remorse, insight and taking responsibility, or (4) make a closing statement to the Board in which you address remorse and insight.

The first option can be accomplished with your attorney asking you questions and eliciting your responses demonstrating remorse and insight.

The second option is achieved by your attorney discussing your psychological evaluations in which the psychologist concludes you express genuine remorse and insight, as well discussion of your own comments in the psychological report demonstrating remorse and insight.

The third option is accomplished by carefully preparing a written statement expressing remorse and insight and submitting it to the Board before the hearing.

The fourth option permits the inmate to present his own verbal statement to the Board at the end of the hearing in which he or she expresses remorse and insight.

Discuss with your attorney the pros and cons of discussing or not discussing your commitment offense and the above options for demonstrating remorse and insight.

2. Will the victim's relatives be at the hearing?

As mentioned above, victim's next of kin have the right to attend the hearing and express their views concerning parole. Sometimes, victim's relatives attend every hearing, sometimes none, and sometimes they begin attending after the inmate has had a number of hearings. You will not know until the day of your hearing whether the victim or family members will attend.

3. Should I contact the victim's family?

Many individuals want to contact the victim or victim's family to express remorse but aren't sure how to do it. The Board will not permit you to speak to the victim's next of kin at the hearing. The Board recommends that all contact with the victim's family be made through the District Attorney's Office. Therefore, any letters of remorse or apology should be sent to the District Attorney's Office with a request to forward the letter to

the victim or victim's family. Keep a copy of your letter and a copy of your letter to the District Attorney. Ask the District Attorney to inquire whether the family is willing to receive the letter before it is forwarded to the victim or victim's family. Be extremely careful about contacting the victim's family or the victim, even through the District Attorney's Office. In some cases the Board advises not to contact the victim or victim's family. Consult with your attorney before attempting any contact with the victim's family.

4. Can I parole out of state?

Penal Code section 3003 subdivision (j) states: "An inmate may be paroled to another state pursuant to any other law." The Board generally prefers that inmates begin their parole in California rather than another state. Discuss with your attorney your parole plans for another state.

5. I have no friends or family in California; how can I make parole plans for California?

This is a fairly typical situation. Some people have lost contact with friends and family and appear to have no support in California. There are many organizations, however, that offer transitional housing and employment training and assistance. I recommend that you contact churches and organizations such as the Salvation Army in the area where you intend to parole and request information about housing and employment resources for parolees. Also, ask around the prison; someone may be able to provide

you with information to get you started. Metropolitan areas such as Los Angeles, San Francisco, Oakland, etc., generally have many different organizations that provide housing and employment assistance to parolees.

6. Can I postpone the hearing?

Postponements are governed by California Code of Regulations, title 15, Division Two, Section 2253. Postponements may be granted for good cause or when insufficient information is present to determine any necessary fact (section 2238) or the panel determines that a decision regarding parole cannot be made because of pending criminal or disciplinary charges (section 2272).

Consult with your attorney whether you have good cause to postpone the hearing. Postponements may be granted sometimes to obtain support letters and job offers if it appears that the individual may be suitable for parole. However, if an individual has one or more recent 115s, the Board is not likely to grant a postponement to obtain support letters and job offers.

Note: title 15 parole regulations are continually under review and are subject to change at any time. Postponement criteria and procedures may have changed by the time you read this. Therefore, consult an attorney for all questions related to title 15 regulations and procedures, including postponement of the hearing.

Update, November 30, 2010: the title 15 regulations were amended, and prisoners were provided the right to waive (i.e., "give up") their hearing. Waiver of the hearing may be advisable for a number of reasons, such as, pending litigation, completion of educational, vocational or self-help programs or receipt of recent disciplinary write-ups, among others. Below are the title 15 regulations addressing waivers, stipulations, postponements and continuances. As usual, consult with your attorney before choosing which option is best for you.

2253. Voluntary Waivers, Stipulations of Unsuitability, Postponements, and Continuances.

(a) General. The rights and interests of all persons properly appearing before a board life parole consideration hearing are best served when hearings are conducted as scheduled. Occasional circumstances may require the delay of a scheduled hearing. It is the intention of the board to recognize the need and desirability to occasionally delay a scheduled hearing and to authorize said delays through a process of voluntary waiver or stipulation of unsuitability or to postpone or continue a scheduled life parole consideration hearing.

(b) Voluntary Waivers. A prisoner may request to voluntarily waive his or her life parole consideration hearing for any reason. Requests shall be made in writing to the board and shall state the reason for the request.

(1) In requesting a voluntary waiver, the prisoner shall be deemed to have waived his or her right to a life parole consideration hearing pursuant to sections 3041 and 3041.5 of the California Penal Code for the period specified in the waiver. A prisoner may waive his or her hearing for one, two, three, four or five years.

(2) A request for a voluntary waiver of a life parole consideration hearing should be submitted to the board at the earliest possible date that the prisoner becomes aware of the circumstances leading to the request, but shall be no later than 45 calendar days prior to the date of the scheduled hearing. A request made no later than 45 days prior to the scheduled hearing shall be presumed to be valid.

(3) A request for a voluntary waiver of a life parole consideration hearing submitted less than 45 calendar days prior to the scheduled hearing shall be presumed to be invalid and shall be denied by the board unless good cause is shown and the reason(s) given were not and could not reasonably have been known to the prisoner 45 calendar days prior to the scheduled hearing.

(4) In the event a request for a voluntary waiver is granted during the week of a scheduled life parole consideration hearing, in order to avoid future cost and inconvenience to properly appearing parties, the board shall give the District Attorney and the victim, victim's next of kin, members of the

victim's immediate family and two victim's representatives the opportunity to give a statement on the record. If statements are taken, a transcript shall be made and shall be considered by the next hearing panel. The prisoner may waive his or her right to be present for such statements.

(5) Prisoners may waive no more than three consecutive life parole consideration hearings.

7. There are some mistakes in my Board or psych report. What should I do?

It is fairly common for mistakes to appear in both the Board and psychological reports. Contact the counselor who prepared your Board report or the doctor who prepared your psychological evaluation and request in writing that the mistakes be corrected. If the mistakes go uncorrected, make sure you point them out to your attorney before your hearing so that he or she can bring them to the Board's attention and provide appropriate documentation, if necessary. Mistakes can usually be clarified at the beginning of the hearing. If the mistakes are serious enough, you may want to request a postponement to correct them.

