

 ORIGINAL

AO 241 (Rev. 5/85)

PETITION UNDER 28 USC § 2254 FOR WRIT OF  
HABEAS CORPUS BY A PERSON IN STATE CUSTODY

<b>United States District Court</b>		District	EASTERN DISTRICT OF CALIFORNIA
Name	PHILLIP MENDOZA	Prisoner No.	C-47764
Place of Confinement		Case No.	
CALIFORNIA STATE PRISON-SOLANO COUNTY, 2100 PEABODY ROAD, 20-W-3-L, P.O. BOX 4000, VACAVILLE, CA. 95696			
Name of Petitioner (include name under which convicted)		Name of Respondent (authorized person having custody of petitioner)	
PHILLIP MENDOZA		V. D.K. SISTO, WARDEN	
The Attorney General of the State of:		CALIFORNIA 2:08-cv-3067 CMK (HC)	

PETITION

- Name and location of court which entered the judgment of conviction under attack LOS ANGELES  
COUNTY SUPERIOR COURT
- Date of judgment of conviction SEE EXHIBIT B AND EXHIBIT E

For your information, the following is a list of the most frequently raised grounds for relief in habeas corpus proceedings. Each statement preceded by a letter constitutes a separate ground for possible relief. You may raise any grounds which you may have other than those listed if you have exhausted your state court remedies with respect to them. However, you should raise in this petition all available grounds (relating to this conviction) on which you base your allegations that you are being held in custody unlawfully.

Do not check any of these listed grounds. If you select one or more of these grounds for relief, you must allege facts. The petition will be returned to you if you merely check (a) through (j) or any one of these grounds.

- (a) Conviction obtained by plea of guilty which was unlawfully induced or not made voluntarily with understanding of the nature of the charge and the consequences of the plea.
- (b) Conviction obtained by use of coerced confession.
- (c) Conviction obtained by use of evidence gained pursuant to an unconstitutional search and seizure.
- (d) Conviction obtained by use of evidence obtained pursuant to an unlawful arrest.
- (e) Conviction obtained by a violation of the privilege against self-incrimination.
- (f) Conviction obtained by the unconstitutional failure of the prosecution to disclose to the defendant evidence favorable to the defendant.
- (g) Conviction obtained by a violation of the protection against double jeopardy.
- (h) Conviction obtained by action of a grand or petit jury which was unconstitutionally selected and impaneled.
- (I) Denial of effective assistance of counsel.
- (j) Denial of right of appeal.

A. Ground one: ALL GROUNDS ARE FULLY ALLEGED AND SET FORTH IN THE ATTACHED "MEMORANDUM OF STATEMENTS OF FACT AND LAW."

Supporting FACTS (state briefly without citing cases or law) SAME AS ABOVE.

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B. Ground two: SAME AS "A" ABOVE.

Supporting FACTS (state briefly without citing cases or law): SAME AS "A" ABOVE.

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MEMORANDUM OF STATEMENTS OF FACT AND LAW

PETITIONER PHILLIP MENDOZA, alleges as follows:

1. That he appeared before the Board of Parole Hearings (hereafter "Board") on October 2, 2007, for his fourth parole hearing, following a 1981 conviction for first degree murder.

2. Mr. Mendoza states that he was arbitrarily and capriciously found unsuitable for and denied parole release for a period of two years because the hearing panel concluded that he would pose a current unreasonable risk of danger to public safety if released. The main reason for denying parole was the nature of the 1981 first degree murder conviction.

3. The Board also concluded that Mr. Mendoza would pose a current unreasonable risk of danger because of his prior involvement with a gang.

4. Mr. Mendoza claims that the Panel did not articulate a rational nexus showing how the commitment offense and previous gang affiliation currently makes him an unreasonable risk of danger if released, especially in light of all the positive evidence in the record demonstrating suitability for parole. See Exhibit A, pp. 82-91 (Parole Hearing Transcripts dated October 2, 2007).

5. The Board's fourth decision became final on January 30, 2008. Mr. Mendoza then sought review of the Board's decision in the Superior Court of California by filing a petition for writ of habeas corpus on June 13, 2008. The Superior Court subsequently summarily denied petition on August 13, 2008. See Exhibit B, (Court order Case BH005333).

Mr. Mendoza then sought habeas corpus review in the California Court of Appeal, which subsequently summarily denied the petition on September 18, 2008. Petitioner sought timely review in the California Supreme Court which denied review on November 12, 2008. See Exhibit C (Cout of Appeal order Case No. B120270) & State Supreme Court Order (Case No. S16716). Mendoza's federal petition is therefore timely under 28 U.S.C. §2244(d)(1)&(2).

6. Mr. Mendoza alleges that he currently in custody in violation of the Constitution, laws or treaties of the United States because the parole board's 2007 decision to deprive him of his state created liberty interest in parole release was arbitrary, capricious, not supported by relevant or reliable evidence, and violated his rights to due process of law secured under the Fourteenth Amendment to the United States Constitution. Further, the state court decisions upholding that arbitrary deprivation were either contrary to, involved an unreasonable application of, clearly established federal law, and were the result of an unreasonable determination of the facts in light of evidence of rehabilitation in the state court record, because of the following Grounds:

- A. MENDOZA IS ENTITLED TO HABEAS CORPUS RELIEF BECAUSE THE "UNREASONABLE RISK OF DANGER" FACTOR AS APPLIED TO DEPRIVE HIM OF HIS LIBERTY INTEREST IN PAROLE RELEASE VIOLATES FEDERAL DUE PROCESS SAFEGUARDS

The Board's regulations for parole under Penal Code section 3041, subdivision (b), specify that "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." See CCR, § 2402, subd. (a); In re Dannenberg, (2005) 34 Cal.4th 1061, 1080.)[Emphasis added in underline, Italics omitted.]

In other words, for an individual to pose an "unreasonable" risk of danger that person must be: 1) "not governed by or acting according to reason"; 2) "not conforming to reason: ABSURD; or (3) "exceeding the bounds of reason or moderation." (See Merriam Webster's Collegiate Dictionary (10th ed. 2001) at page 1291: @ "unreasonable".) The evidence must contemplate that in order to be an "unreasonable" risk of danger at the time of their release from prison, the person must be lacking in: 1) "the power of comprehending, inferring, or thinking esp. in orderly rational ways: INTELLIGENCE"; 2): the "proper exercise of the mind"; or 3) "SANITY." (See Merriam Webster's Collegiate Dictionary at page 971: @ "reason".)

Basically, Mendoza must be so psychologically impaired at the time of the parole hearing that the peril of danger to society is unmistakable. Essentially, the determination of whether there is evidence of current "unreasonable" dangerousness can only turn on an assessment of psychological factors based on the current behavior record of the inmate, because that record is critical in the sense that "it reflects the degree to which the inmate is prepared to adjust to parole release." See Greenholtz v. Nebraska Penal Inmates, (1979) 442 U.S. 1, 15.

The evidence therefore must clearly indicate that Mendoza is "currently" suffering from a severe psychological impairment which will make him a danger to society if released. See Exh. A, pp. 33-69 & 83-85; e.g. Penal Code §§ 2960-2966; Addington v. Texas, (1979) 441 U.S. 418, 429; Greenholtz, supra, 442 U.S. at 13.

There is no doubt that at the time of the commitment offense Mendoza a 17-year old juvenile was "not acting according to reason." See Exh. A, pp. 11-24; cf. Rosenkrantz v. Marshall, (C.D.Cal. 2006) 444 F.Supp.2d 1063, 1085, citing, Roper v. Simmons, (2005) 543 U.S. 561-562 and Thompson v. Oklahoma, (1988) 487 U.S. 835 (Less culpability should attach to a crime committed by a juvenile than to a comparable crime committed by an adult). However, over the past 27 years there has not been an iota of evidence that he has acted in a dangerously unreasonable (i.e. insane) manner. See Exh. A, pp. 33-69 & 83-85; cf. Roper, supra, 543 U.S. at 570 (Relevance of youth as a mitigating factor derives from the fact that signature qualities of youth are transient; as individuals mature, the impetuosity and recklessness that may dominate the younger years can subside). Furthermore, the psychological evidence does not indicate that Mendoza's behavior over the course of 27 years is unreasonably dangerous, but clearly stated that his future risk of becoming violent or committing a violent act was reasonably low. See Generally Exhibit D (Psychological Assessments Dated 08/13/07 and 2/24/08); Exhibit A, pp. 52-54 & 85.

Mendoza agrees, and it can be understandable, that an inmate will pose a current unreasonable risk of danger to public safety where that inmate has not acted according to reason but "exhibited a long-continued pattern of criminal violence such that any knowledgeable [person] would anticipate future violence." See People v. Murtishaw, (1981) 29 Cal.3d 733, 769-774; In re Scott II, (2005) 133 Cal.App.4th 573, 595 nn. 8-9; In re Shaputis, (2008) 44 Cal.4th 1241, 1246-1248 & 1257-1260 n. 18. In this case, however, that evidence is clearly lacking. See Exh. A pp. 24-69; Exh. D. Accordingly, there is not any evidence because Mendoza committed a murder in 1981, at the age of 17, that he continues to pose an "unreasonable" risk of danger if released in 2007. In re Lawrence, (2008) 44 Cal.4th 1181, 1219-1221. Thus, the Board's decision to the contrary was arbitrary and violates established due process safeguards. See U.S. Const. 14th Amend; e.g. Hess v. Bd. of Parole & Post-Prison Supervision, (9th Cir. 2008) 514 F.3d 909, 913-915; Kolender v. Lawson, (1983) 461 U.S. 352, 357-359; and Cleavinger v. Saxner (1985) 474 U.S. 193, 204 (In the "penalty context" the parole board is constitutionally required to provide greater due process protections). Accordingly, as applied to the facts of Mendoza's case, the "unreasonable" risk of danger factor is unconstitutionally vague "because it encourages arbitrary enforcement by failing to describe with sufficient particularity" what a prisoner must do to satisfy the statutory requirements, in order to no longer pose an unreasonable risk of danger to public safety, so he can

be released upon parole as required by his state created and safeguarded liberty interests . See cf. Kolender, 461 U.S. at 358-362

1. Mendoza Does Not Have A Previous Record Of Violence Or Unstable Relationships.

The hearing panel is required to consider "[a]ll relevant and reliable information" available and which is reliably documented. See Penal Code § 3041, subd. (a) and CCR, title 15 § 2402(b). In this case, the 2007 hearing panel considered Mr. Mendoza's "Pre-Commitment Factors." See Exh. A pp. 24-33. However, for this information to be "relevant" or "reliable" to the overall conclusion he will pose a current unreasonable risk of danger to public safety, it must clearly show that Mendoza has "convictions" relating to a "previous record of violence" and/or "unstable social history." See Penal Code § 3041, subd. (b); CCR, title 15 § 2402(b)&(c)(2)&(3).

The reliable evidence shows that while Mendoza became a gang member at the age of 13, he has no convictions, other than the commitment offense, for inflicting or attempting to inflict serious injury on others; nor did he demonstrate serious assaultive behavior at an early age. Further, he does not have a history of convictions for unstable or tumultuous relationships with others. See Exh. A, pp. 24-33; and Exh. D. The documented evidence also shows that while he was affiliated with a gang since he was 15, he has distanced himself from that life-style since 2004, and the only prior conviction is for a "juvenile being drunk in public." See Exh. D, pp.

1-2; Exh. A 24-33, & 79-80.) Neither of which is relevant to any specified unsuitability factor. See Penal Code § 3041, subd. (b); CCR, title 15 § 2402(b)&(c)(2)&(3).

The hearing panel claimed that Mr. Mendoza posed a current unreasonable risk of danger because he has a prior criminal history of (i) being a gang member since the age of 13 and, (ii) he had a drunk in public arrest as a juvenile, where he was counseled and released. See Exh. A, pp 82 & 83.

Mr. Mendoza contends that he is entitled to habeas corpus relief because the acts and conduct the 2007 hearing panel are referring to transpired over 29 years ago, and they do not reliably indicate he will currently pose an unreasonable risk of danger if released. Further, the evidence of his gang involvement since the age of 13 and his previous drunk in public are not relevant to the factors tending to indicate unsuitability for parole as specified under statute and regulation. Accordingly, Mendoza is entitled to relief where there is no "probative" evidence indicating he "continues" to pose an unreasonable risk of danger to public safety. See CCR, title 15 § 2402(d)(1)&(6); In re Lawrence, 44 Cal.4th at 1219-1221 & 1227; Rosenkrantz v. Marshall, supra, 444 F.Supp.2d at 1084-1086; Roper v. Simmons, supra, 543 U.S. at 570-572.)

2. Mendoza's Post-Commitment Factors Do Not Show That He Will Be Unreasonably Dangerous If Released, But Demonstrate Laudable Conduct.

The hearing panel is required to consider "[a]ll relevant and reliable information" available, which is reliably

documented. See Penal Code § 3041, subd. (a) and CCR, title 15 § 2402(b). In this case, the 2007 hearing panel considered Mendoza's "Post-Commitment Factors." See Exh. A pp. 33-54. However, for this information to be "relevant" or "reliable" to the overall conclusion that he will pose a current unreasonable risk of danger to public safety, it must clearly show that Mendoza has been convicted of engaging in serious misconduct in prison or jail. See Penal Code § 3041, subd. (b); CCR, § 2402(b)&(c)(6).

Here reliable documented evidence indicates that Mendoza spends his time in prison trying to better himself through working in the Prison Industry Authority, Hobby crafts program, and other pursuits such as participation in self-help and therapy type programs. See Exh. A, pp. 35-40. Moreover, Mr. Mendoza has been involved in the Alcohol Anonymous program in 1999-2001. See Exh. A, 40-41. He also has an overall grade point level of 12.7 with a 12.9 reading level. Id. p. 41. He did receive his GED in 1989. Ibid. Also there is reliable documented evidence that Mendoza has taken a significant amount of vocational training. See Exh. A, pp. 41-42. Although Mendoza does have five CDC 115's from 1985 up to 1989, he remained disciplinary free until 2004 where he received a 115 for participation in a melee. See Exh. A, pp. 42-49 [**\*\*Note:** It must be noted for the record that all of the 115's Mr. Mendoza received were not for seriously violent or harmful conduct on his part. Even the panel recognized that the 115 concerning the 2004 participation in a melee reflected that he was not

a principal actor but an unwilling participant due to the department of corrections' classification of him as a Southern Mexican.].

The hearing panel while concluding that Mr. Mendoza posed a current unreasonable risk of danger to public safety, commended him for his institutional behavior. See Exh. A, pp. 82, 83-85. The hearing panel also commended him for positive behavior for discontinuing the 115's since 2004. See Exh. A, pp. 84-85.

Mr. Mendoza contends that he is entitled to habeas corpus relief because reliably documented evidence of laudable institutional behavior indicates he has "experienced reasonably stable relations with others" and has "an enhanced ability to function within the law upon release." Accordingly, Mendoza is entitled to relief where there is no reliable or relevant evidence indicating he continues to poses an unreasonable risk of danger to public safety . See CCR, title 15, §2402(d)(2)&(9); Lawrence, 44 Cal.4th 1204-1205, 1219-1221, 1227 & nn. 19-20; also Greenholtz, supra, 442 U.S. at 15.

3. Mendoza's Psychological Factors Indicate He Will Pose A Low Risk Of Danger.

The hearing panel is required to consider "[a]ll relevant and reliable information" available, which is reliably documented. See Penal Code § 3041, subd. (a) and CCR, title 15 § 2402(b). In this case, the 2007 hearing panel considered Mendoza's 2007 Psychological Report. See Exh. A pp. 49-54. However, for this information to be "relevant" or "reliable"

to the overall conclusion he will continue to pose an unreasonable risk of danger to public safety, it must indicate that he has a "lengthy history of severe mental problems related to the offense." See CCR, title 15 §2402(c)(5).

The panel asked Mendoza if the information in the current psychological report, prepared by Dr. Rouse, was "correct." See Exh. A, p. 49; and Exh. D. Mendoza responded that it was, and the panel member said: "okay." Ibid. The documented evidence reveals that Mendoza has been clean and sober for over 20 years. He has not had any significant illnesses, nor does he have any type of psychiatric history and there is no evidence he needs mental health treatment or therapy. See Exh. A, pp. 51-54; Ex. D, pp. 2-6. Dr. Rouse indicated in his assessment that he has an Axis I diagnostic impression of marijuana abuse in institutional remission; no diagnosis under Axis II and a Global Assessment Functioning score (GAF) of 90. Dr. Rouse, further stated Mendoza has developed into a mature and reflective 44-year old man who has developed the appropriate insight and judgment as it relates to the factors which contributed to his crime. See Exh. A, p. 52; Exh. D, p. 4. Dr. Rouse, also stated that due to his level of insight, upgrading educationally and vocationally and his sustained level of impulse and behavioral control, Mendoza's risk of dangerousness is lower than the average inmate and consistent with the average citizen. Dr. Rouse's, report also concludes that Mendoza does not have any mental health concerns; and opined that overall, Mendoza would be a suitable candidate

for parole. Which the panel verified as very favorable. See Exh. A, pp. 53-54; Exh. D, pp. 4-6.

