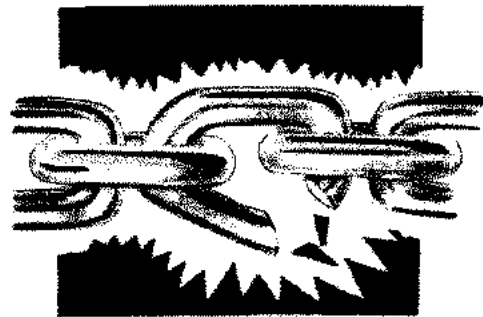




Voices.Con

Term-to-Life Prisoners Converse



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MARCH 2014

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COURTS FIND GOVERNOR REVERSALS UNCONSTITUTIONAL

The U.S. Eastern District Court issued an injunction blocking the State of California from enforcement of the state's Proposition 9 (Marsy's Law), and Proposition 89, the 1988 law which permits the Governor's reversal of parole suitability decisions. The 58-page order was published on February 27, 2014, and signed by U.S. District Judge Lawrence K. Karlton in the case of Gilman v. Brown, 9th Circuit No. 10-15471. USDC E.D.Cal, CIV No. S-05-830 LKK/GGH (2014). The lawsuit was certified as a class action, on behalf of all California state prisoners serving a term-to-life sentence. In the Feb. 27th ruling, Judge Karlton found that both of these laws, passed by voter initiatives, "retrospectively increased punishments, in violation of the Ex Post Facto Clause of the U.S. Constitution."

As a result of the injunction, the state's Board of Parole Hearings (BPH) was ordered to revert to the law governing the spacing of parole hearings prior to Proposition 9, which allowed for denial periods of anywhere between 1 year and 5 years. This means parole hearings may no longer be deferred for periods of 7, 10, or 15 years. Also as a result of the ruling, the Court ordered the Governor to discontinue the practice of reversing parole grants that have been approved for term-to-life prisoners with offenses which occurred prior to November 8, 1988, the date on which Proposition 89 was enacted.

For those who's crime occurred after Nov/1988, they will remain subject to the Governor's review of any parole decision. For those who's crime occurred after the passage of Proposition 9 (2008), they will also remain subject to the 7, 10, or 15 year deferrals of parole. The new ruling, simply put, means that Prop. 89 and Prop. 9 may no longer be applied retroactively, because it changes a person's sentence after the fact. And that is unconstitutional.

A state prisoner, Richard Gilman, and seven other term-to-life prisoners brought this case, and are ably represented by Monica Knox of the Federal Defender's office. Back in Jan/2011, this same U.S. Eastern District Court found that Proposition 9 (the parole denial intervals) as applied to term-to-life prisoners long after they committed their offenses was an ex post facto law. The State Attorney General appealed that finding to the Ninth Circuit Court of Appeals. On appeal, the 9th Circuit concluded that absent evidence in the record to support plaintiffs' allegations, the Eastern District's ruling was an abuse of discretion and, therefore, reversed the District Court's ruling. The 9th Circuit Court of Appeals based its opinion on the part of Prop. 9 that enables the BPH to advance a parole hearing to an earlier date, thereby making the lengthy 10 or 15 year parole denials have a less significant

reversals UNCONSTITUTIONAL, cont'd
risk of prolonging the prisoner's incarceration.

After the many years of evidentiary hearings and the new evidence plaintiffs have been able to introduce since the 9th Circuit reversal, it became clear that Proposition 9 was causing people to stay in prison longer. Therefore, in Judge Karlton's recent ruling, the Court found that the record is no longer absent the requisite evidence needed to support plaintiffs' allegations. The judge wrote, "when this requirement [petition for an advanced hearing] is spun off from the suitability requirement, it imposes an additional, substantive burden..." and several examples of prisoner petitions for an advanced hearing showed that the process "can be rendered meaningless or illusory," Judge Karlton said in the order.

In address to Proposition 89, Judge Karlton stated that "In practice, the governors have used it to tip the scales against parole. Thus, while the governors could use the law to review parole decisions to ensure that they are accurate and fair, they appear to have no such concern about decisions that deny parole." The court ordered the Governor to quit reversing already-approved BPH parole grants, if the prisoners' crime occurred prior to 1988. Implementation of this order is stayed 31 days. For now, the Gilman case has settled the questions that the Vicks court refused to address. Thank you Monica Knox and congratulations to the Federal Defender's office. Well done!

Sources: Denny Walsh, The Sacramento Bee-3/2/14, Rina Palta, Crime and Safety Reporter-3/3/14, Gilman v. Brown, USDC E.D. No. S-05-830, Opinion & Order-2/27/14.