8. Should I talk about my prior convictions?

Penal Code section 5011 subdivision (b) states: "The Board of Prison Terms shall not require, when setting parole dates, an admission of guilt to any crime for which an inmate was committed." Additionally, title 15,

section 2236 states: “The facts of the crime shall be discussed with the prisoner to assist in determining the extent of personal culpability. The board shall not require an admission of guilt to any crime for which the prisoner was committed. A prisoner may refuse to discuss the facts of the crime in which instance a decision shall be made based on the other information available and the refusal shall not be held against the prisoner. Written material submitted by the prisoner under s 2249 relating to personal culpability shall be considered.” I would argue that these sections apply to convictions occurring before the conviction for the indeterminate life term. Therefore, if you have prior convictions, Penal Code section 5011 subdivision (b) and title 15 section 2236 permit you *not* to admit guilt for *any* prior conviction, not just the commitment offense. This does not mean the Board cannot consider the prior conviction or convictions; the Board will. Whether you discuss any prior convictions with the Board is another question. There may be advantages or disadvantages to discussing any prior conviction with the Board, so you should consult with your attorney regarding this decision.

If you admit your prior convictions and take responsibility for them, answering the Board’s questions about them may suggest remorse, accountability and insight—as long as there are no significant disputes

concerning your responsibility. If you deny responsibility to any significant degree for any prior conviction, it may be to your disadvantage to discuss them with the Board, as your denial of responsibility may cause the Board to question your credibility, accountability and remorse—particularly if you also deny responsibility for the commitment offense.

Nevertheless, if you have any prior convictions, I recommend that you be fully prepared to discuss them at the hearing and clarify any incorrect information. Sometimes the Board has questions about prior convictions, sometimes they do not. In any event, you should be fully prepared to answer questions about prior convictions—if necessary, to clarify incorrect information or show your remorse, insight and accountability, unless you and your attorney have decided not to discuss any aspect of any prior conviction.

Generally speaking, I recommend *not* discussing any prior arrests and dismissed charges. Discussion of prior arrests or dismissed charges can lead to contentious exchanges with the Board and additional arguments by the District Attorney's representative concerning lack of insight, remorse and accountability. Let any prior arrests or dismissed charges be handled by your attorney. The Board is allowed to consider all relevant and reliable information, but prior arrests or dismissed charges are not likely to be

relevant or reliable and, therefore, should generally not be discussed or considered by the panel.

Unfortunately, however, the Board sometimes considers prior arrests and dismissed charges, even if your attorney objects. On the other hand, effectively presented objections sometimes result in the Board not considering this information. If the Board repeatedly permits this sort of information to be introduced and considered at your hearing, you may have to take the Board to court to stop this from occurring in the future.

Consult with an attorney concerning the potential significance of any prior convictions, arrests or dismissed charges.

9. Should I hire a lawyer or take a state-appointed lawyer for my hearing?

Many individuals want to know whether they should hire a private attorney for their parole hearing or take a state-appointed lawyer. They often ask, which is better and why? The answer depends greatly on the circumstances of each case. For example, if you are having your initial hearing, hiring a private lawyer will not ensure that you are granted parole, nor will it likely improve your chances for receiving parole under current Board policies. As discussed above, parole is denied at virtually all initial hearings with only the rarest of exceptions, such as when you have the support of the prosecuting attorney and trial judge, which is not very often.

A private attorney will spend more time on your case than the state-appointed attorney and may be more familiar with all facts and circumstances of your case. However, once again, regardless of the amount of your attorney's preparation and participation in the hearing, parole will almost certainly be denied at your initial hearing whether you have a private or state-appointed attorney. Having said that, as mentioned above, it is important to document all facts and circumstances properly at the initial hearing to build a foundation for future hearings. Most state-appointed attorneys are aware of this and provide adequate, good or excellent representation at both initial and subsequent hearings.

Another situation in which hiring a private attorney will probably not improve your chances for parole is when the inmate has one or more serious 115s since the last hearing. For example, if, since your last hearing three years ago, you have received 115s for pruno and battery on an inmate, under current Board policies, the Board is unlikely to grant parole.

Of course, there is the other side of that coin. Maybe you have had no 115s in the past 5 or 10 years; maybe you've had none at all and have been programming and earning certificates of completion for various self-help groups. If you have a supportive psychological evaluation and good parole plans and can afford to hire a private attorney, doing so may be to your

benefit. As I mentioned, the main benefit of hiring a private attorney is that the private attorney will spend more time preparing for your case. State-appointed lawyers are paid $50 an hour with a cap of eight hours, nine if an ADA issue is involved. Therefore, your state-appointed attorney gets paid probably $450 to represent you at your hearing. A private attorney will charge considerably more.

I don't mean to create the impression that you cannot be granted parole if you are represented by a state-appointed attorney. That is absolutely not true. As a prior state-appointed attorney myself, dozens of my clients were granted parole. Therefore, if you have been doing all the things necessary to be found suitable for parole, it will be reflected in your record and will be obvious to the Board. So, the notion that you must hire a private attorney to receive a parole grant is simply not true.

There are an infinite number of factors that may determine whether hiring a private attorney will enhance your chances for parole, such as whether it is your initial hearing, whether you have recent 115s, whether your parole plans are adequate, whether the psychological evaluation is supportive, whether victim's relative attend your hearing and oppose parole, the nature of the district attorney's opposition and many others.

If funds are available and you have met all the Board's expectations and have built a strong resume for parole suitability, then hiring a private attorney may be the better option. Not only will the attorney spend more time preparing for the hearing, he or she will also spend more time preparing *you* for the hearing. Therefore, having a private attorney may provide you with a greater sense of readiness, as the attorney will anticipate issues and develop a strategy with you. But, under current Board policies, no attorney in the world will prevent the Board from denying parole if you fail to meet the parole suitability criteria under title 15, Division 2 Section 2402 subsections (c) and (d), due to recent 115s, poor psychological evaluations, lack of self-help programming, inadequate parole plans and so on.

Another advantage of hiring a private attorney is the creation of an attorney-client relationship through which your questions and concerns may be addressed well in advance of the hearing. Typically, a state-appointed attorney will not meet with you until about two weeks before the hearing. Nor will you typically have any mail correspondence with a state-appointed attorney. He or she will probably have little time to review additional documentation, assist with development of parole plans or address other matters that may require attention. If you hire a private attorney six months before your hearing, you will have plenty of time to correspond by mail,

review trial transcripts, if necessary, consider legal issues such as pending writs or appeals, review plea bargain agreements, probation officers' reports develop parole plans, discuss potential questions about the crime by the Board and deputy DA, plan closing statements and create a strategy for the hearing.