The hearing panel agreed that "basically" the overall report was favorable to support Mendoza's release, but they were displeased the good Doctor would have the audacity to recommend he was a suitable candidate for parole and it was "not acceptable" for the doctor to assess Mendoza's dangerousness as not only lower than the average inmate but consistent with the average citizen because the "average citizen in the community has not done any crime." See Exh. A, pp. 54 & 85 [**\*\*Note:** The Doctor did use the proper format when assessing Mendoza's dangerousness as lower than the average inmate prior to parole release (see Department of Corrections and Rehabilitations, Operations Manual (2007) § 62090.13.2, p. 529).].

Mr. Mendoza contends he is entitled to habeas corpus relief because there is no relevant or reliable documented evidence indicating he has "a history of severe mental problems related to the offense" as required by the enumerated statutory factors. See cf. CCR, title 15 § 2402(c)(5); Penal Code §§ 2960-2966; Addington, supra, 441 U.S. at 429; Greenholtz, supra, 442 U.S. at 12-14; Lawrence, 44 Cal.4th at 1223-1227.

4. Mendoza's Realistic Parole Plans And Marketable Skills Demonstrate He Is Suitable For Parole.

The hearing panel is required to consider "[a]ll relevant and reliable information" available, which is reliably documented. See Penal Code § 3041, subd. (a) and CCR, title

15 § 2402(b).) In this case, the 2007 hearing panel considered Mendoza's "Parole Plans." See Exh. A, pp. 54-69. Such information shall include . . . conditions of treatment and control, including the use of special conditions under which the prisoner may be safely released to the community, and any other information which bears on the prisoner's suitability for parole." See CCR, title 15 § 2402(b). In California Mendoza's sentence and corresponding liberty interest "shall" include a period of parole -- unless the Board waives it and discharges him -- the purpose of which is to protect public safety by successfully reintegrating him into society by providing for supervision and surveillance, and to also provide him with educational, vocational, family and personal counseling necessary to assist in the transition between imprisonment and discharge. See Penal Code § 3000 et seq; In re Roberts, (2005) 36 Cal.4th 575, 586-590; Morrissey v. Brewer, (1972) 408 U.S. 471, 477.

The granting of parole is an essential part of the criminal justice system and is intended to assist those convicted of crime to intergrate into society as constructive individuals as soon as possible and alleviate the cost of maintaining them in custodial facilities." Morrissey, 408 U.S. 477; People v. Vickers, (1972) 8 Cal.3d 451, 455 & 458. Thus, release on parole "is the rule," rather than the exception. In re Lawrence, 44 Cal.4th at 1204-1205. The relevant or reliable information inidicating that Mendoza is suitable for parole is whether he has (i) made realistic plans for release,

or (ii) developed marketable skills that can be put to use upon release. See CCR, title 15 § 2402(d)(8). There is not any detailed factor of unsuitability as it relates to parole plans. See cf. CCR, title 15 § 2402(c); but see Penal Code § 3000, subd. (a)(1).

Mr. Mendoza introduced documentation which consisted of numerous letters of support from members of his family and the community, indicating that he will have financial support, a place of residence, and employment offers. See Exh. A, pp. 54-69. Further, the hearing panel recognized and commended him for his participation in numerous vocational trades, thereby indicating that he has developed marketable skills. See Exh. A, pp. 33-42, 83-85.

The 2007 hearing panel while concluding that Mendoza would pose a current unreasonable risk of danger found that he does appear to have parole plans and marketable skills. See Exh. A, pp. 82, 85, & 90.

Mr. Mendoza contends he is entitled to habeas corpus relief because there is no reliable or relevant evidence that he would pose an unreasonable risk of danger, where he has parole plans and marketable skills. Further, the panel's concern about gang affiliation upon parole is unfounded because they were required to consider that, when paroled Mendoza cannot actively participate in, promote, further or assist in any gang activity, nor "associate" with any gang. See CCR, title 15 § 2513(e); Penal Code § 3000(a)(1). Accordingly, Mendoza is entitled to relief because there is not any evidence he will

reoffend once he is released upon parole. Lawrence, 44 Cal.4th at 1219-1221 & 1226-1227 & nn. 19-20.

5. Mendoza's Commitment Offense Consisted Of The Minimum Elements Necessary To Support A Conviction For First Degree Murder.

The hearing panel is required to consider "[a]ll relevant and reliable information" available, which is reliably documented. See Penal Code § 3041, subd. (a) and CCR, title 15 § 2402(b). In this case, the 2007 hearing panel considered Mendoza's "Case Factors." See Exhibit A, pp. 11-24; Exhibit E (Unpublished Court of Appeal Opinion, Second Appellate District, Div. One, People v. Mendoza, Case No. 42814 dated June 16, 1983.) Although, evidence of the commitment offense may be relevant under Penal Code section 3041, subdivision (b), it is only reliable in determining whether Mendoza poses an unreasonable risk of danger at the initial parole hearing. See e.g. Biggs v. Terhune, (9th Cir. 2003) 334 F.3d 910, 916.

Stated in more precise terms, "in some circumstances, a denial of parole based on the nature of the offense alone might rise to the level of a due process violation--for example where no circumstances of the offense reasonably could be considered more aggravated or violent than the minimum necessary to sustain a conviction for that offense." Dannenber, 34 Cal.4th 1061, 1071 and In re Rosenkrantz, (2002) 29 Cal.4th 616, 683; but see Lawrence, 44 Cal.4th at 1213-1219. Mendoza's case factors state that he was convicted of first degree murder with use of a firearm, a 22. caliber rifle, and received a term of 25 to life, plus two years for the use enhancement,

for a total prison term of 27 years to life. His minimum eligible parole release date was fixed pursuant to Penal Code section 190 at April 15, 2000. See Exh. A, p. 3; Exh. C.

In plain terms, the first degree murder arose out of a 1981 shooting where Mendoza and other members of the Compton Varrio Largo gang were driving in a car. They subsequently noticed a pick-up truck driving around on Largo turf with rival Compton Varrio Setenta gang members riding in it. Mendoza and other members of the car thought the rival gang members were acting rowdy and being aggressive and disrespectful while on Largo turf. Mendoza had also noticed that certain rival gang members riding in the Setenta pick-up had on previous occasions assaulted him and other members of the Largo gang. The driver of the Largo car pulled in behind the Setenta pick-up truck, and flashed the car's headlights trying to get the truck to pull over. Mendoza then thought that one of the rival Setenta gang members was reaching for a gun, so he pulled out a 22. caliber rifle and started shooting at the pick-up truck, eventually hitting and killing Richard Pompas a passenger of the pick-up truck. See Exh. A, pp. 11-24; Exh. E, pp. 2-7.

Mr. Mendoza took full responsibility for the murder of Mr. Pompas and expressed genuine remorse. See Exh. A, pp. 78-80; cf. Shaputis, 44 Cal.4th at 1259-1260 & n. 18. Further, the favorable psychological report prepared by Dr. Rouse, indicated that Mendoza has developed the appropriate insight and judgment as it relates to the factors that contributed to his life crime. See Exh. A, pp. 52-53; Exh. D, pp. 4-6. The hearing panel even

claimed that he has shown remorse. See Exh. A, p. 87. This evidence indicates suitability for parole. See CCR, title 15 § 2402(d)(3). What is not a specified factor of unsuitability is requiring the inmate to do some more soul searching, or explaining how he got his insight. See Exh. A, pp. 87-91. All that is required by the enumerated factors is that Mendoza "understands the nature and magnitude" of the offense. CCR, § 2402(d)(3).

The hearing panel determined that Mendoza posed an unreasonable risk of danger and denied parole for two years mainly on the nature of the commitment offense. The panel stated that the crime was callous because the rival gang members were vulnerable and weaponless as they rode in the pick-up truck with Mendoza and the driver of the car following them with a rifle. See Exh. A, pp. 82-83 & 86-88. The offense was carried out dispassionately and in a calculated manner because Mendoza stared at the passengers of the pick-up and started shooting, firing four shots into the back of the pick-up and three shots hit Mr. Pompas, where he died in the hospital shortly thereafter. See Exh. A, p. 83 & 86. The offense was carried out in a manner demonstrating an exceptionally callous disregard for human suffering because Mr. Pompas was shot in the abdomen and right shoulder and died shortly after the crime; and public safety was at a high risk from the gun fire and the motive was trivial in relation to the crime. See Exh. A, pp. 87-88. The offense was also committed due to gang participation and rivalry. See Exh. A, pp. 82-83, 88-91.

Mr. Mendoza contends that he is entitled to habeas corpus relief because the evidence of the commitment offense after 27 years of incarceration and laudable prison behavior, positive rehabilitation and four parole hearings is no longer a reliable indicator that he currently poses an unreasonable risk of danger to society if released. Further, the panel is relying on the basic minimum necessary evidence and elements to sustain the conviction of the offense he was committed on. See Exh. E, pp. 7-15. For one, Mendoza was convicted of a first degree murder and has served his minimum term required by law. See Exh. A, p. 3. Further, based on the circumstances of his crime, the Matrix of Base Terms establishes his term of confinement at 29-30-31 years. See CCR, title 15, § 2403(b)(CIII). Second, the evidence although supporting premeditation (i.e. calculation) a minimum necessary element, does not support an execution-style murder as indicated by CCR § 2402(c)(1)(B). See Exh. E, pp. 11-13; CCR, § 3000 [Execution-style murder defined]. Third, motive was also a minimum necessary element, as was the evidence of gang membership. See Exh. E, pp. 12-15. Accordingly, Mendoza is entitled to relief because, although his offense was in terms of what society deems as reprehensible, it was not "especially heinous atrocious or cruel" but more common place among gang related first degree murders, committed by a juvenile. See e.g In re Elkins, (2006) 144 Cal.App.4th 475, 496-503; People v. Saille, (1991) 54 Cal.3d 1103, 1114-1115; Rosenkrantz v. Marshall, supra, 444 F.Supp.2d at 1084-1086; Lawrence, 44 Cal.4th at 1214-1221.

In sum, the unreasonable risk of danger factor as applied to the facts of this case, was applied in an unconstitutionally vague manner. There was no evidence demonstrating -- other than the hearing panel's hypothetical comments -- that if paroled Mr. Mendoza will continue to pose an unreasonable risk of danger. See e.g. Lawrence, 44 Cal.4th 1212-1213, & 1219-1227; also see Osbourne v. Dist. Atty's Office For Third Judicial, (9th Cir. 2008) 521 F.3d 1118, 1137 (The State's hypotheticals are called into question where they are not supported by record or have any basis in reality).) Thus, the parole board's decision that an inmate "will pose an unreasonable risk of danger to society if released," which in the "penalty context" is the derived from a "quasi-judicial" function and greater constitutional due process protections, must have a "factual basis" -- not a hypothetical basis -- in order to survive strict due process scrutiny. See e.g. Miller v. Davis, (9th Cir.2008) 521 F.3d 1142, 1146-1147; Cleavinger, supra, 474 U.S. at 204; Lawrence, 44 Cal.4th at 1204-1205 & 1213; In re Scott II, (2005) 133 Cal.App.4th 573, 595 & nn. 8-9.

#### CONCLUSION

In sum, there is no evidence to support a factual basis that Mr. Mendoza "will" continue to be unreasonably dangerous if released from prison after serving almost 30 years. As such, the "identified facts" are not probative to the central issue of "current" dangerousness. Lawrence 44 Cal.4th at 1221. Accordingly, Mendoza's due process rights were violated by the Board's arbitrary and capricious actions. Id. at 1227.

WHEREAS, Petitioner Mendoza is without any other speedy remedy at law save for habeas corpus;

WHEREAS, Petitioner Mendoza is currently in custody and being restrained of his liberty in violation of the Constitution of the United States, by D.K. Sisto, Warden of California State Prison Solano;

WHEREFORE, Petitioner Mendoza respectfully requests the Court to provide the following redress for the grievances alleged herein:

1. Issue an order to show cause upon respondent; and appoint counsel to represent his interests because he is indigent;

2. Order respondent to serve a copy of the entire state court record upon this Court and Petitioner;

3. Grant habeas corpus relief by:

- (i) Ordering the Board to set a parole release date in accordance with the suggested Matrix of Base Terms, and adjust that date accordingly based on postconviction credit as prescribed by Penal Code section 3041 and California Code of Regulations title 15, section 2403 & 2410; or

- (ii) Order the respondent to immediately release Mr. Mendoza upon parole where his current period of confinement exceeds the adjusted period of confinement as set by the Board; and,

4. Grant any and all relief necessary to ensure that justice is served.

(c) At trial NOT APPLICABLE AT THIS TIME.

(d) At sentencing SAME AS ABOVE.

(e) On appeal SAME AS ABOVE.

(f) In any post-conviction proceeding SEE EXHIBIT A, PP. 2-4.

(g) On appeal from any adverse ruling in a post-conviction proceeding NOT APPLICABLE.

16. Were you sentenced on more than one count of an indictment, or on more than one indictment, in the same court and at the same time?  
Yes  No

17. Do you have any future sentence to serve after you complete the sentence imposed by the judgment under attack?  
Yes  No   
(a) If so, give name and location of court which imposed sentence to be served in the future: \_\_\_\_\_

(b) Give date and length of the above sentence: \_\_\_\_\_

(c) Have you filed, or do you contemplate filing, any petition attacking the judgment which imposed the sentence to be served in the future?  
Yes  No

Wherefore, petitioner prays that the Court grant petitioner relief to which he may be entitled in this proceeding.

\_\_\_\_\_  
Signature of Attorney (if any)

I declare under penalty of perjury that the foregoing is true and correct. Executed

\_\_\_\_\_  
(date)

  
\_\_\_\_\_  
Signature of Petitioner

# EXHIBIT COVER PAGE:

Exhibit:     A    

Description of this exhibit: Parole Hearing Transcripts, Oct. 2, 2007

Number of pages of this exhibit:     92     pages

**JURISDICTION: (Check only one)**

Municipal Court

Superior Court

Appellate Court

State Supreme Court

United States District Court

United States Circuit Court

United States Supreme Court

California Department of Corrections, 602 Exhibit.

SUBSEQUENT PAROLE CONSIDERATION HEARING

STATE OF CALIFORNIA

BOARD OF PAROLE HEARINGS

In the matter of the Life ) CDC Number: C-47764  
Term Parole Consideration )  
Hearing of: )  
 )  
PHILLIP MENDOZA )

**INMATE COPY**

CALIFORNIA STATE PRISON - SOLANO

VACAVILLE, CALIFORNIA

OCTOBER 2, 2007

2:45 P.M.

PANEL PRESENT:

Sadra Bryson, Presiding Commissioner  
John Weaver, Deputy Commissioner  
Fred Sims, Observing Commissioner

OTHERS PRESENT:

Phillip Mendoza, Inmate  
Marsha Hurst, Attorney for Inmate  
David Dahle, Deputy District Attorney, Los Angeles Co.  
Correctional Peace Officer, Non-Participating

CORRECTIONS TO THE DECISION HAVE BEEN MADE

       No See Review of Hearing  
       Yes Transcript Memorandum

**Bette L. Gallant**

**WPU, Inc.**

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P R O C E E D I N G S

1  
2       **PRESIDING COMMISSIONER BRYSON:** This is the fourth  
3 subsequent parole consideration hearing for Phillip  
4 Mendoza, CDC number C, Charles, 47764. Today's date is  
5 October 2<sup>nd</sup>, 2007. The time is 14:45. We're located at  
6 California State Prison-Solano. This inmate was  
7 received May 21<sup>st</sup>, 1982 from Los Angeles County. The  
8 life term began August 16<sup>th</sup>, 1983 with a minimum  
9 eligible parole date of April 15<sup>th</sup>, 2000. Charging in  
10 Case Number A, Adam, 620991, Count 1, the controlling  
11 offense, Penal Code 187, Murder First with Penal Code  
12 12022.5 Use of a Firearm, To Wit: .22 Caliber Rifle,  
13 for which the inmate received a term of 25 plus two or  
14 27 years to life. This hearing is being recorded. For  
15 the purpose of voice identification, each of us will  
16 state our first and last names, spelling the last name.  
17 When it is your turn, sir, after you spell your last  
18 name, please state your CDC number. I will start and go  
19 to my left. Sadra Bryson, B-R-Y-S-O-N, Commissioner,  
20 Board of Parole Hearings.

21       **OBSERVING COMMISSIONER SIMS:** Fred Sims, S-I-M-S,  
22 Commissioner.

23       **DEPUTY COMMISSIONER WEAVER:** John Weaver, W-E-A-V-  
24 E-R, Deputy Commissioner.

25       **PRESIDING COMMISSIONER BRYSON:** Sir.

1       **INMATE MENDOZA:** Phillip Mendoza, M-E-N-D-O-Z-A, C  
2 number, C-47764.

3       **INMATE ATTORNEY:** Marsha Hurst, H-U-R-S-T, Counsel  
4 for Mr. Mendoza.

5       **DEPUTY DISTRICT ATTORNEY DAHLE:** David Dahle, D-A-  
6 H-L-E, Deputy District Attorney, Los Angeles County.

