

## Followup - Parole and Clemency

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To: PRA Response <praresponse@braunhagey.com>; Ellen Leonida <Leonida@braunhagey.com>

### \*\*\* EXTERNAL MESSAGE \*\*\*

As promised, I have attempted to obtain the information requested at sections 14 and 15 of your followup CPRA request dated Feb. 18, 2022, concerning our "recommendations" regarding parole and regarding pardon or commutation. While my information is not entirely complete, I wanted to provide to you what I have.

Regarding "recommendations regarding parole," I have learned from the lead attorney of our Lifer Parole Unit that a statistical breakdown of how often we grant or oppose parole is not formally retained, nor is such information explicitly noted in our files. However, she estimated that on the experience of many hundred hearings, we have opposed parole in 80-85 per cent of cases, taken a neutral position on virtually all others, and have only on very rare occasions argued in *favor* of parole. She only recalls actually advocating parole in one case, but regards declining to argue against it as in effect communicating our agreement with parole. And I can further represent that as someone who has attended more than 50 lifer hearings as a backup to the unit, these estimates correspond closely to my own experience. Similarly, I have declined to advocate denial in 10-20 per cent of cases, with the understanding that it will be interpreted as agreement, but have used the opportunity to point out areas of potential concern when the inmate is freed and to argue for appropriate conditions of release. Because an inmate is fully represented at parole hearings, it seems to us as a general principle that it is not our place to advocate directly on his behalf, even if so inclined, but rather to simply acknowledge his or her good works and make clear we see him (her) as a potentially suitable candidate. The commissioners have access to information from an inmate's confidential file that is not available to us, as you know, and on rare occasions such information strongly suggests parole is *not* appropriate, so we are normally content to leave the decision in their capable hands.

I'm further advised that, as a rule, we do not take positions on parole *violations*, or participate regularly in such hearings. Exceptions may arise when the parole violation is the result of a new criminal charge filed in this county, and you would be safe in assuming that in these situations, we will be opposed to reinstatement on parole. However, I have no data on how often this happens, and would note that the nature of the new charge, especially if serious and resulting in the defendant's pre-trial confinement, may relegate the parole status to secondary importance. And as a basic principle, I'm told we do *not* appear or take stances at hearings on parole violations of other kinds.

In respect to "recommendations regarding pardon or commutation," I have incomplete but potentially useful data. Since August 2020, we have maintained a central spreadsheet of those who have sought pardon or clemency from Gov. Newsom and served us with the request. This is a total of 17 cases.

In five, for varying reasons, we did not respond. Two involved cases from outside our jurisdiction, in two others rehab/pardon had *already* been granted, and in the fifth our notes indicate that the case was "reduced pursuant to PC 11368 and dismissed pursuant to PC 1203.4," which would indicate it was not a prison case in the first place. In the other 12 cases, the spreadsheet indicates that we objected to pardon or clemency in 10, we stipulated to pardon in one case last year, and one request remains pending.

You, of course, wanted data going back to 2015. My understanding is that prior to this central repository being created, these requests went to our different divisions for handling, and my initial e-mail to the chiefs of our divisions has not yet been answered. But in light of your request that to receive any available records on a "rolling" basis, I thought it best to send you the limited information we do have, and promise to further update you when more information is received.

Please advise if you have any questions in the interim, or in further regard to the February 18 request in general. As indicated in our most recent response, we don't see any profit in squabbling with you over the projected cost of meeting your data demand, as our estimate, while stratospheric, is made in

complete good faith, is caused in very large part by the novelty of our new data system, and arises entirely from the costs to our consultants rather than ourselves. Indeed, I'd much rather be able to provide this already-public data to you at a reasonable price than have to argue over it, but it is both immense in scale and hyper-challenging in the technical sense, at least at this moment. If you wish to lodge an objection or a further complaint, you may wish to address it to Chief Assistant District Attorney Michael Fermin, Assistant District Attorney Julie Peterson or Supervising Deputy District Attorney Robert Brown, all at 303 West Third St., San Bernardino, CA 92415.

Regards,  
Eric

**Eric M. Ferguson**

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