Finally, even if you have the misfortune to be represented by an unprepared state-appointed attorney who fails to represent you effectively, your record will speak louder than the attorney anyway. If your record indicates parole suitability and you have prepared yourself for the hearing, it is doubtful that an unprepared state-appointed attorney will be the cause of parole denial. Frequently, the Board relies on unchanging factors such as the crime and/or prior criminal history to deny parole. Increasingly, "lack of insight" is also cited as grounds to deny parole. Neither a private attorney nor a state-appointed attorney can prevent the Board from denying parole based on unchanging factors or lack of insight, if that is the Board's desire. Therefore, the Board's decision to deny parole in virtually all cases is not dependent only on the performance of your attorney. Your record, and your performance at the hearing, ultimately weigh more than your attorney's performance. Without adequate preparation for the hearing by yourself and

your attorney, however, your record may not be presented in the most favorable light.

10. I've done more than enough time; isn't the Board required to set a parole date?

The short answer to this question is no. The Board is not required to grant parole simply because of the amount of time an individual has served. This is true for ISL (indeterminate sentence law) prisoners as well. Although it is true that ISL prisoners served much shorter terms before the DSL (determinate sentence law) became law, no court has held that the Board must set parole dates for ISL or DSL prisoners based on time served regardless of public safety considerations. The Board may deny parole to any prisoner, ISL or DSL, if it believes that considerations of public safety require continued incarceration.

Although the Board is not required to grant parole based on the amount of time served, at some point, the term may become constitutionally disproportionate to the offense. Many prisoners have exceeded either the minimum or maximum matrix terms for their crimes. I expect further guidance from the courts concerning the constitutional term limits for individuals serving indeterminate sentences under both the ISL and DSL.

VII. TWELVE RULES FOR PAROLE HEARINGS

Rule No. 1: Be Prepared.

Prisoners have the right to conduct an "Olson" review (review of central file or "c-file") prior to their hearings. Review your c-file; if possible, make copies of the court of appeal's decision, if any, police reports, probation officer's report and intake summary at the beginning of the c-file. Note, be careful not to copy or possess any information from your c-file that may expose your to danger in prison, such as reports of child abuse, sexual abuse and so on.

Typically, the DA will use prior statements in probation officer's reports or evidence cited by the court of appeal. Additionally, be sure to review any police reports in the c-file, as such reports are often supplied by the District Attorney's office for the Board's review. Of course, be familiar with your psychological report or "Mental Health Evaluation." The Board and DA frequently discuss comments in these reports. Finally, be prepared to discuss any prior criminal history, subject to the limitations already discussed, as this is a routine part of the hearing. Know whether charges were dismissed, probation was granted, or a guilty plea or verdict was obtained. The Board will appreciate your preparation. If you are unfamiliar with the resolution of prior criminal charges, the Board may perceive your

lack of knowledge as not caring or an attempt to avoid or minimize responsibility. A little preparation can avoid creating this perception.

Rule No. 2: **Be Honest.**

Nothing works more damage with the Board than dishonesty. This point cannot be overstressed. Be truthful about all matters discussed with the Board. Additionally, answer questions simply and directly. Avoid volunteering unnecessary information. If you have questions about the content of your answers, consult your attorney.

Rule No. 3: **Accept Responsibility.**

Avoid excuses and blaming others. If you don't accept responsibility for your choices, and the consequences of your actions, the Board will find that you lack insight into the causative factors of your offense as well as the consequences of your behavior. However, if explanations are needed to clarify the facts concerning your role in the crime or to address mitigating circumstances, don't hesitate to do so, but always take full responsibility for the consequences of your own choices and actions. Remember, the Board believes you are guilty before you step into the room. The more you attempt to avoid responsibility and distance yourself from your crime, the more the Board sees you as unsuitable for parole. On the other hand, if you truly are innocent, by all means, maintain your innocence. Know, however, that the

Board has absolutely no power to change your status from guilty to not guilty. Know also that simply maintaining one's innocence has never proven persuasive in practice with the Board. Consider completing the Board's recommendations even if you are innocent.

Rule No. 4: **Demonstrate Insight**

It's not enough merely to accept responsibility for the crime. The Board wants to see you demonstrate "insight" and understanding of ***why*** the crime occurred. Keep it simple. The Board wants to know ***why*** you made the choice to commit a seriously anti-social act. Some discussion of your childhood experiences, relationship with your parents, emotional, physical or substance abuse may be appropriate—depending on the circumstances. Inadequate self-esteem as a child or adolescent often leads to approval seeking behavior, substance abuse and poor choices, resulting in a downward spiral that culminates with the crime. These various influences may need to be addressed, but stay focused on the crime and, as mentioned above, do *not* blame your crime on drugs, alcohol, physical or emotional abuse or anyone or anything else. Take responsibility and be able to explain in less than five minutes how those experiences resulted in your choice to commit the crime or get involved in criminal activity. This is the hardest part for many. There is no "good" reason for a life crime, but there are

circumstances which make it more likely that people will commit such a crime. Recognize and explain what events, factors and choices put you in the circumstances to commit the crime. Explain how you would avoid the same crime in the future.

If you have no understanding of any factors that led to the crime, the Board will conclude that you are unsuitable for parole. If you don't understand why the crime occurred, the Commissioner or deputy commissioner will ask: How can the Board know the crime won't happen again if you don't know why it occurred? If you truly don't know why, focus on your life before the crime: What were your goals? Who were your friends? Did you have a drug or alcohol problem? What type of relationship did you have with your parents, siblings, spouse, girlfriend or boyfriend? How did you feel about yourself? Looking into these questions should help give you some understanding of the factors that led to the crime. As always, discuss this topic thoroughly with your attorney.

Update, November 30, 2010: Both the Board's and Governor's reliance on "lack of insight" to deny parole has been exposed as unfounded and illegitimate in many recent court cases. Although a prisoner's "lack of insight" may establish "some evidence" of current dangerousness, as in the *Shaputis* case (*In re Shaputis* (2008) 44 Cal.4th 1241), this is not true in all

cases. Frequently, the Board and Governor criticize the inmate's insight, because he or she denies certain facts or that the crime occurred as presented by the deputy district attorney or as presented in the probation officer's report or court of appeal's decision. Fortunately, however, the law does not require that the inmate admit the facts in the probation officer's report, court of appeal's decision or the district attorney's theory of the case.