7       **PRESIDING COMMISSIONER BRYSON:** And I note for the  
8 record we have a correctional peace officer in the room  
9 who is here for security purposes. And, sir, I need to  
10 swear you in. Would you raise your right hand, please?  
11 Do you solemnly swear or affirm that the testimony you  
12 give at this hearing will be the truth, the whole truth,  
13 and nothing but the truth?

14       **INMATE MENDOZA:** Yes.

15       **PRESIDING COMMISSIONER BRYSON:** Thank you. And  
16 Commissioner Weaver, is there any confidential material  
17 in the file, and if so, will it be used today?

18       **DEPUTY COMMISSIONER WEAVER:** None that appears  
19 related to suitability.

20       **PRESIDING COMMISSIONER BRYSON:** All right. And I  
21 have passed the hearing checklist marked Exhibit 1 to  
22 your attorney, sir, and then to the District Attorney to  
23 ensure that we're all operating with the same set of  
24 documents. And, Counsel, do you have all the documents?

25       **INMATE ATTORNEY HURST:** I do.

1       **PRESIDING COMMISSIONER BRYSON:** And does the  
2 District Attorney have all the documents?

3       **DEPUTY DISTRICT ATTORNEY DAHLE:** Yes, I do.

4       **PRESIDING COMMISSIONER BRYSON:** Thank you. Are  
5 there any additional documents to be submitted, Counsel?

6       **INMATE ATTORNEY HURST:** Yes, quite a few. We have  
7 support letters. I have on my list 11 letters. There  
8 could be more, but I'm going to pass them over--there's  
9 one more, he said. And, in addition, he has brought  
10 some work reports and chronos which may or may not be in  
11 the File, but we'll give them to you, as well. Okay.  
12 Would that be it then, Mr. Mendoza, for now?

13       **INMATE MENDOZA:** Yes.

14       **INMATE ATTORNEY HURST:** Thank you.

15       **PRESIDING COMMISSIONER BRYSON:** All right, sir,  
16 would you please read the ADA statement ahead of you  
17 aloud?

18       **INMATE MENDOZA:** The Americans With Disabilities  
19 Act, ADA, is a law to help people with disabilities.  
20 Disabilities are problems that make it harder for some  
21 people to see, hear, read, talk, walk, learn, think,  
22 work, or take care of themselves than it is for others.  
23 Nobody can be kept out of public places or activities  
24 because of a disability. If you have a disability, you  
25 have the right to ask for help to get ready for your

1 Board of Parole Hearings, get to the hearing, talk, read  
2 forms and papers, and understand the hearing process.  
3 BPH will look at what you ask for to make sure that you  
4 have a disability that is covered by the ADA, and that  
5 you have asked for the right kind of help. If you do  
6 not get help or if you don't think you got the kind of  
7 help you need, ask for a BPH 1074 Grievance Form. You  
8 can also get help to fill it out.

9 **PRESIDING COMMISSIONER BRYSON:** Thank you, sir. Do  
10 you understand what you read?

11 **INMATE MENDOZA:** Yes.

12 **PRESIDING COMMISSIONER BRYSON:** All right. The  
13 record reflects that July 19<sup>th</sup> of 2007, you signed BPT  
14 Form 1073, the Reasonable Accommodation Notice and  
15 Request in accordance with the provisions of the  
16 Americans With Disabilities Act. Disability is defined  
17 under the ADA and that shows that you have no  
18 disabilities that were identified from the File review.  
19 It also shows that you do have your GED. Is that  
20 correct?

21 **INMATE MENDOZA:** Yes.

22 **PRESIDING COMMISSIONER BRYSON:** All right. Have  
23 you ever been involved in the Triple-CMS or EOP program,  
24 sir?

25 **INMATE MENDOZA:** No.

1       **PRESIDING COMMISSIONER BRYSON:** All right. Have  
2 you ever taken psychotropic medication, either in prison  
3 or on the streets?

4       **INMATE MENDOZA:** No.

5       **PRESIDING COMMISSIONER BRYSON:** And you don't wear  
6 glasses, so do you have good vision?

7       **INMATE MENDOZA:** Yes.

8       **PRESIDING COMMISSIONER BRYSON:** All right. Very  
9 lucky. All right. You don't appear to have any hearing  
10 difficulties, either. Is that correct?

11       **INMATE MENDOZA:** Yes.

12       **PRESIDING COMMISSIONER BRYSON:** All right. And you  
13 didn't appear to have any mobility issues getting to the  
14 hearing room. Is that correct?

15       [No audible response].

16       **PRESIDING COMMISSIONER BRYSON:** All right. Do you  
17 suffer from any disabilities that you think might  
18 prevent you from participating in today's hearing?

19       **INMATE MENDOZA:** No.

20       **PRESIDING COMMISSIONER BRYSON:** All right. And,  
21 Counsel, do you concur?

22       **INMATE ATTORNEY HURST:** I do. Yes.

23       **PRESIDING COMMISSIONER BRYSON:** This hearing is  
24 being conducted pursuant to Penal Code Sections 3041 and  
25 3042 in the Rules and Regulations of the Board of Parole

1 Hearings governing parole consideration hearings for  
2 life inmates. The purpose of today's hearing is to  
3 consider your suitability for parole. In doing so, the  
4 Panel will consider the number and nature of the crimes  
5 for which you were committed, your prior criminal and  
6 social history, and your behavior and programming since  
7 your commitment. The Panel has had the opportunity to  
8 review your Central File. You will be given the  
9 opportunity to correct or clarify the record. The Panel  
10 will consider your progress since your commitment, your  
11 counselor's report, psychological report, and any other  
12 relevant information. Any change in parole plans should  
13 be brought to the Panel's attention. The Panel will  
14 reach a decision today and inform you whether or not it  
15 finds you suitable for parole and the reasons for its  
16 decision. If you're found suitable for parole, the  
17 length of your confinement will be explained to you.  
18 Nothing that happens here today will change the findings  
19 of the Court. The Panel is here for the sole purpose to  
20 determine your suitability for parole. Do you  
21 understand?

22 **INMATE MENDOZA:** Yes.

23 **PRESIDING COMMISSIONER BRYSON:** All right. This  
24 hearing will be conducted in three phases. I will  
25 discuss with you the crime for which you were committed,

1 your prior criminal and social history. Commissioner  
2 Weaver will discuss with you your progress since your  
3 commitment, your counselor's report, and your  
4 psychological evaluation. Commissioner Sims will then  
5 discuss with you your parole plans and any letters in  
6 support or opposition that may be in the File. Once  
7 that is concluded, the Panel, and then the District  
8 Attorney, and then your attorney will be given the  
9 opportunity to ask you questions. Questions from the  
10 District Attorney shall be asked through the Chair and  
11 you will direct your answers to the Panel. Next the  
12 District Attorney, and then your attorney, and then you  
13 will be given an opportunity to make a final statement  
14 regarding your parole suitability. Your statement  
15 should address why you feel you are suitable for parole.  
16 The Panel will then recess, clear the room, and  
17 deliberate. Once the deliberations are completed, the  
18 Panel will resume the hearing and announce the decision.  
19 California Code of Regulations states that, "Regardless  
20 of time served, a life inmate shall be found unsuitable  
21 for and denied parole if, in the judgment of the Panel,  
22 the inmate would pose an unreasonable risk of danger to  
23 society if released from prison. You have certain  
24 rights. Those rights include the right to a timely  
25 notice of this hearing. Were you given timely notice of

1 this hearing, sir?

2 **INMATE MENDOZA:** Yes.

3 **PRESIDING COMMISSIONER BRYSON:** All right. The  
4 right to review your Central File. Were you given an  
5 opportunity to review your Central File?

6 **INMATE MENDOZA:** Yes.

7 **PRESIDING COMMISSIONER BRYSON:** Did you do so?

8 **INMATE MENDOZA:** No, I did not.

9 **PRESIDING COMMISSIONER BRYSON:** And why is that,  
10 sir?

11 **INMATE MENDOZA:** I did not need to.

12 **PRESIDING COMMISSIONER BRYSON:** All right. Have  
13 you done an Olsen review in the past?

14 **INMATE MENDOZA:** Yes.

15 **PRESIDING COMMISSIONER BRYSON:** All right. Did  
16 you--do you understand that it's--it's all to your  
17 advantage to do an Olsen review?

18 **INMATE MENDOZA:** Oh, yes.

19 **PRESIDING COMMISSIONER BRYSON:** All right. You  
20 also have the right to be heard by an impartial Panel.  
21 Do you have any evidence that the Panel before you today  
22 cannot be impartial, sir?

23 **INMATE MENDOZA:** No.

24 **PRESIDING COMMISSIONER BRYSON:** You will receive a  
25 copy of the Panel's written tentative decision today.

1 That decision will become effective within 120 days. It  
2 is also subject to review by the Governor. A copy of  
3 the tentative decision and a copy of the transcript will  
4 be sent to you. The Board has eliminated its appeal  
5 process. If you disagree with anything in today's  
6 hearing, you have the right to go directly to the Court  
7 with your complaint. You are not required to admit your  
8 offense or discuss your offense if you do not wish to do  
9 so. However, this Panel does accept as true the  
10 findings of the Court and you're invited to discuss the  
11 facts and circumstances of the offense if you desire.  
12 The Board will review and consider any prior statements  
13 you've made regarding the offense in determining your  
14 suitability for parole. So, basically, it's very  
15 simple. Just tell the truth.

16 **INMATE MENDOZA:** Yes.

17 **PRESIDING COMMISSIONER BRYSON:** Are there any  
18 preliminary objections, Counsel?

19 **INMATE ATTORNEY HURST:** No. We have none today.

20 **PRESIDING COMMISSIONER BRYSON:** Will the inmate be  
21 speaking with the Panel today?

22 **INMATE ATTORNEY HURST:** Yes, he will.

23 **C A S E F A C T O R S**

24 **PRESIDING COMMISSIONER BRYSON:** All right. I'll be  
25 reading the facts of the crime. From the Court of

1 Appeals, State of California, Second Appellate District,  
2 Division 1, *The People v. Phillip Valente* [spelled  
3 phonetically] *Mendoza*. This is Superior Court number A,  
4 Adam, 620991, beginning on page 2, and I'll be beginning  
5 with the second full paragraph.

6 "About five a.m. on July 18<sup>th</sup>, Richard  
7 Pompas [P-O-M-P-A-S], age 19, died of three  
8 gunshot wounds. At two a.m., Thomas Morales  
9 [spelled phonetically] drove his pickup into a  
10 Jack-In-The-Box parking lot. Seated in the cab  
11 with him were Henry Lopez [spelled  
12 phonetically] and Frank Ramos [that's R-A-M-O-  
13 S]. In the open bed were Rubin Solis [S-O-L-I-  
14 S], Joey Lauro [L-A-U-R-O], and Pompas. All  
15 were members of the Compton Varrrio Setenta,  
16 that is, CV70 Gang. Some went into the  
17 restaurant, but Morales talked with a friend  
18 about 20 minutes during which a white Chevrolet  
19 came by and the occupants said something and  
20 gave them the 'finger' which gesture was  
21 returned. Later, all but the friend got into  
22 the truck. Lauro, Pompas, and Solis..."

23 And there's a footnote.

24 "Defendant testified that among those in the  
25 bed of the truck he recognized someone he knew

1 as 'Artie' [that's A-R-T-I-E], friends Arthur  
2 Nooniez [N-O-O-N-I-E-Z], a member of the  
3 Setenta, who, with others, had beaten him up at  
4 Dominguez High School. He identified the man  
5 he knew as Artie as one of those who had  
6 testified. Thus, it is likely that he knew  
7 either Solis or Lauro as Artie because he  
8 claimed he did not know Pompas.

9 Returning to the text and I'll start at the beginning of  
10 the sentence.

11 "Lauro, Pompas, and Solis sat in the open bed  
12 as the pickup departed through the alley. A  
13 white Toyota containing the driver, co-  
14 defendant Cabrerra [spelled phonetically], a  
15 passenger Colorubio [spelled phonetically], and  
16 the defendant seated in the rear, drove into  
17 the alley. They wore straw hats and dark  
18 jackets and all were members of the Compton  
19 Varrio Largo, a gang rival to Setenta's."

20 Here I will read Footnote 3.

21 "Deputy Grani [G-R-A-N-I], a qualified  
22 expert on gangs and dealing with street gangs  
23 since 1979, in a sheriff's detail called  
24 'Operation Safe Streets,' identified those in  
25 the pickup as members of the Compton Varrio

1 Setenta gang, and the three in the Toyota as  
2 members of the Compton Varrio Largo gang. He  
3 testified that these two gangs were rivals and  
4 had been for years. He believed defendant to  
5 be an active Largo member. He delineated the  
6 area of each gang and placed Jack-In-The-Box  
7 closer to Largo turf."

8 Now I'm returning to text.

9 "The defendant 'brought up' a 'weapon or gun'  
10 two and one half to three feet long and  
11 Cabrerra turned around and followed the pickup.  
12 Cabrerra caught up to about 45 feet of the  
13 pickup and blinked his headlights and parking  
14 lights off and on four or five times at the  
15 truck. Morales slowed down, having observed  
16 the blinking lights of the Toyota and thinking  
17 that its occupants were friends from CV70.  
18 Solis said, 'Wait up, here come some home  
19 boys.' And he, Lauro, and Pompas stood up to  
20 see who they were. They had their hands at  
21 their sides and had no weapons. As the Toyota  
22 drove up, they did not recognize the occupants,  
23 but defendant stared at them, then started  
24 shooting with the rifle, pushing the rifle  
25 barrel out the back window. Defendant fired

1 four shots into the rear of the pickup, three  
2 of which hit Pompas, and one shattered the back  
3 window of the truck. Pompas cried, 'They shot  
4 me.' Morales heard shots from the rear, turned  
5 to the left, and saw the white Toyota coming up  
6 on his side with the barrel of a gun sticking  
7 out of the window. Morales ducked down and as  
8 the Toyota passed, defendant fired two more  
9 shots which struck the driver's door. Solis  
10 yelled at Morales to follow the Toyota. No one  
11 in the pickup had any kind of weapon and no one  
12 in the truck said anything to the occupants of  
13 the Toyota before the shooting. As Morales  
14 pursued the Toyota, he saw a police car and  
15 waved the officers on toward it. Believing  
16 something was wrong, the officers pursued the  
17 Toyota. Officer Markey [M-A-R-K-E-Y] turned on  
18 his lights and siren and, after a distance, the  
19 Toyota slowed down because of a dead end  
20 requiring a turn, at which time the defendant,  
21 seated in the rear, pushed out of the window a  
22 rifle which fell to the ground, discharging,  
23 and landing in the gutter. The Toyota stopped  
24 shortly thereafter. The three in the Toyota  
25 were ordered out and prone on the ground for a

1 pat down search for weapons. Officer Markey  
2 was unaware that a shooting had occurred, but  
3 asked defendant, 'Who did the shooting?' And  
4 defendant replied, 'I did.' The pickup had  
5 pulled up and someone yelled that somebody had  
6 been shot. And defendant said, 'Yeah, I did  
7 it.' Near where the rifle was retrieved from  
8 the gutter was a spent .22 caliber casing. A  
9 bullet had shattered the truck's back window  
10 and two bullet holes were in the driver's door.  
11 There were not bullet holes in the Toyota.  
12 Three spent .22 shell casings were in the  
13 Toyota, on the rear window ledge, underneath  
14 the rear seat, and on the center rear seat.  
15 The spent casing shells had been fired from the  
16 rifle."

17 And, sir, did you do that crime?

18 **INMATE MENDOZA:** Yes, I did.

19 **PRESIDING COMMISSIONER BRYSON:** Say again?

20 **INMATE MENDOZA:** I said yes, I did.

21 **PRESIDING COMMISSIONER BRYSON:** And is the sequence  
22 of—are the sequence of events as they are delineated  
23 here in the report I just read?

24 **INMATE MENDOZA:** Some yes. Not all.

25 **PRESIDING COMMISSIONER BRYSON:** Well, let us give

1 you a chance to speak to that and talk about any  
2 differences that you have of opinion from the Appellate  
3 Court as to what happened. And, if you could take us  
4 back, first of all, you were at the time a member of the  
5 Compton Varrio Largo street gang. Is that correct?

6 **INMATE MENDOZA:** Yes, I was.

7 **PRESIDING COMMISSIONER BRYSON:** And you were 17  
8 years old at the time of this crime?

9 **INMATE MENDOZA:** Yes.

10 **PRESIDING COMMISSIONER BRYSON:** How long had you  
11 been a gang member?

12 **INMATE MENDOZA:** For a few years. Since about the  
13 age of 13, I guess.

14 **PRESIDING COMMISSIONER BRYSON:** Okay. So, were you  
15 formally jumped into the gang?

16 **INMATE MENDOZA:** Yes.

17 **PRESIDING COMMISSIONER BRYSON:** Okay. How did you  
18 come to be armed that day? How did you come to be armed  
19 that day?

20 **INMATE MENDOZA:** I was taking the rifle—I was  
21 taking it from my mother's home back to where I live.

22 **PRESIDING COMMISSIONER BRYSON:** Okay. And, but you  
23 were in a vehicle not your own. Is that correct?

24 **INMATE MENDOZA:** Yes..