ON GOVERNMENT

Force of character, or whatever else you may call a fixed determination in obtaining what one has a mind for, rightly applied, can effect infinite good. The misfortune is that there is less of this quality about good people than about bad people, and as ignorance begets rashness, and thoughtfulness produces deliberation, so modesty is apt to cripple the action of virtue, while confidence will become the aid of vice.

PLINY THE YOUNGER (89 A.D.)

* PLATA/COLEMAN UPDATE *

On February 10, 2014, a federal three-judge court granted the two-year extension to reduce the CA prison population down to 137.5% of design capacity, requested by state attorneys in the Plata case. The new order sets the following benchmarks:

- >143% of design capacity by June 30, 2014
- >141.5% of design capacity by Feb. 28, 2015
- >137.5% of design capacity by Feb. 28, 2016

The state was also ordered to begin the following measures immediately:

- >Increased time credits (33.3%) for non-violent second strikers. Not retroactive.
- >Increased time credits (2-for-1) for minimum custody prisoners. Not retroactive.
- >Parole eligibility for non-violent second strikers after 50% of term served.
- >Parole for indeterminately sentenced prisoners already granted a date by BPH.
- >Expanded parole process for medically incapacitated prisoners.
- >Prisoners over 60 Yrs. old and served 25+ Yrs. referred to BPH for parole consideration.

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A LITTLE HONESTY GOES A LONG WAY

There is a saying in recovery circles that goes "we are only as sick as our sickest secrets." This is as true as it may be frightening for some, because essentially it means that, in order to heal, we must unburden ourselves of all those secrets we are keeping to ourselves; all the shame we tend to hold inside ourselves. We must disclose those things we believe others don't need to know, or we don't want to share, and those secrets which carry with them so much guilt, shame, anger, or pain that we believe we are more comfortable with them being hidden. If we are a 12-stepper, then there is the fifth step and our need to share our fourth step with God, ourselves, and another person. And there are those people who either attempt to hold things back during this step, or they tell themselves that it isn't necessary because they are doing fine.

The truth of all of this is that, at our core, those secrets affect our self-esteem, our self-worth, and our happiness. Carrying shame specifically, something that the fifth step is designed to release, can only be ended by sharing those secrets which we are hiding from others. Those secrets about ourselves which cause us to feel less than who we are, and question the acceptance we seek from others. This release is critical to our continued sobriety and peace of mind. We must be free from the guilt and shame of our past in order to gain the strength to withstand future situations in which relapse is possible. We must be confident in our identity and self-worth, so that indecision and self-doubt are not able to gain credence in our thoughts.

The magic of the process of unburdening ourselves is that we begin to become whole again, because while those feelings are still inside of us, with the added fear of disclosure, the wound remains and cannot heal itself. It is only by relieving ourselves of those feelings that the emotional injury can be closed and we can begin our emotional selves anew. Then we can find the true inner peace and happiness which is our right, as human beings. The pot of gold is exactly that, the absence of unresolved guilt, shame, and anger in our lives. This leaves us feeling happy, satisfied, and at peace with ourselves each day, instead of the opposite.

It is considered unhealthy to carry those feelings around inside us, physically, mentally, and we become free from those feelings by sharing them with someone we trust and who will treat us with respect. It is important to

our process to share these secrets with our sponsor, our process group, our psychologist, whomever we can trust to accept our experiences and feelings without judgment or blame. And it will be true for us that there will be new temporary bouts of these same negative feelings, but if we treat those feelings in this same way and resolve them, then they will not take over our lives as they once did, and we will remain healthy and unburdened. Lastly, don't put your recovery at risk, because that is what is happening when we hold back from those we can trust and don't allow the process to work. Faith is a difficult thing to have sometimes, but we must find it in order to heal ourselves.

SQ NEWS HITS BUMP IN ROAD

The San Quentin News was recently placed under suspension as prison officials charged that prisoner editors switched a photo after the page already had been vetted by staff. Thousands of copies of their December issue were destroyed before the 45-day suspension was lifted on February 15th.

The prison spokesperson said the prisoners "circumvented the editorial process by publishing disapproved content."

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Clandestine is the best word to describe many of the processes that take place in preparation for a hearing to consider parole for a term-to-life prisoner in California. A short list of determinations that must be made is comprised of: The date of the hearing, the time of the hearing, the order of prisoners throughout the course of that particular dates' hearings at a particular location, the commissioner and deputy commissioner who will comprise the panel, and the attorney who is appointed to represent the prisoner, providing that the prisoner has not retained private counsel. And that's just pre-hearing events. Post-hearing events no one is privy to include: Discussions at BPH Headquarters among commissioners and the BPH legal team, any communication between BPH and the Governor's office, and communication between BPH and the Parole Department and District Attorney's offices in each county.