Courts are taking a very close look at whether the prisoner's claimed "lack of insight" is supported by the record and whether the claimed deficient insight or failure to admit certain facts supports the conclusion that the prisoner is currently dangerous. This is significant, because many prisoners deny the prosecution's theory of the case or certain aspects of it, but if the record establishes adequate insight, the prisoner's refusal to admit certain facts, lack of memory about the crime or other factual discrepancies may not establish "some evidence" of current dangerousness, and there may be even less reason to discuss the crime. On the other hand, denial of facts well established in the record that may implicate current dangerousness may present a barrier to parole. Consult with your attorney whether the record establishes adequate insight and acceptance of responsibility and whether further clarification may be necessary.

Update: June 26, 2012: ***Shaputis II***

The California Supreme Court issued a second opinion in the case of Richard Shaputis. (*In re Shaputis* (2011) 53 Cal.4th 192, *Shaputis II*). The court's opinion has received much criticism from commentators but, nevertheless, this opinion is now the "gold standard" on questions concerning a prisoner's "insight" and the advisability of choosing not to discuss the crime, or other matters, with the Board. Superior courts and courts of appeal will apply *Shaputis II* when considering habeas corpus petitions challenging parole denial, particularly in cases where the Board's denial was based on "lack of insight" or an implausible denial of guilt. As the *Shaputis II* court explained: "It is true that often the most recent evidence as to the inmate's level of insight will be particularly probative on the question of the inmate's present dangerousness, but that is not *necessarily* the case." (*Id*. at p. 211; italics original.) The court explained: "The regulations do not use the term 'insight,' but they direct the Board to consider the inmate's 'past and present attitude toward the crime' (Regs., § 2402, subd. (b)) and 'the presence of remorse,' expressly including indications that the inmate 'understands the nature and magnitude of the offense' (Regs., § 2402, subd. (d)(3)). These factors fit comfortably within the descriptive category of 'insight.'" (*Id*. at p. 218.)

Thus, despite the absence of statutory and regulatory language or definitions concerning the term "insight," it is now well established that the inmate's understanding of and attitude toward the crime—his "insight," are important in determining whether there is "some evidence" of current dangerousness.

The court acknowledged that the inmate is not required to participate in the hearing or discuss the crime: "The inmate is free to limit his participation in the process, but that choice cannot restrict the scope of the Board's review of the evidence.... An inmate who refuses to interact with the Board at a parole hearing deprives the Board of a critical means of evaluating the risk to public safety that a grant of parole would entail. In such a case, the Board must take the record as it finds it." Obviously, the court is saying that it is important for the inmate to talk to the Board, so the Board can assess the inmate's insight. The court is also clearly sending a message saying, in essence, "The Board is not confined to relying solely on the prisoner's record of good programming, favorable psych reports and parole plans. If the record contains evidence showing a deficiency in 'insight,' the Board will be justified in denying parole." Those who choose not to discuss the crime to express "insight" are likely to be in a worse position than those who do.

The court also made clear that it was not persuaded by arguments concerning Penal Code section 5011 subsection (b). "We note, however, that an *implausible* denial of guilt may support a finding of current dangerousness, without in any sense requiring the inmate to admit guilt as a condition of parole. In such a case it is not the failure to admit guilt that reflects a lack of insight, but the fact that the denial is factually unsupported or otherwise lacking in credibility." (*In re Shaputis II*, *supra*, 53 Cal.4th at p. 216.) This puts many into a difficult position. For those who deny guilt, the "plausibility" of the denial will be crucial. The more plausible the denial, the less likely insight will be found lacking; but, if the denial is *implausible*—"factually unsupported or otherwise lacking in credibility," the Board is almost certain to deny parole based on lack of "insight," and the denial will most likely be upheld in court.

There is no one-size-fits-all solution to this dilemma. Consult with your attorney about the best parole hearing strategy in your case if you deny guilt. I will say this: I did have a client who denied guilt for many hearings. He said he acted in self-defense when he clubbed a man to death. The DA always attacked him for denying guilt, as there was no evidence of a self-defense struggle. My client finally admitted he had killed the victim as the victim slept. He took full responsibility for the crime and for lying about it

previously. The DA opposed his parole for a couple more hearings then actually changed his position and supported parole. My client was eventually granted parole and released a few years ago.

I'm not suggesting anyone admit guilt if they are innocent; I'm merely providing anecdotal proof that changing one's version of the crime does not necessarily mean that parole will *always* be denied because of prior untruthful denials. Keep in mind, however, that in addition to admitting finally that he had killed the victim while the victim was asleep, my client also had an unblemished post-conviction record, extensive programming, highly favorable psych reports, no priors and good parole plans. His name was Gustavo Aguilar. Weighing all the factors, the Board found that his prior denials of guilt—although misleading and untrue, did not continue to provide evidence of current dangerousness, in light of his entire record and sincere expressions of remorse and accountability. The DA's support for his parole also was important. So, you have to evaluate all the factors in your case before deciding whether to recant an innocence or self-defense claim. Depending on the circumstances, recanting might do more harm than good, or it might result in an eventual parole grant, as the questions of remorse, responsibility and insight get cleared up. Consult your attorney on this issue.

Another issue clarified by the *Shaputis II* court was whether it is proper for the Board to inquire about the inmate's "insight" into matters *other* than the crime. The Board likes to explore whether the inmate has adequate "insight" into subjects like prior substance abuse, prior crimes, domestic violence and so on. Before *Shaputis II*, the case law was not clear whether inquiry into the inmate's insight in areas other than the crime was proper, but now the answer is clearly yes. "Accordingly, the inmate's insight into not just the commitment offense, but also his or her other antisocial behavior, is a proper consideration." (*In re Shaputis II*, *supra*, 53 Cal.4th at p. 219.)

Now, hearing preparation should include discussion of insight into non-commitment-offense topics that are likely to interest the Board, such as, prior drug and alcohol abuse, prior crimes, prior failures on probation, domestic violence and any other relevant matters. Of course, you are not *required* to discuss any of this with the Board but, as the *Shaputis II* court observed, when the inmate refuses to participate in the hearing, "[T]he Board must take the record as it finds it." If the Board deems the record concerning "insight" in any of these areas to be inadequate, it will probably be very difficult to convince a court that the Board was wrong—particularly

if numerous questions concerning “insight” into prior substance abuse, crimes, probation failures and the crime remain unanswered.