25 **PRESIDING COMMISSIONER BRYSON:** So, how did you

1 come to be in somebody else's vehicle transporting a  
2 weapon?

3 **INMATE MENDOZA:** Like I said, I was taking it from  
4 one—from my mother's home to where I live.

5 **PRESIDING COMMISSIONER BRYSON:** All right. Then,  
6 let's just let you tell the story here. What happened  
7 in the hours just immediately preceding this and then  
8 leading up to the crime?

9 **INMATE MENDOZA:** I was at my mother's. She had  
10 called me earlier and told me she didn't want the rifle  
11 there at her house, so I went over there to take it back  
12 to bring it back to where I was living, which was at my  
13 grandmother's. And then from there I had gotten a ride  
14 with a guy that I recognized. Well, he was driving  
15 erratically, so I told him to pull over to get out and  
16 that I didn't want to be driving with somebody who's not  
17 paying that much attention. So, I had seen a friend go  
18 by—

19 **PRESIDING COMMISSIONER BRYSON:** So you got out.  
20 Okay. Okay.

21 **INMATE MENDOZA:** So I spotted the driver, Cabrerro,  
22 and I flagged him down and asked him to give me a ride  
23 back, back to the neighborhood, which was where I was  
24 living at. And that's how I got in with Cabrerro.

25 **PRESIDING COMMISSIONER BRYSON:** Okay. So, how did

1 you come to be in the same location as this other  
2 vehicle?

3 **INMATE MENDOZA:** The pickup?

4 **PRESIDING COMMISSIONER BRYSON:** Yes.

5 **INMATE MENDOZA:** Uh, that's the street I was on was  
6 behind the Jack-In-The-Box and we had, my partner had  
7 made a u-turn and that's when we were coming back. And  
8 we got behind the truck.

9 **PRESIDING COMMISSIONER BRYSON:** And what led you to  
10 pulling out the gun in the first place, going through  
11 this?

12 **INMATE MENDOZA:** As it states in there, the  
13 occupants in the back, they stood up. And the one in  
14 the middle, he went to his waistline, and in the motion  
15 that I believe, I saw a weapon. I saw him draw a  
16 weapon. One of them yelled out, "the seventies," which,  
17 as it states, was a rival and when I saw the guy draw  
18 the weapon, I grabbed the rifle.

19 **PRESIDING COMMISSIONER BRYSON:** And you were in the  
20 back of the other vehicle. Is that correct?

21 **INMATE MENDOZA:** Yes.

22 **PRESIDING COMMISSIONER BRYSON:** I'm trying to  
23 understand how you fired from the back of the vehicle.  
24 You—did you lean out the window?

25 **INMATE MENDOZA:** I grabbed the weapon and brought

1 it across and just fired.

2 **PRESIDING COMMISSIONER BRYSON:** I see. So, was the  
3 vehicle you were in actually coming up onto one side of  
4 the other vehicle?

5 [No audible response].

6 **PRESIDING COMMISSIONER BRYSON:** Sir, in the process  
7 of your seeing this gesture, that what you felt was  
8 another gang member, made, in terms of potentially going  
9 for and retrieving a weapon, it took you some time to  
10 bring that rifle into position, correct?

11 **INMATE MENDOZA:** Everything happened so fast. I  
12 don't know. I couldn't tell you the time.

13 **PRESIDING COMMISSIONER BRYSON:** He had no gun,  
14 though.

15 **INMATE MENDOZA:** I believe he did.

16 **PRESIDING COMMISSIONER BRYSON:** Oh, you, to this  
17 day, believe that he had a weapon?

18 **INMATE MENDOZA:** Yes, I do. I do believe that.

19 **PRESIDING COMMISSIONER BRYSON:** Did you see a  
20 weapon?

21 **INMATE MENDOZA:** I do believe I did.

22 **PRESIDING COMMISSIONER BRYSON:** What do you think  
23 you saw? What type of a weapon?

24 **INMATE MENDOZA:** A small semi-automatic handgun.

25 **PRESIDING COMMISSIONER BRYSON:** Did you have any

1 verbal exchange with the driver of your vehicle at all?

2 **INMATE MENDOZA:** Their driver?

3 **PRESIDING COMMISSIONER BRYSON:** Your driver in your  
4 vehicle.

5 **INMATE MENDOZA:** No.

6 **PRESIDING COMMISSIONER BRYSON:** So, you didn't  
7 shout anything to him about, 'Get out of the way, slow  
8 down, move, he's got a weapon,' nothing? You didn't do  
9 anything like that?

10 **INMATE MENDOZA:** No.

11 **PRESIDING COMMISSIONER BRYSON:** Why was your—why  
12 did your vehicle make the u-turn and come up on these  
13 people to begin with? Why didn't you just drive off?

14 **INMATE MENDOZA:** Well, I got into Cabrerro's car.

15 **PRESIDING COMMISSIONER BRYSON:** Okay.

16 **INMATE MENDOZA:** And we had gone into a small  
17 parking lot, made a u-turn in there, and came back out.  
18 By that time, the truck had passed us, and we ended up  
19 coming up behind the truck. I'd have to show you a  
20 diagram so you'd understand, but there's a-

21 **PRESIDING COMMISSIONER BRYSON:** I'm beginning to  
22 understand. What I'm trying to understand is why did  
23 you exchange challenges with these people at all? Why  
24 didn't you just get out of there?

25 **INMATE MENDOZA:** Well, I seen him pull a gun so I

1 thought of defending myself.

2 **PRESIDING COMMISSIONER BRYSON:** But, prior to that.  
3 Prior to that.

4 **INMATE MENDOZA:** I don't follow you.

5 **PRESIDING COMMISSIONER BRYSON:** Well, are you  
6 saying that they made the first, that they did the first  
7 yelling? That they identified themselves and challenged  
8 you first? Who challenged first, do you think?

9 **INMATE MENDOZA:** Uh, they did, if you want to call  
10 it a challenge. It was more like identifying  
11 themselves. Basically, I'm not saying anything. I  
12 don't know how to—in Spanish it would be, "Aqui para los  
13 sententas," which is, loosely translated would be  
14 saying, "Here we are, the seventies."

15 **PRESIDING COMMISSIONER BRYSON:** Was anyone else in  
16 your vehicle armed?

17 **INMATE MENDOZA:** No.

18 **PRESIDING COMMISSIONER BRYSON:** How do you feel  
19 today, given the distance in time that you have? Would  
20 you have done the same thing today?

21 **INMATE MENDOZA:** Honestly, I couldn't tell you. I  
22 really don't know.

23 **PRESIDING COMMISSIONER BRYSON:** Okay. Commissioner  
24 Sims, do you have questions about the crime?

25 **OBSERVING COMMISSIONER SIMS:** The only question I

1 have is, this gang that you were in, you obviously were  
2 a member of the gang. Did you have a status in the  
3 gang? Were you a higher level? Or were you just a gang  
4 member?

5 **INMATE MENDOZA:** No. Just a member.

6 **OBSERVING COMMISSIONER SIMS:** Yeah, okay. And, is  
7 it common for you to transport a weapon that's loaded,  
8 even if you're moving it from one place to another? Or,  
9 is it normal procedure to possibly take the-unload the  
10 gun before you transport it? Obviously, the gun was  
11 loaded, right?

12 **INMATE MENDOZA:** Yes.

13 **OBSERVING COMMISSIONER SIMS:** Okay. And that was  
14 kind of a common practice to leave the shells in the  
15 gun.

16 **INMATE MENDOZA:** Well, I would say no. But, at  
17 that time, apparently, yes.

18 **OBSERVING COMMISSIONER SIMS:** Was the gun loaded at  
19 your mother's house when you picked it up?

20 **INMATE MENDOZA:** Yes.

21 **OBSERVING COMMISSIONER SIMS:** And you were the only  
22 occupant in the truck, I believe-

23 **INMATE MENDOZA:** Car.

24 **OBSERVING COMMISSIONER SIMS:** -in the car with the  
25 gun.

1 **INMATE MENDOZA:** Yes.

2 **OBSERVING COMMISSIONER SIMS:** And the next question  
3 is, did the police ever find the gun on the person that  
4 you thought was going to go for his gun and possibly  
5 shoot you?

6 **INMATE MENDOZA:** They were never searched.

7 **OBSERVING COMMISSIONER SIMS:** They were never  
8 searched.

9 **INMATE MENDOZA:** No.

10 **OBSERVING COMMISSIONER SIMS:** No further questions.

11 **PRESIDING COMMISSIONER BRYSON:** How do you know  
12 they were never searched, sir? How would you know that?

13 **INMATE MENDOZA:** From what I seen for myself.

14 **PRESIDING COMMISSIONER BRYSON:** So, to your  
15 knowledge they were never searched. Okay. Commissioner  
16 Weaver, do you have any questions regarding the crime?

17 **DEPUTY COMMISSIONER WEAVER:** No, I have no  
18 questions regarding the crime.

19 **P R E - C O M M I T M E N T F A C T O R S**

20 **PRESIDING COMMISSIONER BRYSON:** Sir, you have a  
21 record of as a juvenile being drunk in public. You were  
22 counseled and released for that. Do you admit to that?

23 **INMATE MENDOZA:** Yes.

24 **PRESIDING COMMISSIONER BRYSON:** That was in 1980.  
25 That would have made you, what, 17 years old? And then

1 there was an ADW arrest apparently and that was  
2 dismissed. What was that about?

3 **INMATE MENDOZA:** That was-

4 **PRESIDING COMMISSIONER BRYSON:** I'm sorry. Assault  
5 with a deadly weapon. Sorry.

6 **INMATE MENDOZA:** That was-these guys said that he  
7 got into an argument with a cousin of mine and that my  
8 cousin turned around and told me to go inside and get a  
9 gun. While they remained arguing, I supposedly ran in,  
10 got a gun, came back, handed it to my cousin, and my  
11 cousin shot at him. That was his complaint.

12 **PRESIDING COMMISSIONER BRYSON:** I see.

13 **INMATE MENDOZA:** That's when I was arrested.

14 **PRESIDING COMMISSIONER BRYSON:** I see. Was he hit  
15 with the gun?

16 **INMATE MENDOZA:** No.

17 **PRESIDING COMMISSIONER BRYSON:** Okay. And the  
18 instant offense does appear to be your first adult  
19 arrest. So, had you committed other offenses prior with  
20 the Largo 36?

21 **INMATE MENDOZA:** No.

22 **PRESIDING COMMISSIONER BRYSON:** Never before?

23 **INMATE MENDOZA:** There was the usual fights,  
24 apparently.

25 **PRESIDING COMMISSIONER BRYSON:** Usual fights?

1       **INMATE MENDOZA:** Well, you bump into a rival and  
2 you had fights, but-

3       **PRESIDING COMMISSIONER BRYSON:** Mostly fist fights  
4 that you're referring to?

5       **INMATE MENDOZA:** Yes.

6       **PRESIDING COMMISSIONER BRYSON:** Had you ever used a  
7 weapon before?

8       **INMATE MENDOZA:** No.

9       **PRESIDING COMMISSIONER BRYSON:** Had you done any  
10 robberies or burglaries prior in your career?

11       **INMATE MENDOZA:** No.

12       **PRESIDING COMMISSIONER BRYSON:** All right. As to  
13 your social factors, you were born in Lynwood,  
14 California? And it says you attended local schools. At  
15 Montclair High School you were asked to leave due to  
16 your behavior. And, at Dominguez High School you were  
17 kicked out for gang-related activity. And, at Santa  
18 Alina [spelled phonetically] High School, you were  
19 dropped out of school to support your child. So, let's  
20 try to fill in some gaps there. Why were you so  
21 problematical in school?

22       **INMATE MENDOZA:** I would say just things happen,  
23 but small instances at Montclair High was just like  
24 truancies. That was about it. It's the truancies.

25       **PRESIDING COMMISSIONER BRYSON:** Did you have

1 brothers and sisters?

2 **INMATE MENDOZA:** Yes.

3 **PRESIDING COMMISSIONER BRYSON:** What-what-

4 **INMATE MENDOZA:** One older brother-

5 **PRESIDING COMMISSIONER BRYSON:** One older brother.

6 **INMATE MENDOZA:** -and one sister. She passed away.

7 **PRESIDING COMMISSIONER BRYSON:** I'm sorry. Okay.

8 As for your older brother, was he a role model for you?

9 **INMATE MENDOZA:** At Montclair High, that's who I  
10 was staying with when I attended Montclair High.

11 **PRESIDING COMMISSIONER BRYSON:** I see. So, what  
12 about your parents? What happened with them?

13 **INMATE MENDOZA:** They were both there. My father,  
14 he passed away in '84.

15 **PRESIDING COMMISSIONER BRYSON:** Okay.

16 **INMATE MENDOZA:** But my mother's still-my mother's  
17 still living.

18 **PRESIDING COMMISSIONER BRYSON:** Okay. But at that  
19 time you had your biological father and your mom?

20 **INMATE MENDOZA:** There were both in the home.

21 **PRESIDING COMMISSIONER BRYSON:** Okay. It says that  
22 your mother at one point sent you to live with an uncle  
23 to get you away from the gangs of the school.

24 **INMATE MENDOZA:** It's my brother.

25 **PRESIDING COMMISSIONER BRYSON:** I see. So, how did

1 you get involved with the gangs at--what did you say--13  
2 years old?

3 **INMATE MENDOZA:** That's where I was--I didn't go  
4 with my brother until I was in--in '76 right when I  
5 turned--right after turning 13. I went to junior high.  
6 I went to the first half of junior high in Compton and  
7 the second half of junior high--that's when I was getting  
8 messed up doing a lot of truancies.

9 **PRESIDING COMMISSIONER BRYSON:** The second half?

10 **INMATE MENDOZA:** The first half. That's why I was  
11 sent to my brother's.

12 **PRESIDING COMMISSIONER BRYSON:** So, the first half  
13 you were doing truancies in Compton. Is that when you  
14 joined the gang?

15 **INMATE MENDOZA:** Yeah.

16 **PRESIDING COMMISSIONER BRYSON:** Okay, and why--how  
17 did you get mixed up in the gang?

18 **INMATE MENDOZA:** That's where I grew up. That was,  
19 for a better word, the neighborhood. The street that I  
20 lived on is the street of the neighborhood of the gang.

21 **PRESIDING COMMISSIONER BRYSON:** Did you do drugs  
22 with the gang?

23 **INMATE MENDOZA:** Yes.

24 **PRESIDING COMMISSIONER BRYSON:** What did you do?

25 **INMATE MENDOZA:** Well, we experimented. Marijuana,

1 we drank, drank beer, hustled, tried PCP, acid, LSD,  
2 paint.

3 **PRESIDING COMMISSIONER BRYSON:** And that all began  
4 sort of at the same time frame as your involvement with  
5 the gang. Is that correct?

6 **INMATE MENDOZA:** Yeah.

7 **PRESIDING COMMISSIONER BRYSON:** Okay. But, then  
8 you said the second half of that year you went to live  
9 with your brother?

10 **INMATE MENDOZA:** Right.

11 **PRESIDING COMMISSIONER BRYSON:** And, did that have  
12 any effect on you then?

13 **INMATE MENDOZA:** Well, yeah. It took me out of  
14 the gang area.

15 **PRESIDING COMMISSIONER BRYSON:** Okay.

16 **INMATE MENDOZA:** But it--still I went to an area  
17 where I really didn't know nobody. I did attend--I was  
18 at higher attendance. My grades came up. I did pretty--  
19 I was doing pretty well. But then for vacations and  
20 summertime, I would always come home. So, it was back  
21 to the neighborhood.

22 **PRESIDING COMMISSIONER BRYSON:** I see. Back to the  
23 gang, too, then. Is that right? Okay. So, when did  
24 this back-and-forth, did that continue and did you  
25 graduate?

1 **INMATE MENDOZA:** No, I did not graduate.

2 **PRESIDING COMMISSIONER BRYSON:** Why not?

3 **INMATE MENDOZA:** I was dropping out of the 11<sup>th</sup>  
4 grade.

5 **PRESIDING COMMISSIONER BRYSON:** Okay.

6 **INMATE MENDOZA:** In order to support my common-law  
7 wife and my son.

8 **PRESIDING COMMISSIONER BRYSON:** So, how did you  
9 meet your common-law wife? Was that in school?

10 **INMATE MENDOZA:** No. She was in the neighborhood.  
11 She lived a few houses away.

12 **PRESIDING COMMISSIONER BRYSON:** I see. Okay. So,  
13 you dropped out of school in the 11<sup>th</sup> grade to support  
14 your wife and a son on the way, you said? Okay. And,  
15 did she end up having the son with you? All right. So,  
16 at the time of this crime you actually had a family. Is  
17 that correct?

18 [No audible response.]

19 And what were you doing to support the family?

20 **INMATE MENDOZA:** I was working. I had gotten a job  
21 with a company called Hawaiian Host which is a—they were  
22 manufactured chocolate-covered macadamia nuts.

23 **PRESIDING COMMISSIONER BRYSON:** Okay.

24 **INMATE MENDOZA:** And I was a machine operator  
25 there.