Given that we have laws that require "transparency in government," why are so many BPH functions kept private? If they are presumed to be operating in good faith, why all the secrecy?

Anyone who has studied law or followed legal procedures knows that the job of Court Clerk confers upon a person a substantial amount of personal influence over legal cases. Court Clerks have the authority to prep cases for the court, and to make decisions about which justices will review and rule upon specific cases. Think of them as the court's traffic cop. The power and influence held by the Court Clerk is rooted in the clandestine nature of their activities. They are insulated from scrutiny and responsibility, and can thereby exercise sway.

Somewhere deep in the underground vaults of the BPH, there are persons who are vested with the authority to make the above-listed decisions, and those individuals, like Court Clerks, are heavily insulated.

Once a term-to-life prisoner is found suitable for parole, the parole "grant" is subjected to a series of further clandestine procedures at BPH Headquarters. If the grant survives this 120-day ordeal, it then goes to the Governor's office for a final set of clandestine machinations. One of the little-known facts about the 30-day procedure carried out in the Governor's office is that the Governor does not actually review the parole grant. That task is given to an unpaid "Aide" or "Intern" at the Governor's office, who then renders a decision in the Governor's stead, and stamps the document with the stamp

A W R R O G Y O E T I B A H N I V
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| 1) Association | 13) Kinship |
| 2) Communicate | 14) Locality |
| 3) Companions | 15) Neighbor |
| 4) Comrade | 16) Peers |
| 5) Domestic | 17) People |
| 6) Environment | 18) Populous |
| 7) Fellowship | 19) Residence |
| 8) Friends | 20) Resource |
| 9) Home | 21) Settlement |
| 10) Inhabitants | 22) Society |
| 11) Inhabited | 23) Surroundings |
| 12) Interests | 24) Town |

of the Governor's signature. That's the "Governor's Review" process.

We pay the parole board how many hundreds of millions of dollars each year to carry out parole hearings, yet we send their few grants to an unpaid Aide for a final decision? Why, pray tell, do we need a parole board? Oh right, due process.

The process afforded to the term-to-life prisoner in the Governor's review was enacted in 1988 as an end-run to defeat the legal decision arrived at by the courts in the In re Fain case. The parole board found Mr. Fain suitable for parole. Following his grant of parole, there was public outcry and a lengthy petition submitted in opposition to his parole, so the parole board rescinded their earlier grant of parole. Fain challenged the reversal of his parole grant in court and won, because public outcry isn't evidence of current dangerousness, or of anything else germane to parole.

Shortly thereafter, the Governor was given review power (Prop. 89) to rescind any parole grant given by the parole board. The Governor's review is in place to effectively short-circuit the U.S. Constitution's protections against arbitrary government actions,

(Cont'd on page 6)

orchestrated AUTHORITY, cont'd
and from "mob mentality" in decision making related to an individual who is unpopular in the public's eye. Our founding fathers knew what they were doing. We need to get back to the spirit of their words and the intentions they so rightly had for the direction of this country.

*** SB 260 HEARINGS ***

The results of the BPH Youth Offender hearings over the past two months are as follows:

Jan/2014: Paroles Granted: 7
Paroles Denied: 7
Hearing Deferred: 1
Hearing Postponed: 1

Feb/2014: Paroles Granted: 3
Paroles Denied: 1
Hearings Postponed: All Others

It is not known why so many hearings were postponed during the month of February, but maybe next month we'll be able to provide you with this info.

*** GILMAN v. BROWN (2/27/14) ***

From Judge Karlton's recent order:

"When the governors put their fingers on the scale to obtain a result of longer prison sentences, regardless of the inmate's showing of suitability, they failed to apply the statute in a neutral manner. Whether or not this is a violation of California law is not for this court to say. However, it is a plain violation of the ex post facto clause as to those inmates whose crimes were committed before Proposition 89." He then ordered "The Governor of California shall refrain from imposing longer sentences on class members than are called for.."

The Court went on to make two final declarations when granting injunctive relief:

"The court accordingly DECLARES that Proposition 89, as implemented by the governors of California, violates the ex post facto rights of class members..The court further DECLARES that Proposition 9, as implemented by the Board [BPH], violates the ex post facto rights of the class members." The court instructed the BPH to apply §3041.5 as it existed prior to Prop. 9.