Rule No. 5: **Show Remorse.**

The Board wants to see remorse. I am emphatically NOT suggesting that anyone put on a show for the Board or display false remorse, but if you are remorseful, a genuine expression of remorse is important. When the Board asks, "How do you feel about this crime?" you have an opportunity to express remorse and understanding of the pain caused to the victim and his/her family. Put yourself in the shoes of the victim's family in order to show empathy and understanding of their feelings. Relate how your own personal losses, if any, bring you understanding of the suffering of the victim’s family. Take the opportunity to tell the Board how you "feel" about the crime and express your regret for the pain it caused.

Even if the Board does not ask you how you “feel” about the crime, make sure you say so in your closing statement, if you make one.

Rule No. 6: **Discuss the Crime Only if Something is Gained.**

I talked about discussing the crime earlier, but let me reiterate: The decision whether to discuss the crime is yours. If you feel that you want to discuss the crime with the Board regardless of evidence that may contradict your version of the crime, regardless of the deputy district attorney's

potential questions, regardless of the presence of the victim or victim's family, then go ahead and discuss the crime. It's your hearing, and it's your right to discuss the crime. That said, I'll also reiterate that discussing the crime is advisable only if you are relatively comfortable doing so and have something to gain, such as clarifying your limited role in the crime (without minimizing your choices or behavior), pointing out mitigating factors (such as long-term stress,) explaining your insight and understanding of the causative factors, or have the support of the victim's family and/or District Attorney's Office. Absent these benefits or others, discussing the crime merely gives the Board and District Attorney the opportunity to ask questions that make you look bad. Unless you assert your right not to answer the deputy district attorney's questions, you may find yourself answering his or her questions, much to your detriment. Additionally, if your account of the crime is *implausible*, the Board may be justified in finding "some evidence" of current dangerousness under *Shaputis II*. You could, however, present your version of the crime to the Board and choose not to answer questions from both the Board and deputy district attorney; or, you could fully discuss the crime with the Board on the one hand and choose not to answer questions from the deputy district attorney on the other; you are not required to answer the deputy district attorney's questions.

The district attorney's role in the hearing is defined under title 15 section 2030 subsection (d)(2): "Role of the Prosecutor. The role of the prosecutor is to comment on the facts of the case and present an opinion about the appropriate disposition. In making comments, supporting documentation in the file should be cited. The prosecutor may be permitted to ask clarifying questions *of the hearing panel*, but may not render legal advice." There is no authorization for the prosecutor to ask *the prisoner* questions. (Emphasis added.)

Therefore, if you know that the deputy district attorney will be hostile, consider not answering his questions. When it comes time for questions, your attorney should inform the Board that you will not be answering any questions from the District Attorney's Office, if that is your choice.

I generally recommended that extended discussion of the facts of the case should be avoided if it will lead to impeachment by the Board or deputy district attorney with prior inconsistent statements or contrary eye witness or expert testimony on matters of substantial significance but, as usual, discuss this decision with your attorney.

Rule No. 7: **Have the "Right" Attitude.**

There are absolutely, unquestionably subjective "human" elements at work in parole hearings. One of these is attitude. Even though it may be

hard to be optimistic in the face of the Board's high denial rate, the Board still expects a certain attitude before it will grant parole. Hostility, distrust, and accusations against the Board work only to your disadvantage. These feelings and attitudes may be completely understandable; however, it truly serves you better to present yourself as calm and composed rather than distrustful and angry, even though those feelings may be well justified. The Board sees an individual's inability to control his anger and emotions in a parole hearing as a sign that he will be unable to control his anger and emotions in free society. Therefore, failing to control these emotions does more harm than good. On the other hand, being overly respectful or obsequious is not recommended either. Just be yourself and show common courtesy. Even though the prisoner may have an outstanding record to present to the Board, if he does it with the wrong attitude--one that conveys anger, distrust and hostility, parole will likely be denied. Avoid those attitudes in hearings; it will serve you better than venting your emotions on the Board.

Rule No. 8: **Avoid Making Extended Legal Arguments**

Unless you are representing yourself, it is not advisable to make extended legal arguments to the Board. Additionally, the best place for legal arguments is a courtroom, not the Boardroom. The Board is an

administrative agency and has no judicial power. Sometimes, however, legal arguments are necessary, but they should ordinarily be made by your attorney. Making legal arguments to the Board explaining why the Board must set a parole date for you is perceived by the Board as an *absence of remorse*. These arguments focus on the prisoner's legal rights and are perceived as a sign of *self-centeredness*. Although you may have good arguments, let your attorney make them at the appropriate time. This will help avoid the appearance of selfishness and lack of remorse.

Rule No. 9: Don't Minimize Prior Convictions or Prison Misconduct.

Nonviolent prior convictions such as burglary, receiving stolen property, possession of drugs and so on should not be minimized as irrelevant or not deserving of the Board's consideration. All prior criminal convictions warrant the Board's consideration—even if you choose not to discuss them. The Board knows the difference between a petty theft and a prior robbery, so dwelling on the insignificance of a prior petty theft presents an image of *self-centeredness* and *absence of remorse* that should be avoided. This ties in with rules 3, 4 and 5 regarding acceptance of responsibility and demonstrating insight and remorse.

By the same token, old 115s should not be minimized or treated as if they are too old to warrant any consideration by the Board. I've seen many

clients go into hearings with great psych reports, excellent parole plans, recent self-help certificates and high chances for a parole date, only to have their hopes dashed when the discussion of 115s that were 15 or 20 years old went poorly. In many cases, the Board may not have inquired about old 115s for the past two or three hearings, but you can't assume that just because prior Board panels have not asked detailed questions about 115s that your next panel won't ask any, either. Therefore, you should be prepared to discuss all prior 115s, administrative 115s and 128 counseling chronos. Becoming frustrated and defensive about discussing 115s that have not been discussed for several hearings is the worst of all options. If you are guilty of the misconduct, you should simply admit it and explain the efforts you have taken to avoid repeating the behavior, such as, additional substance abuse programming, self-help courses, etc. If you maintain your innocence for prior 115s or other misconduct, calmly and patiently provide your explanation to the Board without announcing that the Board has obviously already made up its mind by bringing up this old write-up. Case law has upheld Board denials when the inmate has shown anger or loss of self-control during hearings, so if the Board unexpectedly brings up an old 115, remaining calm, rational and answering questions directly is your best approach.