1       **PRESIDING COMMISSIONER BRYSON:** I see. So, you  
2 were gainfully employed. You had a young family. Were  
3 you doing drugs at the same time in this timeframe?

4       **INMATE MENDOZA:** At that time, I was more kind of  
5 trying to take care of my son and my common-law wife, so  
6 I was backing away from-

7       **PRESIDING COMMISSIONER BRYSON:** Were they involved  
8 in drugs or was your wife involved in drugs?

9       **INMATE MENDOZA:** No.

10       **PRESIDING COMMISSIONER BRYSON:** Did she work?

11       **INMATE MENDOZA:** No.

12       **PRESIDING COMMISSIONER BRYSON:** What has happened  
13 to your son and your common-law wife since?

14       **INMATE MENDOZA:** Well, my son is-he's a-the work  
15 slips me-special needs. So, he's been involved in a  
16 program so, but he's living on his own. He has a job.  
17 As far as his mother, she ended up using drugs and  
18 getting involved with other things that she was arrested  
19 for. I am not sure, exactly sure, what they were. I  
20 have not inquired about it.

21       **PRESIDING COMMISSIONER BRYSON:** I see.

22       **INMATE MENDOZA:** But I know she's been in and out  
23 of jail a few times. But, as for her activities, I know  
24 she's out there, but I don't know what-

25       **PRESIDING COMMISSIONER BRYSON:** And who has, more

1 or less, taken care of your son then since you left?

2 **INMATE MENDOZA:** Well, she did off and on, but as  
3 he grew up with the special needs, he was put into a  
4 program where he is able to—the program he was in—it  
5 would help him develop to be independent. That's what  
6 he's done.

7 **PRESIDING COMMISSIONER BRYSON:** Good. That's good.

8 **INMATE MENDOZA:** He's still involved with it.

9 **PRESIDING COMMISSIONER BRYSON:** Is he capable of  
10 corresponding with you at all?

11 **INMATE MENDOZA:** Yes.

12 **PRESIDING COMMISSIONER BRYSON:** Does he do that?

13 **INMATE MENDOZA:** Oh, yes.

14 **PRESIDING COMMISSIONER BRYSON:** Oh, that's good.

15 **INMATE MENDOZA:** As a matter of fact, there's one  
16 of the letters that was from him.

17 **PRESIDING COMMISSIONER BRYSON:** I see. Okay.  
18 Then, during the intervening years, have you married  
19 again?

20 **INMATE MENDOZA:** Yes.

21 **PRESIDING COMMISSIONER BRYSON:** Are you married  
22 now?

23 **INMATE MENDOZA:** No. We just recently divorced.

24 **PRESIDING COMMISSIONER BRYSON:** I see. So, just  
25 one marriage then in between?

1       **INMATE MENDOZA:** Yes.

2       **PRESIDING COMMISSIONER BRYSON:** I see. Any more  
3 children?

4       **INMATE MENDOZA:** No.

5       **PRESIDING COMMISSIONER BRYSON:** Okay. Well, if  
6 you'll turn your attention now to Commissioner Weaver,  
7 he'll talk about your post-incarceration factors.

8                   P O S T - C O N V I C T I O N F A C T O R S

9       **DEPUTY COMMISSIONER WEAVER:** All right. Thank you  
10 very much. You last-first when you appeared before the  
11 Board, December the 18<sup>th</sup> of 2003, you were denied one  
12 year at that time. Recommendations were that you remain  
13 disciplinary free, that you participate in self-help  
14 and/or therapy, as available, and a new psychological  
15 evaluation was ordered. The case came up on April the  
16 4<sup>th</sup> of 2005. You were denied two years by virtue of a  
17 stipulation and, again, recommendations were that you  
18 remain disciplinary free, that you participate in self-  
19 help, as available, and that you get positive chronos.  
20 The counselor's report that was done in anticipation of  
21 this hearing was completed by Counselor Robinson, R-O-B-  
22 I-N-S-O-N. Did you get a copy of that, sir?

23       **INMATE MENDOZA:** Yes, I did.

24       **DEPUTY COMMISSIONER WEAVER:** Did you review it?

25       **INMATE MENDOZA:** Yes, I did.

1       **DEPUTY COMMISSIONER WEAVER:** Is the information in  
2 there correct?

3       **INMATE MENDOZA:** Yes.

4       **DEPUTY COMMISSIONER WEAVER:** Okay. It talks about  
5 the offense, about your version of it. It talks about  
6 your juvenile record and also about personal factors  
7 which have been covered. Also about custody history at  
8 various institutions that you have been assigned to, and  
9 disciplinary history with regard to variances. I  
10 noticed there is a pending rule violation report for his  
11 alleged participation in a North-South riot requiring  
12 use of force. And it says it's pending. Is that the  
13 same one that was on July the 20<sup>th</sup>, 25<sup>th</sup>, of 2004?

14       **INMATE MENDOZA:** Yes.

15       **DEPUTY COMMISSIONER WEAVER:** Okay. I just wanted  
16 to make sure. The way it's written—it's written so—  
17 there's something pending and that's a 115, in fact, was  
18 adjudicated although you may have that on appeal. The  
19 counselor goes on to talk about your future plans, which  
20 should be covered by Commissioner Sims and acknowledge  
21 as sure as you've indicated that you declined to review  
22 your Central File, it covers the period of time going  
23 back to 2005 when your last Board appearance was  
24 supposed to occur. It indicates that you have been here  
25 at Solano, that you were on the PIA laundry list and

1 you're currently assigned to PIA laundry. Is that  
2 correct?

3 **INMATE MENDOZA:** Yes, sir.

4 **DEPUTY COMMISSIONER WEAVER:** And it indicates  
5 there's no group or any other activities that are noted.  
6 The counselor goes on indicating that after being  
7 assigned to PIA laundry on June 23<sup>rd</sup> of '06, that your  
8 supervisor rated your work performance as satisfactory  
9 and you have some other reports also indicating  
10 satisfactory performance. With regard to self-help, it  
11 says you completed the Project Pride Anger Management  
12 program and there was a laudatory chrono to validate  
13 that. And it also indicates that you've had laudatory  
14 chronos from PIA. The prisoner has submitted work  
15 supervisor's chronos, one indicating 15 months in PIA in  
16 laundry with all grade 1 and 2's, exceptional or above  
17 average. And that's signed by Marty Franck, F-R-A-N-C-  
18 K, and indicates that you have a 40 cent pay number. Is  
19 that correct?

20 **INMATE MENDOZA:** Yes, sir.

21 **DEPUTY COMMISSIONER WEAVER:** What's that equate to  
22 a month?

23 **INMATE MENDOZA:** Uh, for-get a hundred dollars?

24 **DEPUTY COMMISSIONER WEAVER:** If you work-if you  
25 work all month with no lock downs and everything, no

1 equipment breakdowns, what's that 40 cents equate to in  
2 terms of a monthly wage.

3 **INMATE MENDOZA:** It would give me about  
4 approximately 120 hours, which would give me 48-

5 **DEPUTY COMMISSIONER WEAVER:** Forty-eight dollars?

6 **INMATE MENDOZA:** Yes, sir.

7 **DEPUTY COMMISSIONER WEAVER:** Saving any money in  
8 anticipation of release? Or do you spend it all?

9 **INMATE MENDOZA:** Right now I'm in the process of  
10 learning leather craft, so-

11 **DEPUTY COMMISSIONER WEAVER:** So, you do it for  
12 spending for hobby? Hobby materials?

13 **INMATE MENDOZA:** Yes.

14 **DEPUTY COMMISSIONER WEAVER:** Do you have a hobby  
15 card?

16 **INMATE MENDOZA:** Yes, I do.

17 **DEPUTY COMMISSIONER WEAVER:** Okay. And what's your  
18 specialty in hobby?

19 **INMATE MENDOZA:** Leather craft.

20 **DEPUTY COMMISSIONER WEAVER:** And what kind of  
21 leather craft?

22 **INMATE MENDOZA:** I do, uh-

23 **DEPUTY COMMISSIONER WEAVER:** Purses? Stuff for  
24 officers?

25 **INMATE MENDOZA:** Purses, belts, officers'

1 equipment-

2 **DEPUTY COMMISSIONER WEAVER:** Belts? Cuff, uh-

3 **INMATE MENDOZA:** Brown belts, the double key fobs,  
4 the single keys.

5 **DEPUTY COMMISSIONER WEAVER:** Okay. And, so then,  
6 part of that that you hobby crafted, you sell that, some  
7 of that goes to--some of that money goes to the inmate  
8 welfare fund?

9 **INMATE MENDOZA:** Yes.

10 **DEPUTY COMMISSIONER WEAVER:** Okay. So, besides the  
11 48 dollar pay number, do you have any net profit from  
12 working in the hobby craft installing some of the wares  
13 that you make?

14 **INMATE MENDOZA:** Well, that is, I'm just starting.  
15 No, I don't 'cause I'm trying to get--I put the money  
16 right back into it to buy more supplies and my tools.

17 **DEPUTY COMMISSIONER WEAVER:** Okay. That chrono  
18 that I read from regarding your PIA work is dated  
19 September 30<sup>th</sup> of 2007, and that's in the last couple of  
20 days that the September 1<sup>st</sup>, 2006 chrono from  
21 psychologist Jannell, J-A-N-N-E-L-L, indicating that you  
22 participated in the Pride/Anger Management class and  
23 that there were 10 weekly sessions. Also, there's a  
24 chrono dated August the 9<sup>th</sup> of 2007 from J. Arnold, the  
25 superintendent in PIA, indicating that you passed the

1 test that would qualify you as a Certified Customer  
2 Service Specialist. It's accredited through the  
3 Electronics Technicians' Association in Indiana. It  
4 says you should be commended for a job well done.  
5 There's also a chrono from Supervisor Guerrero in the  
6 laundry distribution department. And it says that you  
7 are punctual, doing a good job at the folder, counter,  
8 string tier operator, cart assembler, and it's a  
9 positive chrono. In part, says you've been a valuable  
10 employee to the PIA laundry, "I would like to commend  
11 him for a job well done." And there's a similar chrono.  
12 I believe that you submitted a duplicate from Guerrero,  
13 G-U-E-R-R-E-R-O. There's another chrono dated September  
14 18<sup>th</sup> of 2007 by Superintendent Franck, F-R-A-N-C-K, and  
15 that chrono indicates that you're assigned to the B  
16 shift and that you display a positive attitude of good  
17 working habits and that you're commended for being a  
18 diligent PIA laundry employee. There's another chrono  
19 dated September 18<sup>th</sup> by Industrial Supervisor Cueva, C-  
20 U-E-V-A, in the PIA laundry, indicating that you've had  
21 a good attitude, gets along well with staff and peers,  
22 and that you've been an active participant in the inmate  
23 employability program where you earned a certificate as  
24 a Certified Customer Service Specialist. "Inmate  
25 Mendoza's performance under my supervision in regard to

1 his work ethic leads me to believe he would become a  
2 gainful employee when released to society." So that's  
3 very good. And I would commend you for comments made by  
4 the people that you work with.

5 **INMATE ATTORNEY HURST:** Commissioner, we have  
6 another work experience evaluation, a little more  
7 detailed. Could we pass it over?

8 **DEPUTY COMMISSIONER WEAVER:** Certainly.

9 **INMATE ATTORNEY HURST:** All right.

10 **DEPUTY COMMISSIONER WEAVER:** In fact, I could just  
11 trade you if you like-

12 **INMATE ATTORNEY HURST:** Okay, that'll be fine.

13 **DEPUTY COMMISSIONER WEAVER:** --anyway, I'll get  
14 these back to you and-the paper that I've been handed is  
15 entitled Work Experience Evaluation on Phillip Mendoza,  
16 C-47764, and it talks about jobs skills, there's a  
17 folder, and that equipment experience with a string  
18 tier, pack tier, and that it indicates that he's been  
19 trained with blood borne pathogens, total safe  
20 practices, ongoing safety training lectures, and these  
21 are the current 2006 [\_\_\_indiscernible] on a weekly  
22 basis. And with regard to above average grades, they  
23 affect punctuality, ability to work with others, ability  
24 to take direction, ability to accept criticism,  
25 reliability, willingness and ability to learn new tasks,

1 overall attitude toward job, all Grade 2's, all above  
2 average. It says, "Since his assignment, Mr. Mendoza  
3 has been working in the distribution department as a  
4 folder and string tier operator. He also assisted the  
5 scale operator by stapling the laundry in front of the  
6 scale and securing them in the clean room storage cage  
7 for distribution to our customers." And this is signed  
8 by Industrial Supervisor Falcon, F-A-L-C-O-N, and is  
9 dated June the 23<sup>rd</sup> of 2007. So, at least for 15 or  
10 more months you've been doing well, Mr. Mendoza, in your  
11 work assignments. You're to be commended for that.

12 **INMATE MENDOZA:** Thank you.

13 **DEPUTY COMMISSIONER WEAVER:** The counselor has only  
14 actually covered a recent period and I, personally,  
15 reviewed the File to look at some of your prior record.  
16 And it looks like in 1999, in 2000 and 2001, you were  
17 involved in Alcoholics Anonymous. Is that correct?

18 **INMATE MENDOZA:** Yes.

19 **DEPUTY COMMISSIONER WEAVER:** Did you learn any of  
20 the steps?

21 **INMATE MENDOZA:** Well, no, not really.

22 **DEPUTY COMMISSIONER WEAVER:** Not really? Okay.

23 And that you attended for in excess of three years? Why  
24 did you go?

25 **INMATE MENDOZA:** To try to learn something from it.

1 To me it was just a lot of stories that didn't really  
2 pertain to me.

3 **DEPUTY COMMISSIONER WEAVER:** Okay. A lot of  
4 stories that didn't pertain to you. What about the 12  
5 steps? Did you get anything out of those? Any of those  
6 pertain to you, or did you find any of those 12 steps  
7 helpful in any way?

8 **INMATE MENDOZA:** For my life, no. No, I did not.

9 **DEPUTY COMMISSIONER WEAVER:** Okay. You also took  
10 an impact workshop and a TABE test in 1999 that gave you  
11 an overall grade point level of 12.7 and a 12.9 reading  
12 level which is very good. The counselor also, because  
13 it was accomplished earlier, did not note that you  
14 received a GED in 1989. And there are mentions made in  
15 the File that you took the vocational mill and cabinet  
16 program and I believe that was at, where, Soledad?

17 **INMATE MENDOZA:** Yes.

18 **DEPUTY COMMISSIONER WEAVER:** And that instructor  
19 was Mr. Brombach, B-R-O-M-B-A-C-H, who indicated you  
20 were employable and you were in there for at least a  
21 couple of years. There also mention made in reports  
22 that for a period of time you were in vocational dry  
23 cleaning, vocational welding, and vocational sewing  
24 machine repair. I didn't find the certificates in there  
25 for those. Did you complete the vocational dry

1 cleaning?

2 **INMATE MENDOZA:** Vocational dry cleaning,  
3 vocational mill and cabinet, yes.

4 **DEPUTY COMMISSIONER WEAVER:** Okay. What about the  
5 vocational welding and the sewing machine repair?

6 **INMATE MENDOZA:** The welding was when I was in San  
7 Quentin and, no, I did not finish that. But the sewing  
8 machine repair is into—that should be Level 2, that is  
9 actually the PIA textiles.

10 **DEPUTY COMMISSIONER WEAVER:** Okay. Did you  
11 complete that and get a certificate?

12 **INMATE MENDOZA:** There was no completion. It was  
13 a-

14 **DEPUTY COMMISSIONER WEAVER:** Just a vocational or  
15 just an on-the-job training program.

16 **INMATE MENDOZA:** -PIA job program, yes.

17 **DEPUTY COMMISSIONER WEAVER:** Okay and the  
18 vocational dry cleaning, was that at Soledad, as well?

19 **INMATE MENDOZA:** Dry cleaning was at Donovan, where  
20 I completed it.

21 **DEPUTY COMMISSIONER WEAVER:** Okay. I'll further  
22 look at the File to see if there's a certificate in  
23 there. You've have three 128A's, the last on November  
24 the 3<sup>rd</sup> of 2004 and a total of six 115's, the last on  
25 July the 25<sup>th</sup> of 2004. The 115's that you have are for

1 such things as performance in 1985, marijuana in 1985,  
2 refusing to work in 1987, 1988 conduct, possession of  
3 marijuana in 1989, and then the most recent that's been  
4 mentioned, the 2004 North-South melee that in which you  
5 sustained no injuries, however, you have denied being a  
6 participant in that. One of the questions I have  
7 looking through disciplinary record, why, if you caught  
8 a 115 in 1985 for possession of marijuana that you would  
9 again have a marijuana possession in 1989?

10 **INMATE MENDOZA:** That would look--there's a 602 that  
11 I took all the way to director review 'cause that was my  
12 bunky at the time, my cell-mate, and it was not me, but  
13 because he had gone out to Court and the hearing was  
14 held while he was out to Court, I was found guilty of  
15 it.

16 **DEPUTY COMMISSIONER WEAVER:** So, did you get either  
17 one of those 115's overturned? The one in '85 or the  
18 one in '89?

19 **INMATE MENDOZA:** They upheld it.