**PRIVATE PSYCHOLOGICAL EVALUATION
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Many lifers are receiving CDCR/BPH FAD psychological evaluations indicating a moderate or high risk that they do not deserve, based upon the misuse of actuarial measures. This will result in a BPH lengthy denial and many more years of suffering.

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- Open letter to counsel in Plata/Coleman case -



Voices.Con

February 13, 2014

To whom it may concern:

It is my understanding that the Three-Judge Court, in the Coleman/Plata case, has given you until March 10, 2014, to file your recommendation(s) as to who shall be selected to act as the Compliance Officer; the individual who will ultimately decide which prisoners are best suited for early release. The Court also ordered that the Compliance Officer shall have the authority to verify the accuracy of the data provided by CDCR, with regard to any "Low Risk List" of prisoner candidates.

The Court also mandated access to such data as "population projections, risk assessments, recidivism data, statistical data, and prisoner files," to verify the integrity of any such "low risk" prisoner candidates. In selecting any prisoners for release, the Court mandated the Compliance Officer to consider public safety by minimizing any risk of violent re-offense.

Although it is clear to me that the elderly, medically or mentally ill should be given priority in these deliberations, it is also my firm belief that the vast majority of the parole eligible prisoners serving a term-to-life sentence should be given priority as well. As I'm sure you are aware, the term-to-life prisoners score the highest in meeting all of the above criteria, having (by far) the lowest recidivism rates and having already been evaluated under the state's BPH required risk assessments as low risk.

In conclusion, it is therefore my request that you please, in your deliberations to determine a proper candidate for the Compliance Officer position, consider a professional such as Mr. James Austin, President of the JFK Institute, who will be informed as to the statistical make up of the CDCR, and well positioned to see through the political knavery that the newly appointed Compliance Officer will likely face.

I thank you for all of your efforts in this case and for your consideration in this matter.

Sincerely,

Dave, Founder & Editor
Voices.Con

PS. This is an "Open Letter" that will be published in a future edition of the Voices.Con newsletter.

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The Voices.Con newsletter is written exclusively by term-to-life prisoners, unless otherwise noted, focusing on issues of primary concern to those serving a long-term incarceration. The newsletter is published monthly at the VoicesDotCon.org website. This information has been designed to be of potential benefit in any jurisdiction having term-to-life and long-term prisoners and is made available to any other supportive family and friends as well. No persons affiliated with the Voices.Con newsletter are lawyers. Information provided herein is not intended as a substitute for proper legal advice. All questions or comments on information contained herein should be directed to the Editor at the above E-mail address.

ABOUT VOICES.CON

Voices.Con is an excellent source of nuts and bolts information relating to parole preparation, parole related politics, understanding parole law and current rulings and the importance of retaining the proper counsel and psychologists for parole hearings. This information is provided exclusively by long-term prisoners who have been there and are currently experiencing the ups and downs of the parole process. We are sorry to say that we do not have the resources to hire staff lawyers or provide legal documents of any kind. **We do maintain a mailing list for paid monthly newsletter subscriptions (\$11 annually.)** The Voices.Con newsletter and all past editions, may be downloaded at no cost by any friend or family member at the VoicesDotCon.org website. On occasion, we may have a current or past edition that can be mailed to a prisoner who has nobody else to download it for free. However, this remains completely contingent on the number of donations received at our mailing address. **Please include a Self Addressed Stamped Envelope in any correspondence requiring a response.**

A FEW FACTS TO REMEMBER

- ⇒ Today, more prisoners in U.S. prisons are serving life terms than ever before. With a U.S. prison population of 2.3 million people, 140,610 are serving life terms.
- ⇒ California's prison system peaked at 173,000 prisoners in 2007, making it the largest prison system in the nation. With 34,164 prisoners serving life terms, it also has the most lifers.
- ⇒ In Alabama, California, Massachusetts, Nevada, and New York, at least 1 in 6 prisoners are serving a life term.

SUGGESTED GUIDELINES FOR SUBMISSIONS

1. We have only one agenda; advocating on behalf of the term-to-life prisoner and distributing information that will further this cause, enabling the term-to-life prisoner to effectively advocate on his or her own behalf.
2. You may write an essay/article on any related subject or issue of concern to the term-to-life prisoner population.
3. We prefer that all submissions be between 250 and 500 words. Please clearly print or type all submitted material.
4. We also accept and encourage all submissions of topical artwork. Please include a Self Addressed Stamped Envelope with any submissions of artwork or written material where a return has been requested.

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