Rule No. 10: **Discuss Self-Help and Therapy.**

During discussion of post-conviction factors, discuss what was learned in recent self-help programs. Review the program before the hearing to prepare. Bring some of the course materials with you to the hearing. Explain what was taught and how you can apply it in the future, or how you applied it since it was learned. If you attend AA or NA, know the steps. If you can't remember the steps, know some principles of AA/NA you can discuss in detail and whether you have practiced those principles, e.g., making amends, taking a moral inventory, etc.

Rule No. 11: **Have Detailed Support Letters.**

Ask family and friends to write support letters containing detail about your living arrangements, such as whether you will share or have your own room, rent an apartment, etc. For job offers, request details on whether the job is part-time or full-time, hourly or salary, and rates for both, the nature of work and any other details that may be helpful, such as whether your experience is desirable for the position and how long the job is expected to last.

Some inmates submit parole packets to the Board with support letters from potential employers, pictures of the business where they will work and

information about the product or services offered. An organized binder for parole plans is a good idea.

Rule No. 12: **Keep Closing Statements Brief.**

Ideally, closing statements from the parole candidate should be no longer than 10 minutes, if possible. Beyond that, the Board's attention starts to fade. Avoid causing the Board to become restless and impatient by keeping closing statements under 10 minutes. The Board will appreciate your brevity, and 10 minutes is plenty of time to make an adequate closing in virtually all cases.

VIII. EFFECTIVE ANSWERS TO QUESTIONS

Section A.

COMMISSIONER Did you understand what I read, sir?

INMATE: Yes, I did.

COMMISSIONER: And is what I read an accurate reflection of what occurred?

INMATE: It's very accurate.

COMMISSIONER: Are there any clarifications you wish to make regarding this?

INMATE: No. I think it's very accurate, Sir.

COMMISSIONER: Okay. When the report stated that you were finally forced out of the car, what does that mean?

INMATE: It means I surrendered.

COMMISSIONER: You surrendered?

INMATE: Yes.

COMMISSIONER: What did you do with the gun at that point?

INMATE: I threw it on the ground.

COMMISSIONER: Okay. So, from that point on you cooperated with the police? Is that correct?

INMATE: Yes, I did.

COMMISSIONER: And were you honest and truthful during the investigation?

INMATE: Yes, I was.

COMMISSIONER: And why did you have a need to commit this robbery, sir?

INMATE: Well, when I came to California, I was going to work in construction, but when I got here, there was no work. The people who had encouraged me to come out here to work were not supportive. I was paying for a motel room every night, and the money was disappearing; I couldn't

find employment; I needed money; and that's why I committed the crime, Sir.

Section B.

COMMISSIONER: The central file indicates there isn't enough information to validate you as a gang member, although there is some hint that you have been involved in gang activity. Have you participated in any gang activity since coming to prison?

INMATE: No. And I have a chrono that addresses that in my file.

COMMISSIONER: Okay, but there's been some suspicion on the part of prison authorities that you have been involved in gang activities; is that true?

INMATE: No, that's not true.

Notice how all questions were answered directly and little information was volunteered. Generally, the most effective way to answer the Board's questions about the crime, prior criminal history, suspected gang involvement and so on, is to answer them directly, volunteering little or no unnecessary information. Other questions, such as questions about insight, remorse and self-help programs can be answered with more detail.

IX. 20 TRUE/FALSE QUESTIONS (Answer key at end)

1. You should always discuss the crime because you have no chance of being granted parole if you don't.

2. Don't be afraid to get tough with the Board and show your anger; let them know they can't push you around and violate your rights.

3. Make sure that you fully discuss all prior arrests and dismissed criminal charges with the Board.

4. The Board wants to know about your undisputed prior convictions for receiving stolen property and misdemeanor trespassing. You should admit the convictions and answer their questions, even though both convictions are nonviolent and are more than 25 years old.

5. The best way to start a hearing is by personally handing the Board a list of legal objections and copies of case law so that the Board will respect your rights.

6. You may talk about the crime extensively with the Board but are not required to answer any of the deputy district attorney's questions.

7. Whether it's your first or 15th hearing, it is important to review your c-file before your hearing to know what is contained in the probation report, court of appeal's decision and police reports.

8. You have the right to postpone you hearing for any reason.

9. As long as you accept responsibility for your crime, the Board will be satisfied and will require no further explanation.

10. Avoid discussing what you learned in your self-help and therapy courses, so that the Board does not question your insight.

11. You had two crime partners, and they actually took the victim's life. You were only there to commit a burglary and never touched the victim. You should focus on this with the Board to emphasize that you were not personally responsible for the victim's death.

12. You have an excellent post-conviction record and have met all the Board's expectations. You plan to parole to Arizona, where you have a full-time job offer as an electrician and a backup job in construction with your brother's construction company. Your family has agreed to give you a car and rent an apartment for you until you get established, but you have no chance for parole, since you plan to parole to another state.

13. I have no friends or family in California to help me with parole plans, so there's no chance I'll ever get parole.

14. I'm three years past the highest matrix term for my crime. I've done 24 years on a 15 to life sentence. If I stress to the Board the amount of time I have served, the Board is more likely to grant parole, because it will be

aware of the injustice of continuing to keep me incarcerated beyond the highest matrix term.

15. My crime is aggravated and is always used against me to deny parole. Because of the aggravated circumstances of my crime, I have no chance of parole.

16. I admit guilt but deny the DA's theory about most of the facts of the crime. I did not do most of the things the deputy district attorney says I did. Every time I have talked about the crime to the Board, the Board has not believed me and repeatedly says the evidence suggests I am being untruthful. The deputy district attorney tells the Board I'm not telling the truth and have not admitted full responsibility for the crime. I probably should discontinue discussing the crime at my hearings.

17. I was wrongfully convicted and I'm innocent of the crime. My best strategy with the Board should be to try to convince the commissioners that I'm innocent.

18. Two years before my commitment offense I was arrested for an unrelated robbery. No charges were ever filed against me, and I thought the matter was dropped. At my hearing, the district attorney submits a copy of a 20-year-old police report in which another individual claims I committed this never-charged robbery. The district attorney tells the Board that I

committed this robbery, even though I was never even charged. I should not discuss the facts of the robbery or my alleged involvement, and my attorney should object.