20 **DEPUTY COMMISSIONER WEAVER:** Okay. And which one  
21 is the one that you said claiming your celly, it was  
22 your celly's marijuana?

23 **INMATE MENDOZA:** The '89.

24 **DEPUTY COMMISSIONER WEAVER:** And did you discuss  
25 with your celly when you became celly's as to what the

1 house rules would be?

2 **INMATE MENDOZA:** No.

3 **DEPUTY COMMISSIONER WEAVER:** Okay. And is this—is  
4 this 2004 115, is that still on appeal?

5 **INMATE MENDOZA:** No.

6 **DEPUTY COMMISSIONER WEAVER:** That was sustained,  
7 too, and you were held responsible for that?

8 **INMATE MENDOZA:** I was found as a participant in  
9 it.

10 **DEPUTY COMMISSIONER WEAVER:** I read the 115 and I  
11 read the incident report, and you were not identified as  
12 a principal in that, however, there were six Hispanics  
13 in one alleged persuasion, and 11 of another persuasion  
14 or affiliation, whatever you want to call it, that were  
15 involved in a melee. And you were, according to the  
16 charge, were in a group of people who were isolated  
17 subsequent to the alarm being sounded. Is that correct?

18 **INMATE MENDOZA:** Yes.

19 **DEPUTY COMMISSIONER WEAVER:** Okay. And you  
20 sustained no injuries.

21 **INMATE MENDOZA:** No, I did not.

22 **DEPUTY COMMISSIONER WEAVER:** 'Pard me?

23 **INMATE MENDOZA:** I said no, I did not.

24 **DEPUTY COMMISSIONER WEAVER:** Okay. And you were  
25 not identified by anyone as being a principal in that

1 melee, except for the fact that you were in the  
2 perimeter that was secured and you did not get down in a  
3 prone position as was the instruction given. Is that  
4 correct?

5 **INMATE MENDOZA:** No.

6 **DEPUTY COMMISSIONER WEAVER:** You got down?

7 **INMATE MENDOZA:** Yes, I did.

8 **DEPUTY COMMISSIONER WEAVER:** Okay. That's not,  
9 that's not the way I read the report.

10 **INMATE MENDOZA:** I don't know.

11 **DEPUTY COMMISSIONER WEAVER:** Okay. So the report  
12 differs from your version?

13 **INMATE MENDOZA:** Well, yes.

14 **DEPUTY COMMISSIONER WEAVER:** Okay. Did you have  
15 any forewarning that there was gonna be a, any kind of a  
16 incident on the yard between any people with any  
17 affiliation or any problems, or any whatever?

18 **INMATE MENDOZA:** When this happened, we were on  
19 lockdown. We were on modified program. And it happened  
20 inside the building. We were accosted by the Southern,  
21 uh, Southern Mexican and we were told to prepare for  
22 chow that, being under controlled feeding, we were told  
23 to come down to the floor, the floor area. As we were  
24 waiting, that's when the Northerner's attacked, attacked  
25 a few of the other Southerner's. I backed out of the

1 way, I was backing out of the way, by the time all the  
2 other officers and the other staff started ordering  
3 people to get down. That's when I backed off and got  
4 down.

5 **DEPUTY COMMISSIONER WEAVER:** So, your contention is  
6 that you did follow orders and you got down, as opposed  
7 to what the officers said.

8 **INMATE MENDOZA:** Yeah.

9 **DEPUTY COMMISSIONER WEAVER:** Okay. Now you say  
10 that you were on modified lockdown?

11 **INMATE MENDOZA:** Well, modified program at the  
12 time, yes.

13 **DEPUTY COMMISSIONER WEAVER:** Modified program?  
14 Okay, and was it controlled feeding?

15 **INMATE MENDOZA:** Yes.

16 **DEPUTY COMMISSIONER WEAVER:** And why were you on  
17 lockdown?

18 **INMATE MENDOZA:** A few days previous there was an  
19 incident on the yard and that was between the North and  
20 South, and that's why both sides were on lockdown.

21 **DEPUTY COMMISSIONER WEAVER:** Between North and  
22 South. Hispanics? Or Mexicans, or whatever you wanna  
23 refer to the group says?

24 **INMATE MENDOZA:** Yes.

25 **DEPUTY COMMISSIONER WEAVER:** So you knew that there

1 had been a problem?

2 **INMATE MENDOZA:** Well, we knew we were on lockdown,  
3 but we didn't know at the time what it actually was.

4 **DEPUTY COMMISSIONER WEAVER:** You didn't know why  
5 you were on lockdown?

6 **INMATE MENDOZA:** No, 'cause we have rotating yard  
7 schedule and that particular evening that the incident  
8 occurred on the yard, we didn't have yard. When that  
9 happened, everybody was placed on lockdown.

10 **DEPUTY COMMISSIONER WEAVER:** So, the incident  
11 occurred and you were never advised as to why you were  
12 locked down or you were on a modified program is what  
13 you're telling me.

14 [No audible response.]

15 Were you forced to go to chow that night?

16 **INMATE MENDOZA:** We're not forced, no.

17 **DEPUTY COMMISSIONER WEAVER:** You could've stayed in  
18 your house.

19 **INMATE MENDOZA:** I could have stayed up in the  
20 dorm, yes.

21 **DEPUTY COMMISSIONER WEAVER:** If you wanted to.

22 **INMATE MENDOZA:** Yes.

23 **DEPUTY COMMISSIONER WEAVER:** You didn't have to go,  
24 you didn't have to leave the building?

25 **INMATE MENDOZA:** No.

1        **DEPUTY COMMISSIONER WEAVER:** All right. The record  
2 also indicates that you've had some problems in the past  
3 when you were at Soledad in 2003. There was a situation  
4 in which you were battered? Is that correct?

5        **INMATE MENDOZA:** Yes, sir.

6        **DEPUTY COMMISSIONER WEAVER:** What was that behind?

7        **INMATE MENDOZA:** To this day, I do not know.

8        **DEPUTY COMMISSIONER WEAVER:** And that was at  
9 Central. Prior to that, you were at North Facility and  
10 there was an incident in the latter part of 2002, around  
11 December, I believe, wherein it was alleged that you  
12 were stabbed. Is that correct?

13       **INMATE MENDOZA:** Yes.

14       **DEPUTY COMMISSIONER WEAVER:** Were you stabbed?

15       **INMATE MENDOZA:** Yes.

16       **DEPUTY COMMISSIONER WEAVER:** By someone else, or  
17 self-inflicted?

18       **INMATE MENDOZA:** By someone else.

19       **DEPUTY COMMISSIONER WEAVER:** Okay. There's, we saw  
20 in the File that there was mention about the possibility  
21 that those wounds that you sustained at North Facility  
22 were self-inflicted?

23       **INMATE MENDOZA:** Yes, they told me that.

24       **DEPUTY COMMISSIONER WEAVER:** And you're saying that  
25 that's not correct.

1       **INMATE MENDOZA:** Hmmm.

2       **DEPUTY COMMISSIONER WEAVER:** All right. Did you  
3 get a copy of the psychological evaluation that was done  
4 by Dr. Rouse, R-O-U-S-E?

5       **INMATE MENDOZA:** Yes, I did.

6       **DEPUTY COMMISSIONER WEAVER:** And did you review it?

7       **INMATE MENDOZA:** Yes, I did.

8       **DEPUTY COMMISSIONER WEAVER:** Is the information in  
9 Dr. Rouse's report correct?

10       **INMATE MENDOZA:** Yes.

11       **DEPUTY COMMISSIONER WEAVER:** Okay. It talks about  
12 the identifying information, background information,  
13 family history, which has already been covered, and it  
14 talks about your marriage which has been dissolved and  
15 that you have a son that's 26 years of age that is from  
16 a different union than your marriage in prison, and that  
17 you have contact with that son?

18       **INMATE MENDOZA:** Yes, I do.

19       **DEPUTY COMMISSIONER WEAVER:** What's he do?

20       **INMATE MENDOZA:** He's in a, as I stated before,  
21 he's in a special needs program-

22       **DEPUTY COMMISSIONER WEAVER:** Okay, so he's-

23       **INMATE MENDOZA:** -and they give him jobs in  
24 different areas.

25       **DEPUTY COMMISSIONER WEAVER:** So, he has a handicap

1 then.

2 **INMATE MENDOZA:** Yes.

3 **DEPUTY COMMISSIONER WEAVER:** Who's his conservator?

4 **INMATE MENDOZA:** He's in independent living now.

5 **DEPUTY COMMISSIONER WEAVER:** So, he doesn't have a  
6 conservator? There's nobody that manages his money or  
7 anything else for him?

8 **INMATE MENDOZA:** That I know of, no.

9 **DEPUTY COMMISSIONER WEAVER:** And the doctor goes on  
10 and talks about that you've never had any military  
11 history, that your psychosexual development is  
12 unremarkable, that you got a GED in prison in 1989, and  
13 it talks about your vocational skills that we've talked  
14 about. Also project Friday A and the Laubach tutor  
15 program, and that's the computer assisted program?

16 **INMATE MENDOZA:** No. That wasn't the--I think  
17 you're referring to Plato, which is a--

18 **DEPUTY COMMISSIONER WEAVER:** Okay. What about the  
19 Laubach program?

20 **INMATE MENDOZA:** The Laubach program was a one-on-  
21 one tutoring.

22 **DEPUTY COMMISSIONER WEAVER:** You were tutoring on a  
23 one-on-one basis?

24 **INMATE MENDOZA:** Yes.

25 **DEPUTY COMMISSIONER WEAVER:** Okay. No computer

1 assist for that. Okay. It talks about your employment  
2 history and it talks about your history of marijuana and  
3 alcohol abuse prior to incarceration, and then it talks  
4 about the serious disciplinary in 1987 for marijuana  
5 possession. And that's not correct according to my  
6 record. You got one in '85 for marijuana, and then one  
7 in '89. Is that correct?

8 **INMATE MENDOZA:** Yeah. That was my mistake when I  
9 stated that.

10 **DEPUTY COMMISSIONER WEAVER:** So, '87-

11 **INMATE MENDOZA:** Is incorrect.

12 **DEPUTY COMMISSIONER WEAVER:** -is incorrect. The  
13 doctor got that from you and not from reviewing the  
14 record?

15 **INMATE MENDOZA:** Yes.

16 **DEPUTY COMMISSIONER WEAVER:** And you told the  
17 doctor that you didn't believe you needed such a  
18 program, that you-it states he's been, "Remained clean  
19 and sober and has not abused any substances since 1987",  
20 a period of 20 years, but that's-is that as you reported  
21 to the doctor?

22 **INMATE MENDOZA:** Yes.

23 **DEPUTY COMMISSIONER WEAVER:** Okay. Well, there's  
24 no way of proving that you weren't abusing marijuana in  
25 1989 if they charged you with possession of it. Did

1 they get a urine test on you when they found it?

2 **INMATE MENDOZA:** I requested it, but they denied  
3 it. They said they didn't need it because they had-

4 **DEPUTY COMMISSIONER WEAVER:** They had the evidence  
5 and, by virtue, having the marijuana?

6 **INMATE MENDOZA:** They had a paper with residue on  
7 it, is what it was.

8 **DEPUTY COMMISSIONER WEAVER:** Okay. It talks about  
9 you not having any significant major illnesses, which is  
10 good. And that you don't have any psych history. And  
11 it doesn't appear that there's any need for any mental  
12 health treatment needs. The doctor report says there's  
13 nothing in your speech, thoughts, or behavior to  
14 indicate or demonstrate that you're suffering from any  
15 type of serious mental disorder. On Axis I, the doctor  
16 offers a diagnostic impression of marijuana abuse in  
17 institution remission, no diagnosis on Axis II, and  
18 gives you a GAF score of 90, which is relatively in the  
19 very high range. It talks about assessment of  
20 dangerousness and the fact according to the doctor, in  
21 part, he says, "However, within the past years Mr.  
22 Mendoza has changed and presents as a reflective mature  
23 44-year-old man who seems to have developed appropriate  
24 insight and judgment as it relates to the factors that  
25 contributed to his life crime." And it talks about you

1 upgrading educationally and vocationally, and that you  
2 have sustained a level of impulse and behavioral  
3 control.

4 "As a result, it's the reasoned opinion of  
5 this examiner that there is a high degree of  
6 certainty in Mr. Mendoza's risk of  
7 dangerousness in this institutional environment  
8 as lower than that of the average inmate and  
9 more consistent with that of the average  
10 citizen in the community."

11 It indicates there are no mental health issues.  
12 And there's been mention with regard to other reports  
13 and the doctors talk about comparing you to the average  
14 citizen in the community. It's a bit of a jump because  
15 most of the time average citizens have not been to  
16 prison and they certainly haven't been to prison for  
17 being as long a time such as you have been convicted of.  
18 In conclusion, the doctor says,

19 "Assessment of dangerousness, continued.  
20 Mr. Mendoza's mental health status [-uh, that's  
21 a portion of the prior page] there are no  
22 mental health issues that the Board should be  
23 concerned with in regard to Mr. Mendoza's  
24 mental health status. Further, it is the  
25 opinion of this examiner that Mr. Mendoza would

1 be a suitable candidate for parole."

2 So, Dr. Rouse has made a very favorable recommendation  
3 and it, in part, seeks the request made of him and to  
4 assess the dangerousness, in my estimation, that it's  
5 the Board's job to make the determination as to who is  
6 suitable for parole, who's a suitable candidate and who  
7 isn't, but, anyway, that's what his opinion is. And  
8 it's a very favorable report, Mr. Mendoza. Is there  
9 anything I've left out regarding your achievements or  
10 anything else that you wish to place on record besides  
11 the chronos and other documents that are submitted to  
12 the Panel?

13 **INMATE MENDOZA:** No, that's-

14 **DEPUTY COMMISSIONER WEAVER:** All right. That's  
15 issued.

16 **INMATE MENDOZA:** -it's just uh-

17 **DEPUTY COMMISSIONER WEAVER:** If you will give your  
18 attention to Commissioner Sims, he's going to cover your  
19 parole plans.

20 **P A R O L E P L A N S**

21 **OBSERVING COMMISSIONER SIMS:** Mr. Mendoza, I'm  
22 going to read the dates that the letters were received.  
23 I think it's important because they are-all of your  
24 letters are very current. And in 2007-what we're gonna  
25 do is we're gonna-I'm gonna try just to highlight all of

1 your letters because you have about 11. I'm not gonna  
2 read them verbatim, but I'm gonna try to pick out some  
3 important factors and the thing that we're looking for  
4 are job offers, financial support, and also living  
5 conditions or a place to live. So, those are three key  
6 things that we look if we're considering to grant  
7 someone parole. So, I'm gonna highlight these letters  
8 and if you have anything you'd like to add if I happen  
9 to not mention something, feel free to indicate that if  
10 you would, please. The first letter I have is September  
11 17<sup>th</sup> and this is from your ex-wife and it says,

12 "I send this letter on behalf of my ex-  
13 husband, Phillip Mendoza, as he set to appear  
14 before you on a possible parole date next  
15 month. As I have been divorced from Phillip  
16 for approximately one year, I still remain true  
17 and devoted friend, only wanting what is best  
18 for Phillip. Although we are no longer  
19 married, my home is still completely available  
20 for Phillip to come home to."

21 So that shows a support for the home. Is there anything  
22 else you'd like me to mention there, but I'm just trying  
23 to pick out those three key things. Is that fine?

24 **INMATE MENDOZA:** It's fine.

25 **OBSERVING COMMISSIONER SIMS:** Okay. The next one,

1 sir, is dated July 19<sup>th</sup>, 2007 and this is from Julia S.  
2 Mendoza, and it says,

3 "Phillip has expressed his deep remorse to  
4 me on numerous occasions. All he wants now is  
5 to help care for his son, who is mentally  
6 challenged, his grandchildren, and me. I  
7 believe him with all my heart. Phillip is 100  
8 percent ready for release, I pray to God, and  
9 will give him that chance."

10 This letter primarily mentions that Julia wants you to  
11 spend support with your son and be with him while he's  
12 growing up. Is there anything else you'd like me to  
13 mention in this?

14 **INMATE MENDOZA:** No.

15 **OBSERVING COMMISSIONER SIMS:** Okay. Thank you.

16 July 8<sup>th</sup>. This is from Ray Mendoza.

17 "This letter is written on behalf of my  
18 younger brother, Phillip. At tender age of 17,  
19 my brother was committed to the crime of  
20 homicide against another gang member. Our 81-  
21 year-old mother awaits his return to our  
22 family. Our mother is a deeply religious woman  
23 who prays daily for her son who left her at  
24 such a young age. She is bedridden and suffers  
25 from Parkinson's, and her only contact is via

1 Phillip's twice monthly phone calls. My wife,  
2 daughter, and I welcome my brother with open  
3 arms. We have made a place for him in our  
4 home. Upon his release, we will assist him in  
5 making the transition to life on the outside."

6 Anything else, Mr. Mendoza, there?

7 **INMATE MENDOZA:** No.

8 **OBSERVING COMMISSIONER SIMS:** Okay. Thank you.

9 This letter is written June 28<sup>th</sup>. This is from  
10 Ernestine Mendoza. It says,

11 "I write to you on behalf of my brother-in-  
12 law, Phillip. Phillip has been behind bars for  
13 over 25 years. He was only 17. Another  
14 concern that I have that Phillip is now over  
15 40. Unfortunately, we live in a society that  
16 favors youth and beauty. Please take this huge  
17 factor into consideration. I strongly feel  
18 that the Board is very important crosswords.  
19 Please, I urge you to give Phillip a fighting  
20 chance when he is released. Make it possible  
21 for him to join society as a productive member.  
22 Please give Phillip Mendoza a release date."

23 Anything else, sir?

24 **INMATE MENDOZA:** No.

25 **OBSERVING COMMISSIONER SIMS:** This is dated July

1 24<sup>th</sup>, 2007.

2 "My name is Phillip Mendoza and I'm writing  
3 this letter for my dad, Phillip D. Mendoza. He  
4 went away when I was just a baby. I miss him  
5 very much and want him to come home. On  
6 Sundays, I go to visit my grandpa and my dad  
7 calls so I can talk to him. He always tells me  
8 to do the right things in life and not to do  
9 bad things that will get me in trouble."

10 Anything else that you'd like me to say about that?

11 **INMATE MENDOZA:** No.

12 **OBSERVING COMMISSIONER SIMS:** Thank you. September  
13 20<sup>th</sup>, 2007. This is from Elsie Arreas [spelled  
14 phonetically].

15 "Because of our close relationship, I know  
16 Phillip extremely well. I can provide you with  
17 an accurate perspective. Prior to his  
18 incarceration, Phillip never withdrew from the  
19 family. On the contrary, he spent most of his  
20 time at home. Phillip was a vital member of  
21 our family, assisting with the daily activities  
22 and activity participating in special events.  
23 Phillip is always on our minds and in our  
24 prayers. We all await and hope he will soon be  
25 released. I know Phillip will be a law-abiding

1 citizen if given the opportunity. During his  
2 long release I know Phillip is very remorseful  
3 for the one act that was so out of character  
4 for him, but our family is united in its  
5 support for Phillip and want to help him to  
6 adjust to a free society. I am willing to give  
7 him all the assistance in my power when he gets  
8 back home to us. I humbly ask you to please  
9 consider parole for him soon."

10 Anything else you'd like me to mention there?

11 **INMATE MENDOZA:** No, sir.

12 **OBSERVING COMMISSIONER SIMS:** This is To Whom It  
13 May Concern, April 9<sup>th</sup>, 2007. This is from Andrea Pede  
14 [spelled phonetically] and it says that,

15 "After speaking many times on the phone  
16 with Phillip, I notice his positive attitude of  
17 one day being released and joining his close  
18 friends and family. I am a strong Christian  
19 woman and I can provide Phillip with moral  
20 support and I will help him walk in the right  
21 path of life. I am also willing to provide  
22 him, if necessary, with clothing and food.  
23 Most importantly, I will do my best to guide  
24 him in God's ways and keep him in my prayers  
25 like I have for the past years."

1 Anything else, sir?

2 **INMATE MENDOZA:** No.

3 **OBSERVING COMMISSIONER SIMS:** This is September  
4 1<sup>st</sup>, 2007.

5 "After speaking many times on the phone  
6 with Phillip, I can notice his positive  
7 attitude of one day being released and joining  
8 his closed friends and family. I am a strong  
9 Christian man and I can provide Phillip with  
10 moral support and I will help him walk in the  
11 right path of life. I am also willing to  
12 provide him, if necessary, with clothing and  
13 food. I can also help him get provided with a  
14 job, if necessary. Most importantly, I will do  
15 my best to guide him in God's way and keep him  
16 in my prayers like I have for the past years."

17 Is that sufficient?

18 **INMATE MENDOZA:** Yes.

19 **OBSERVING COMMISSIONER SIMS:** August 29<sup>th</sup>, 2007.

20 I am writing this letter in support of my  
21 lifelong friend, Phillip Mendoza. We have  
22 known each other since age 13. I am 45 years  
23 old. I know he is remorseful of his past  
24 mistakes and I am positive he will be useful  
25 and a law-abiding citizen. I will make myself

1 available to him in any way I can to help him  
2 seeking employment, transportation, and moral  
3 support."

4 That's from Jose Oseguerra [spelled phonetically].

5 Anything else?

6 **INMATE MENDOZA:** No.

7 **OBSERVING COMMISSIONER SIMS:** August 29<sup>th</sup>, 2007.

8 "Dear Sir, my name is Enrique Gevalier  
9 [spelled phonetically], owner of Time To Shine  
10 Mobile Detailing One. I know Phillip through  
11 my friend, Jose Oseguerra, Sr. I am aware of  
12 his crime and I would employ Phillip as an auto  
13 detailer in my business upon his parole."

14 Anything else?

15 [No audible response.]

16 And, one more letter. It's dated August 29<sup>th</sup>.

17 "Dear Executive Officer, Board of Prison  
18 Terms, my company is considering hiring Mr.  
19 Mendoza upon his release from prison. We are  
20 aware of his felony criminal conviction and our  
21 company policies allow us to hire known felons.  
22 After reviewing the application and resume  
23 submitted by Mr. Mendoza, we feel that he would  
24 be an asset to this company."

25 What type of company is this, M.D. Enterprise?

1       **INMATE MENDOZA:** A warehouse. Basically, clean  
2 trucks.

3       **OBSERVING COMMISSIONER SIMS:** Okay. All right.  
4 And is this close to where you would be living?

5       **INMATE MENDOZA:** Yes.

6       **OBSERVING COMMISSIONER SIMS:** Okay. And, lastly, I  
7 think Deputy Commissioner has mentioned your certificate  
8 as a Service Specialist. Is that correct?

9       **INMATE MENDOZA:** Yes.

10       **OBSERVING COMMISSIONER SIMS:** So, we don't need to  
11 be redundant there. So, having read these records on  
12 record, I'd like them to be submitted and now I'm going  
13 to-

14       **DEPUTY DISTRICT ATTORNEY DAHLE:** Excuse me,  
15 Commissioner, may I see the letters since I have not  
16 seen them-

17       **OBSERVING COMMISSIONER SIMS:** Sure. Certainly.  
18 You certainly may. I'm sorry. We've sent out our 3042  
19 notices. These notices go to agencies having a direct  
20 interest in your case, Mr. Mendoza. I read some of the  
21 responses to your record and we have received some  
22 replies and we have one from the Sheriff in LA County,  
23 dated August 13<sup>th</sup>, 2007. And it merely states that-

24       **DEPUTY DISTRICT ATTORNEY DAHLE:** Excuse me,  
25 Commissioner. Can you read the entire-

1       **OBSERVING COMMISSIONER SIMS:** -gonna read the whole  
2 thing. Even this part here?

3       **DEPUTY DISTRICT ATTORNEY DAHLE:** No. Your part.

4       **OBSERVING COMMISSIONER SIMS:** Yeah. Okay. I was  
5 just gonna read a brief letter. I'd like the record to  
6 indicate that this is very short. It says that,

7               "Compton police officers observed the  
8 shooting and pursued Cabrerra. During the  
9 pursuit, Mendoza threw the rifle from the  
10 vehicle. Cabrerra ultimately yielded the rifle  
11 and it was recovered and occupants of the  
12 victim's vehicle identified Mendoza as the  
13 shooter. Based on these facts, it is the  
14 opinion of this department that parole of  
15 inmate Mendoza is inappropriate and should be  
16 denied."

17 That's signed by Leroy D. Baca, Sheriff. And that was  
18 dated August 13<sup>th</sup>, 2007. At this time, I guess we're  
19 going to--there is a representative of the County  
20 District Attorney's Office present who will have the  
21 opportunity to make a statement regarding parole  
22 suitability prior to the conclusion of this meeting.

23       **PRESIDING COMMISSIONER BRYSON:** I have a couple of  
24 questions, sir. Why did you shoot at the side of the  
25 vehicle after you fired at the gentleman in the back of

1 the vehicle three times? Why did you shoot at the side  
2 of the vehicle?

3 **INMATE MENDOZA:** I don't know.

4 **PRESIDING COMMISSIONER BRYSON:** You don't know.

5 Okay. And as to your Laubach tutoring work. So, you're  
6 acting as a tutor. Is that correct?

7 **INMATE MENDOZA:** I was.

8 **PRESIDING COMMISSIONER BRYSON:** That's very good.  
9 What were you doing as a tutor?

10 **INMATE MENDOZA:** Just helping some of the Mexican  
11 nationals to learn English.

12 **PRESIDING COMMISSIONER BRYSON:** As far as reading  
13 and-

14 **INMATE MENDOZA:** Yes, and to help them get a better  
15 grasp of language and reading and writing.

16 **PRESIDING COMMISSIONER BRYSON:** That's very good.  
17 How many men do you think you've tutored?

18 **INMATE MENDOZA:** I only tutored a few.

19 **PRESIDING COMMISSIONER BRYSON:** Okay.

20 **INMATE MENDOZA:** Just a few.

21 **PRESIDING COMMISSIONER BRYSON:** All right. And did  
22 you bring any samples of your-not samples, but pictures  
23 of your leather craft? Do you have any of those with  
24 you?

25 **INMATE MENDOZA:** I sure don't.

1       **PRESIDING COMMISSIONER BRYSON:** Okay.

2       **INMATE MENDOZA:** We don't have the ability to take  
3 pictures and I only wish we did.

4       **PRESIDING COMMISSIONER BRYSON:** Okay. Yes. Okay.  
5 And I wanted to confirm on your residence plan, there  
6 were a couple of offers in there. What would your  
7 primary plan for residence be?

8       **INMATE MENDOZA:** With my ex-wife.

9       **PRESIDING COMMISSIONER BRYSON:** With your ex-wife?  
10 Would you then also still consider the offer from your  
11 brother? Is that a possibility for you?

12       **INMATE MENDOZA:** Sure. Any of my family members.

13       **PRESIDING COMMISSIONER BRYSON:** Okay. And you have  
14 never lived with your ex-wife on the outside. Is that  
15 correct?

16       **INMATE MENDOZA:** Yes.

17       **PRESIDING COMMISSIONER BRYSON:** So, if you were to  
18 move in with her and she said, "You're just not the kind  
19 of man I thought you were." What would you do. What  
20 would be your response to that?

21       **INMATE MENDOZA:** I wouldn't want to be a burden on  
22 her, so I'd seek elsewhere.

23       **PRESIDING COMMISSIONER BRYSON:** Okay. Have the two  
24 of you talked about that possibility since you've never  
25 lived together on the outside or known each other even

1 really on the outside.

2 **INMATE MENDOZA:** No, we haven't and I would say  
3 because even with the family visiting program, for the  
4 short time that we were allowed to participate in it, I  
5 believe we grew fairly close enough to know how each  
6 other is, how we are in compatibility. And I believe  
7 that as you can see throughout the years since it was  
8 stopped in '87, we still maintained a very good  
9 friendship, so I would say we would be able to be  
10 compatible.

11 **PRESIDING COMMISSIONER BRYSON:** All right.  
12 Commissioner Sims, did you have any questions?

13 **OBSERVING COMMISSIONER SIMS:** Mr. Mendoza, if you  
14 could please try to clarify the one thing in my mind  
15 that I don't quite understand is the gun that you  
16 indicated you saw at the time of the shooting, but that  
17 the police never recovered that gun or even searched the  
18 vehicle that you fired the shot into. And that's—I'm  
19 kind of confused there because you've indicated to me on  
20 record that you actually saw a gun, the person go for  
21 the gun, and you saw a gun? But there was never any  
22 evidence that that happened. I mean, you know, as far  
23 as true facts there.

24 **INMATE MENDOZA:** Yes, I understand that.

25 **OBSERVING COMMISSIONER SIMS:** If you could explain

1 that to me, please.

2 **INMATE MENDOZA:** The best way I can explain it is  
3 that there was a discrepancy in how many people were  
4 actually in the back of the truck during the trial.  
5 When they said there was uh, I believe they only  
6 identified six people. But, I believe there was at  
7 least one or two more in the truck at the time. As to  
8 what I believe I saw, that's what it is. I do believe I  
9 saw him draw a weapon. As to what happened to it, I do  
10 not know.

11 **OBSERVING COMMISSIONER SIMS:** Was that person that  
12 you believe you saw a weapon, was he at the trial? Was  
13 he one of the people in the trial?

14 **INMATE MENDOZA:** No, he was uh-

15 **OBSERVING COMMISSIONER SIMS:** I beg your pardon?

16 **INMATE MENDOZA:** That was the victim of this crime,  
17 Mr. Pompas.

18 **OBSERVING COMMISSIONER SIMS:** Oh, okay. So, he  
19 wasn't because he was murdered. Okay. All right. That  
20 concludes my question. Thank you.

21 **PRESIDING COMMISSIONER BRYSON:** All right.  
22 Commissioner Weaver.

23 **DEPUTY COMMISSIONER WEAVER:** I have a few things.  
24 One is that I didn't find a certificate, but I did find  
25 a chrono by Instructor Hadjes, H-A-D-J-E-S. It's a 128B

1 dated April the 8<sup>th</sup> of 1991, indicating Mr. Mendoza  
2 successfully completed all the requirements and  
3 competencies for a certificate of completion of  
4 vocational dry cleaning, which is very good, essentially  
5 qualifying him for an entry level position in the  
6 industry. Additionally, when I got into the second  
7 File, I had initially indicated that Mr. Mendoza had  
8 three 128A's and, actually, there were seven more for a  
9 total of 10 128A's, the last being on October the 3<sup>rd</sup> of  
10 2004. And when I said there were only three, how come  
11 you didn't correct me? Because in your resume which you  
12 did a few years ago, you listed all your disciplinaries  
13 and listed the 128A's which you had had.

14 **INMATE MENDOZA:** Yes, um, I don't know. To tell  
15 you the truth, I just didn't key on it.

16 **DEPUTY COMMISSIONER WEAVER:** Okay.

17 **INMATE MENDOZA:** 'Cause I have an updated resume  
18 that has 'em all listed, as well.

19 **PRESIDING COMMISSIONER BRYSON:** Could you pass that  
20 over, since it is new.

21 **INMATE MENDOZA:** Yeah, I just-

22 **DEPUTY COMMISSIONER WEAVER:** Oversight? Okay, well  
23 I don't, you know, I don't, I found the dry cleaning  
24 chrono and then I discovered the other 128's, so. I  
25 have nothing else, Commissioner Bryson.

1       **PRESIDING COMMISSIONER BRYSON:** All right. Does  
2 the District Attorney have questions of this inmate?

3       **DEPUTY DISTRICT ATTORNEY DAHLE:** No, I have no  
4 questions for Mr. Mendoza. Thank you.

5       **PRESIDING COMMISSIONER BRYSON:** All right. And  
6 Counsel, do you have questions of the inmate?

7       **INMATE ATTORNEY HURST:** No, I don't, Commissioner.

8       **PRESIDING COMMISSIONER BRYSON:** All right. Then  
9 I'd like to invite the District Attorney to make a  
10 closing statement.

11                   C L O S I N G     S T A T E M E N T S

12       **DEPUTY DISTRICT ATTORNEY DAHLE:** Thank you. In  
13 this particular case, I join as a representative to the  
14 District Attorney with the LA County Sheriff in opposing  
15 a grant of parole at this time from Mr. Mendoza in this  
16 particular case. I am particularly troubled by several  
17 of the responses from Mr. Mendoza here today to this  
18 Panel, particularly in light of comments made by the  
19 clinician in the latest psychological assessment, which  
20 was found to be highly favorable. I note that Dr. Rouse  
21 indicated that Mr. Mendoza had a great deal of insight  
22 into his criminality, yet today this Panel heard, when  
23 propounding a question to him if you had it to do over  
24 again, how would you do this differently, "I don't  
25 know." After 25 years having been convicted of killing

1 another individual, first degree murder, this inmate  
2 cannot tell you what he would have done differently.  
3 The most reasonable human beings who have not committed  
4 a murder certainly would be able to answer that  
5 question. It is troubling to me, as well, to note from  
6 Dr. Rouse's interview with Mr. Mendoza, that he  
7 apparently continued his gang affiliations until 2004.  
8 That is exceptionally recent. That's three years ago.  
9 After an extensive period of incarceration, Department  
10 of Corrections, he was still living in a gang culture  
11 more than 20-some years. Mr. Mendoza sits here with,  
12 and this Panel should note as part of the record with  
13 very little affect with respect to answering and  
14 discussing the questions of the Board here that may be  
15 attributable to the gang culture, gang lifestyle, but it  
16 certainly raises the question that empathy and  
17 understanding for what his behaviors have wrought upon  
18 society, the community in general, the victim in  
19 particular. In this particular case, the inmate's  
20 behaviors in firing no less than five shots on a public  
21 street at another vehicle is indicative of great risk to  
22 all other people that are in the area. And bear in mind  
23 that this vehicle had pulled out of a, I believe it was  
24 Jack-In-The-Box restaurant, it was referred to, creating  
25 a risk for anyone standing nearby, not just for the

1 intent of targeting this particular case. I go back to  
2 Mr. Mendoza's response, I really don't know what I'd do  
3 differently. It's troubling again when you go back to  
4 his 1992 evaluation by clinicians, there were comments  
5 raised and questions posed similarly to him at that  
6 point in time by the clinician, and he wasn't able to  
7 give an adequate response at that point in time about  
8 this happening. I think one of the grave mistakes that  
9 has gone unnoticed by Mr. Mendoza is the fact that he  
10 was transporting a loaded firearm, which was in and of  
11 itself illegal, in a vehicle. I think there is a  
12 significant question here regarding Mr. Mendoza's true  
13 remorse. There is no question that he does not have  
14 insight about his criminality. He hasn't given thought  
15 to that. He spent three years in self-help in the forms  
16 of AA/NA, yet got nothing out of it. Yet, there is  
17 nothing else that he has offered as a substitute for  
18 that. He paid no attention, little attention, to the  
19 steps, yet he was a poly-substance abuser, as were his  
20 fellow gang members. That's a significant area of  
21 concern and going back to that comment from the 1992  
22 psychological evaluation, December of 1992, if it was  
23 the same circumstances and the same situation, then I  
24 suppose I would do it again. I really question what Mr.  
25 Mendoza has been doing with respect to thinking about

1 his criminality all this time in the Department of  
2 Corrections. And I think, quite frankly, unless and  
3 until he reaches a point in time where he can give a  
4 cogent answer to that question, he should remain  
5 incarcerated in the Department of Corrections. If he  
6 remains otherwise, he is at risk to public safety. And  
7 I'll submit on that basis. Thank you.