19. I should always hire a private attorney to represent me in my parole hearings.

20. I shot the victim, but it was an accident. I have no prior record, and my post-conviction record is excellent. My psychological reports say I pose a low risk of violence if released and assess my insight as good or adequate. The Board says I have no insight because I will not admit the prosecution's theory that the shooting was intentional. My case will be weak against the Board in court, because I do not admit the prosecution's theory that the shooting was intentional.

BONUS MULTIPLE CHOICE QUESTION

21. Your hearing seemed to go well, but the Board denied parole and informed you it had relied on confidential information in your central file. The Board gives no indication who provided the confidential information or what it says.

Your attorney should:

(a) demand that the Board immediately disclose all confidential information;

(b) do nothing, because the Board has the right to consider confidential information;

(c) threaten the Board with contempt;

(d) request that the Board comply with title 15, section 2235 subdivision (b), and provide the inmate with notice of the confidential reports on which the Board panel relied.

X. CONCLUSION (POLITICS AND PAROLE)

Beyond the immediate influence of the parole Board, there are much larger politics affecting the parole process. The most significant of these political influences is probably the Governor's Office. As you may know, the Governor appoints commissioners to the Board of Parole Hearings.

In today's age of hardball politics and negative campaign ads, no candidate for Governor wants to be portrayed as soft on crime. Therefore, any candidate for Governor who permits the release of individuals convicted of crimes such as kidnapping or murder runs the risk that his political opponents will create an attack ad or run a campaign charging that the Governor is soft on crime, because he allows convicted murderers and kidnappers to be released from prison. Of course, the negative attack ads will never tell the long story of rehabilitation. The message that will be

conveyed is that the Governor is permitting dangerous criminals to be released from prison early.

As many of you will recall, this all started with the 1988 presidential election. Michael Dukakis was running for President. His opponents learned that Dukakis, as Governor of his state, had permitted an individual to be released from prison for a work furlough project. While on furlough, the prisoner committed a serious felony. Political attack ads were aired reporting the incident and claiming that Governor Dukakis was soft on crime. He lost the election.

Many claim that the reason the Governor's Office has reversed so many parole grants is because it wants to prevent the image of being soft on crime. Imagine the political consequences if a lifer were released from prison then committed another serious felony in an election year. Although that is extremely unlikely, the incumbent Governor would, nevertheless, probably lose the election, and his political career probably would be over.

In order to maintain the appearance of being tough on crime, many believe that the Governor's Office appoints commissioners who will maintain a very conservative parole policy. Previous Governor Gray Davis, made numerous comments that were reported in the media indicating his belief that his appointees should follow his campaign promises to prevent

anyone convicted of murder from being released on parole. No commissioner I am aware of, however, has ever admitted receiving instructions from the Governor to maintain a no parole policy, nor has any Commissioner ever admitted maintaining his or her own policy of parole denial. Therefore, theories may be alleged, but proving them may be difficult.

Victim's rights groups are also becoming more prominent and vocal in the parole process. They remain informed about parole issues and frequently voice their opinions to the Board. Some may be in contact with state legislators or the Governor's office, seeking to promote their interests. Victim's rights groups appear to have growing political influence on the parole process, and cannot be ignored as a potentially influential factor.

Another aspect of the parole process of which you should be aware is that many Commissioners and deputy commissioners have law enforcement backgrounds. For decades, former police officers, detectives, military officers, prosecutors or individuals with direct ties to law enforcement, such as upper-ranking prison union officials, have been appointed to the Board. Litigation is pending challenging the Board's compliance with Penal Code section 5075, which states, "The selection of persons and their appointment by the Governor and confirmation by the Senate *shall* reflect as nearly as

possible a cross-section of the racial, sexual, economic, and geographic features of the population of the state." The reality is the Board does not reflect a cross-section of the racial, sexual, economic and geographic features of the population of the state. Until the courts order the Board into compliance with Penal Code section 5075, there will most likely continue to be many Board and deputy commissioners with law enforcement backgrounds.

This leads to another political aspect of the parole process. Many judges in the state courts are ex-prosecutors who seem unsympathetic and disinterested in prisoner claims against the parole Board or Governor. Fortunately, some judges seem concerned with the Board's and Governor's practices and thoroughly scrutinize their decisions for compliance with due process standards.

Politics will always be a part of the parole process in one way or another. So instead of becoming preoccupied with the political aspects of the parole process, stay focused on your own path.

Receiving a grant of parole will take time and work, but for those who have achieved this goal, the effort has been worth it. If you do the things recommended in this Guide, I believe your chances for receiving parole eventually will be improved.

Even if you follow the recommendations but still hit the glass ceiling, it is much better to make the effort than to give up. Parole will come sooner to those who are prepared and who have established a record of parole suitability.

On that note, change does appear likely. Many are winning in court against the Board and Governor, and the Board is granting more parole dates than in the past.

I hope this Guide has provided you with useful information, encouragement, guidance and answers to some common questions. I hope you will be inspired to continue your efforts toward rehabilitation on your path to parole.

Good luck in your efforts, and I wish you success.

ANSWERS TO TRUE FALSE QUESTIONS

1. **Answer: False**: Recall from our earlier discussion that under Penal Code section 5011 subsection (b), you are not required to admit guilt, and the Board may not hold your refusal to admit guilt against you.

2. **Answer: False: <u>See</u> Rule 7, Have the Right Attitude:** Hostility, distrust, and accusations against the Board only work to your disadvantage. These feelings and attitudes are completely understandable; however, it truly serves you better to present yourself as calm and composed rather than

distrustful and angry, even though those feelings may be well justified. The Board sees an individual's inability to control his anger and emotions in a parole hearing as a sign that he will be unable to control his anger and emotions in free society. Therefore, failing to control these emotions does more harm than good.

3. **Answer: False: See Question No. 8, Should I Talk About My Prior Convictions?** Prior arrests and dismissed charges should be handled with great caution. Generally speaking, I recommend not discussing prior arrests and dismissed charges. There may be good reasons to discuss such matters, however, so you should consult with your attorney before deciding whether to discuss any prior arrests or dismissed charges.

4. **Answer: True: See Rule 9, Don't Minimize Prior Convictions:** All prior convictions warrant the Board's consideration. Dwelling on the insignificance of nonviolent or misdemeanor prior convictions, however, presents an image of *self-centeredness* and *absence of remorse* that should be avoided, and admitting and discussing undisputed prior convictions may show insight, accountability and remorse.

5. **Answer: False: See Rule 8, Avoid Making Extended Legal Arguments**: Unless you are representing yourself, it is not advisable to make extended legal arguments to the Board. Additionally, the best place for

legal arguments is a courtroom, not the Boardroom. The Board is an administrative agency and has no judicial power. Sometimes, however, legal arguments are necessary, but they should ordinarily be made by your attorney. Making legal arguments to the Board explaining why the Board must set a parole date for you is perceived by the Board as an *absence* of *remorse*. These arguments focus on the prisoner's legal rights and are perceived as a sign of self-centeredness. Although you may have good arguments, let your attorney make them at the appropriate time. This will help avoid the appearance of selfishness and lack of remorse.

6. **Answer: True: <u>See</u> Rule 6, Discuss the Crime only if Something is Gained:** You may present your version of the crime to the Board and choose not to answer questions from both the Board and deputy district attorney; or, you could fully discuss the crime with the Board and choose not to answer questions from the deputy district attorney; you are not required to answer the deputy district attorney's questions.

7. **Answer: True: <u>See</u> Rule 1, Be Prepared:** It is important to review the c-file before the hearing.

8. **Answer: False: <u>See</u> Question 6: Can I postpone the hearing?** Postponements may be granted for "good cause."

9. **Answer: False: <u>See</u> Rule 4, Demonstrate Insight:** It's not enough to accept responsibility for the crime. The Board wants to see you demonstrate "insight" and understanding of ***why*** the crime occurred. Even though you may not have a good answer for why the crime occurred, explore your background to find contributing causes such as drug or alcohol abuse, long-term stress, mental or physical abuse and so forth. Be careful *not* to *blame* your crime on any external factor, but realize that circumstances probably contributed to poor judgment and decision making which ultimately led to the crime.

10. **Answer: False: <u>See</u> Rule 10, Discuss Self-Help and Therapy:** During discussion of post-conviction factors, discuss what was learned in recent self-help programs. Review the program before the hearing to prepare. Bring some of the course materials with you to the hearing. Explain what was taught and how you can apply it in the future, or how you applied it since it was learned.

11. **Answer: False: <u>See</u> Rule No. 3, Accept Responsibility:** If you don't accept responsibility for your choices, and the consequences of your actions, the Board will find that you lack insight into the causative factors of your offense as well as the consequences of your behavior. However, if explanations are needed to clarify the facts concerning your role in the crime

or to address mitigating circumstances, don't hesitate to do so, but always take full responsibility for the consequences of your own choices and actions. Remember, the Board believes you are guilty before you step into the room. The more you attempt to avoid responsibility and distance yourself from your crime, the more the Board sees you as unsuitable for parole.

12. **Answer: False: See Rule No. 4, Can I parole out of state?** The Board has authority to release you to another state, but generally prefers that you begin parole in California.

13. **Answer: False: See Question No. 5, I have no friends or family in California; how can I make parole plans for California?** There are many organizations that offer transitional housing and employment training and assistance. I recommend that you contact churches and organizations such as the Salvation Army in the area where you intend to parole and request information about housing and employment resources for parolees. Also, ask around the prison; someone may be able to provide you with information to get you started. Metropolitan areas such as Los Angeles, San Francisco, Oakland, etc., generally have many different organizations that provide housing and employment assistance to parolees.

14. **Answer: False: See Question No. 10, I've done more than enough time; isn't the Board required to set a parole date?** The short answer to

this question is no. The Board is not required to grant parole simply because of the amount of time an individual has served. The Board may deny parole to any prisoner, ISL or DSL, if it believes that considerations of public safety require continued incarceration.

15. **Answer: False:** If your crime is especially aggravated, you can still be granted parole.

16. **Answer: True: See <u>Rule No. 6:</u> Discuss the Crime Only if Something is Gained.**

It's your hearing, and it's your right to discuss the crime. Discussing the crime, however, is advisable only if you are relatively comfortable doing so and have something to gain, such as clarifying your limited role in the crime (without minimizing your choices or behavior), pointing out mitigating factors (such as long-term stress,) explaining your insight and understanding of the causative factors, or when you have the support of the victim's family and/or District Attorney's Office. Absent these benefits or others, discussing the crime merely gives the Board and District Attorney the opportunity to ask questions that make you look bad. If your account of the crime is "implausible," consider not discussing it with the Board.

I generally recommended that discussion of the facts of the case should be avoided if it will lead to impeachment by the Board or District Attorney with prior inconsistent statements or contrary eye witness or expert

testimony on matters of substantial significance. As always, however, consult with your attorney before deciding whether to discuss the crime.

17. **Answer: False:** Conviction of the innocent is possibly the greatest failure not only of our justice system but of society as well. Wrongful convictions are the unfortunate and tragic reality of a flawed justice system and a flawed society. However, simply maintaining your innocence in front of the Board has never proven to be effective. Although I encourage you to maintain your innocence, remember that the Board considers everyone to be guilty. Additionally, even if you are innocent, in most cases there's no way for the Board to verify your innocence. All the Board has is the paperwork saying that you were found guilty or pled guilty. The Board simply cannot and will not conduct an independent investigation to evaluate your innocence. **Review Rule 3**

18. **Answer: True: <u>See</u> Question 8, Should I talk about my prior convictions?** Prior arrests which resulted in no criminal charges and prior criminal charges that were dismissed should be handled with great caution. Generally speaking, I recommend not discussing arrests and dismissed charges. The Board is allowed to consider all relevant and reliable information, but prior arrests resulting in no charges or dismissed charges

are not likely to be relevant or reliable and, therefore, should not be discussed or considered by the panel.

19. **Answer: False: <u>See</u> Rule 9, Should I hire a lawyer or take a state-appointed lawyer for my hearing?** If funds are available to hire a private attorney, doing so may be the better option.

20. **Answer: False: <u>See</u> Rules 3, 4, and 5; see also *In re Palermo* (2009) 171 Cal.App.4th 1096, 1110.**

BONUS QUESTION

21. The best answer is (d). Your attorney should request that the Board comply with title 15, section 2235 subdivision (b), and provide notice of the confidential reports on which the Board panel relied. The other options have no legal basis.