8 **PRESIDING COMMISSIONER BRYSON:** Thank you.  
9 Counsel, I'd like to give you an opportunity to make a  
10 final statement.

11 **INMATE ATTORNEY HURST:** Yes, thank you. I wonder  
12 if I could ask Mr. Charlie Simpson [sic], did you just  
13 cite a 1992 psych evaluation?

14 **DEPUTY DISTRICT ATTORNEY DAHLE:** Yes.

15 **PRESIDING COMMISSIONER BRYSON:** Thank you. Because  
16 I-

17 **INMATE ATTORNEY HURST:** Because I don't have one.

18 **PRESIDING COMMISSIONER BRYSON:** -I don't, either.  
19 I don't have that. '99 and '96, I believe. '96, I  
20 believe is the earliest I have.

21 **INMATE ATTORNEY HURST:** Right. Mine, too.

22 **DEPUTY DISTRICT ATTORNEY DAHLE:** Well, I've got to  
23 say my comments regarding this, I'm reading from a  
24 quotation from the hearing of October the 25<sup>th</sup>, 1999.  
25 It may be a typo as far as the date, but it was for a

1 psychological that was presented at the initial parole  
2 consideration hearing. And the comments were by then  
3 Deputy District Attorney Al Botello noting those  
4 comments. So, my date, I may be incorrect on my date on  
5 that psychological assessment.

6 **PRESIDING COMMISSIONER BRYSON:** Do you have the  
7 name of the clinician?

8 **DEPUTY DISTRICT ATTORNEY DAHLE:** No, I don't. I  
9 know that he was discussed in the Panel that was October  
10 the 25<sup>th</sup>—I'm sorry, October the 21<sup>st</sup>, Commissioners  
11 Ortega, Hepburn, and Bruce.

12 **PRESIDING COMMISSIONER BRYSON:** All right.

13 **DEPUTY DISTRICT ATTORNEY DAHLE:** [Inaudible  
14 comment].

15 **INMATE ATTORNEY HURST:** Well, I certainly don't  
16 remember, Mr. Dahle.

17 [Laughter.]

18 Is it the comment?

19 **DEPUTY COMMISSIONER WEAVER:** Excuse me. As a  
20 matter of clarification in the second File of Mr.  
21 Mendoza, in the Board section, there is an evaluation  
22 that was done by Dr. Martin, M-A-R-T-I-N. And it was  
23 dated December the 23<sup>rd</sup>, 1992 for the February '93  
24 calendar. And, in addition to that, an evaluation  
25 October the 29<sup>th</sup> of 1986 by Dr. Willis, W-I-L-L-I-S,

1 that was done at Tehachapi. And, in addition to that,  
2 there's a psych eval from '85 that was done by Dr.  
3 Matychowiak, M-A-T-Y-C-H-O-W-I-A-K, December the 20<sup>th</sup> of  
4 '85. And then there's one before that. So-

5 **INMATE ATTORNEY HURST:** Well, we should have all of  
6 those.

7 **DEPUTY COMMISSIONER WEAVER:** -apparently, in  
8 addition to the one that Mr. Dahle's pulled from, there  
9 are a number of other ones that are not in the fourth  
10 packet, however, they are part of the extended Central  
11 File that is available to the Panel and the Counsel, and  
12 also to Mr. Mendoza at the time of his opportunity for  
13 File review.

14 **PRESIDING COMMISSIONER BRYSON:** Thank you. May I  
15 ask that you proceed, Counsel?

16 **INMATE ATTORNEY HURST:** Yes, you certainly may.  
17 And I would like to comment first on the issue of the  
18 gang affiliation up to the year 2004 and I feel somewhat  
19 remiss there because I think that is, in fact, an error.  
20 Mr. Mendoza will have to be the one to amplify that, but  
21 you know, we've had some discussion of it a week or so  
22 ago and I think his position is that as a Hispanic  
23 inmate, you are basically going to be labeled as a  
24 Northern or Southern. And that he didn't have a  
25 tremendous amount of concern about that, just accepting

1 that as being a given. As far as active affiliation or  
2 participation in gang activities and I think the C-File  
3 will reflect this, you know, that there's nothing to  
4 indicate that, in fact, he was involved for many, many  
5 years prior to that date. And we probably shouldn't  
6 have let that go by without comment before this, but I  
7 don't think it was specifically mentioned when the psych  
8 report was being reviewed. And he certainly can address  
9 that issue himself, but I think I need to say at least  
10 that much about it. This is, unfortunately, just a  
11 pretty straightforward gang shooting and no matter how  
12 many times that you see this type of case, this absolute  
13 senselessness of it, just, you know, it fails to be  
14 amazing. Mr. Mendoza was 17 years old at the time.  
15 He's a mature 44-year-old man now, not involved with  
16 drugs, not involved with alcohol, not affiliated with  
17 gangs, and with a truly excellent support system on the  
18 outside. He does reject his former lifestyle. He has  
19 done so for a number of years and he does feel remorse  
20 for this crime. In terms of his institutional  
21 adjustment, he certainly has benefitted from his  
22 programming. The last 115, of course, being in 2004 and  
23 that's relatively recent, and I had some—I was very  
24 surprised when I read that. He had been disciplinary  
25 free since 1989, a period of 15 years. And we went over

1 that 115 in some detail here and I, frankly, didn't  
2 think that that would support a finding of guilty, in  
3 that he was simply within the secured perimeter.  
4 However, he took it through the appeal process and it  
5 was sustained, and he's doing everything that he can do  
6 about it at this time. So, it's in there, but it was  
7 somewhat of a surprise to me that that was sufficient  
8 evidence to support a finding of guilt. He's upgraded  
9 educationally with his GED. He's obviously, should the  
10 opportunity arise, he has the ability to do more because  
11 he has extremely good TABE scores. There's a lot of  
12 ability there. He's upgraded vocationally with two  
13 certified trades. That's dry cleaning and mill and  
14 cabinet, in addition to which, he has had good  
15 experience in optical and welding and in sewing machine  
16 repair, all of which are very excellent job skills on  
17 the outside. He's done a fair amount of self-help. His  
18 participation in Alcoholics Anonymous was fairly long  
19 term, although it has been several years since he's  
20 participated now. And he has more recently been  
21 involved in Project Pride, Anger Management, and the  
22 Laubach tutoring, and at the present time, putting quite  
23 bit of his energy into the leather craft program, the  
24 hobby program. In the past, and I think this is at CTF,  
25 he was involved in the Impact Program, which, of course,

1 is victim oriented, so I know he benefitted from that,  
2 as well. Dr. Rouse's report is extremely supportive and  
3 very explicit in that perhaps he does go further than he  
4 needs to go in terms of the fact that he feels Mr.  
5 Mendoza would be a suitable candidate for parole. He  
6 notes his insight. He says he does not minimize his  
7 life crime and he sees him as being a very mature  
8 individual who has no mental health issues. On the  
9 diagnosis, he notes marijuana abuse and institutional  
10 remission. If you accept the fact that he has the two,  
11 the two 115's for marijuana, the last one was in 1989.  
12 So, that's very long term. No Axis II diagnosis and a  
13 very high GAF score of 90. So, it's overall an  
14 extremely supportive report. He'll definitely support  
15 parole. I think the one area in which he excels, I  
16 think the area in which he really does excel is that  
17 he's put together some very good goal plans. He has  
18 multiple options there. He has multiple residential  
19 options. He clearly has good family support and he has  
20 the support of friends. He has two solid job offers.  
21 And he has numerous skills with which he could sustain  
22 himself if he were released. I think that Mr. Mendoza  
23 is, does not pose an unreasonable risk at the present  
24 time and I would ask the Board to find him suitable  
25 today. Thank you.

1       **PRESIDING COMMISSIONER BRYSON:** Thank you. And,  
2 sir, I'd like to give you an opportunity to address this  
3 Panel regarding your suitability for parole.

4       **INMATE MENDOZA:** I have written up this piece and  
5 I'd like to submit it. In June 1981, I committed the  
6 crime for which I am now incarcerated for. I was 17  
7 years old at the time. I entered the Department of  
8 Corrections in 1982. I have now served 25 years in  
9 which time I have obtained my GED and received two  
10 certifications from the vocational programs, as well as  
11 certification as a customer service specialist. Also, I  
12 have maintained a good worker's program at each position  
13 that I have been assigned to. Although my last serious  
14 115 was for a North-South riot, I did not have a violent  
15 past history while incarcerated. I did have a past  
16 problem with drugs as my record shows, but as you can  
17 see, that was back in 1987 and is in the past. I have  
18 not used any drugs since before then, nor do I have any  
19 desire to do so. I do not have any wish to numb my mind  
20 or body in any fashion. I did experiment with different  
21 drugs before my incarceration and, as I have already  
22 stated, I have not used, nor do I have any intentions to  
23 do so. As for alcohol, beer was the mainstay and drink  
24 of choice and, as well, I did not have any urges to dull  
25 my senses with this type of altering stimulant. The

1 crime for which I am convicted is Murder in the First  
2 Degree. This is a violent crime for which no amount of  
3 time will ever lessen the violent nature of. However, I  
4 am not the same individual of that day that sits before  
5 you. I grew up in a gang infested area and even with  
6 both of my parents living in the home, I still chose to  
7 run in the streets. The actions I took the night of the  
8 crime were committed by me, for which I do take full  
9 responsibility. I did drink some beer that night, but  
10 alcohol was not the cause. I was the cause. I did not  
11 drink to excess, only as a social activity. The burden  
12 of this act is on my shoulders. Even though I believe  
13 that my own life was in danger by what I thought was a  
14 weapon being aimed at me, it does not excuse or lessen  
15 the act. Gang life was the life I knew and grew up in  
16 and after a few years I now know that I realize the  
17 stupidity of it. Not one life was lost that night, but  
18 two. A young life was taken and another was lost. Both  
19 of us brought a lot of misery and hurt to our families.  
20 I do not mean to imply or to try to shift blame to the  
21 other person 'cause I did participate on my own.  
22 Nothing I can do will bring him back and nothing I can  
23 say will lessen the pain and heartache of a lost loved  
24 one for his family. If I could, I would like to ask his  
25 family to pardon me and my family to forgive me for all

1 the pain and suffering they have had to endure because  
2 of this situation that I am responsible for. I would  
3 ask the Board to grant me parole, so that I may be given  
4 another chance to become a productive part of society.  
5 I have a well established home to parole to. As for  
6 employment, I do have a couple of job offers and I'm  
7 willing to do any job. Outside of that, if it becomes  
8 necessary, I will attend a trade school to further my  
9 abilities, if needed. I also have a strong network of  
10 family and friends that are willing to support me in any  
11 capacity that will ensure my positive and productive  
12 part in society. As my support letters indicate, my  
13 family, as well as my friends, are law abiding,  
14 established, and productive members of society. I have  
15 spent more time living in prison than I have as a free  
16 person and the meaning of life has taken on a whole new  
17 significance in which I hope to one day become a  
18 successful part of, given the opportunity. I have no  
19 desire or intention of returning to any type of  
20 lifestyle such as I had before coming to prison. My  
21 friend and partner, Leslie, lives in a nice quite  
22 residential area on the other side of the county away  
23 from gangs and is closer to my older brother's house, as  
24 well as some friends that will be part of my support  
25 network. Aside from my mother and one aunt that still

1 reside in the city, I have no wish to return there  
2 because my future lies elsewhere. With all of the  
3 support and work offers, I hope that you will grant me  
4 the opportunity to be a good successful part of society  
5 once again and grant me a parole date that I may rejoin  
6 my family and friends, as well as society, as a man and  
7 not the young boy that had made such a stupid and  
8 terrible mistake of a lifestyle that no longer has any  
9 meaning of ties to me. I sit before you today a man of  
10 44 years of age and not a teenage boy of 17 with a  
11 limited view of life. I thank you.

12 **PRESIDING COMMISSIONER BRYSON:** Thank you for your  
13 remarks, sir. The time is now 16:26 and we will be in  
14 recess for deliberations.

15 R E C E S S  
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## CALIFORNIA BOARD OF PAROLE HEARINGS

D E C I S I O N

1                   **PRESIDING COMMISSIONER BRYSON:** We have reconvened  
2  
3 for the decision in the matter of Phillip Mendoza, CDC  
4 number C, Charles, 47764. All parties have returned to  
5 the room. The time is 17:03. And, sir, the Panel  
6 reviewed all information received from the public and  
7 from you, and relied on the following circumstances in  
8 concluding that you're not yet suitable for parole and  
9 would pose an unreasonable risk of danger to society or  
10 a threat to public safety if released from prison. This  
11 offense was carried out in a very callous manner in that  
12 on July 18<sup>th</sup>, 1981, at 02:00 hours, six members of the  
13 Compton Varrio Setenta, the CV70, were particularly  
14 vulnerable as they rode in a pickup away from a Jack-In-  
15 The-Box, three in the cab and three in the open bed,  
16 including the victim, Richard Pompas, a 19-year-old  
17 male. As the pickup departed through the alley, a white  
18 Toyota containing the driver, Cabrerra, the passenger,  
19 Colorubio, and the inmate in the rear seat, drove into  
20 the alley wearing straw hats and dark glasses, all  
21 members of the Compton Varrio Largo rival gang. The  
22 inmate brought up a rifle that he was transporting  
23 loaded as Cabrerra turned around and followed the

24 **PHILLIP MENDOZA C-47764 DECISION PAGE 1 10/2/07**  
25

1 pickup, blinking the headlights. Morales, driving the  
2 pickup, slowed down thinking they were homeboys. Solis,  
3 Lauro, and Pompas stood up to see, hands at their sides,  
4 weaponless. This offense was carried out  
5 dispassionately and in a calculated manner. The inmate  
6 stared at them, then started shooting, firing four shots  
7 into the rear of the pickup, three hitting Pompas, one  
8 shattering the back window of the truck. Pompas cried,  
9 "They shot me." As the Toyota pulled alongside, the  
10 inmate fired two more shots, striking the driver's door.  
11 No one in the pickup had a weapon and had not said  
12 anything before the shooting. The pickup waved to alert  
13 police unit that pursued the Toyota, after a u-turn,  
14 where the inmate pushed the rifle out of the window and  
15 it discharged upon landing in the gutter. The Toyota  
16 stopped and the inmate admitted the shooting. Shot in  
17 the lower right abdomen and right shoulder, the victim  
18 died at the hospital shortly after the crime. Sir, you  
19 do have a history of prior criminality. You were a gang  
20 member since the age of 13 and you did have a Drunk in  
21 Public arrest, in which you were counseled and released.  
22 As to your institutional behavior, you have behaved  
23 commendably in recent years. You have been on a wait  
24 list. You're currently PIA laundry. You've been  
25 **PHILLIP MENDOZA C-47764 DECISION PAGE 2 10/2/07**

1 optical and textile. In 2006, PIA laundry, you received  
2 satisfactory work reports and multiple laudatory chronos  
3 that were read into the File, some from PIA. In 2002,  
4 you were also in waste management. You did achieve your  
5 GED in 1989 and also to your credit, you participated as  
6 a tutor in the Laubach literacy program. You also have  
7 achieved two vocational certifications. One was in '90-  
8 91 for vocational dry cleaning and then in 1999 for  
9 vocational mill and cabinet, which is very good. You've  
10 also been working in the leather craft in the hobby,  
11 which is also good. You've also worked in vocational  
12 welding and sewing machine repair PIA textiles. As for  
13 your self-help, it's been very limited, sir. You  
14 participated in AA in '93 and '94, and also in 2000 and  
15 2001, but when asked about knowing the steps, you did  
16 not know them. You have recently participated in  
17 Project Pride Anger Management. As of 2007, you also  
18 received recent certification as a customer service  
19 specialist. But prior to that, you participated in the  
20 Impact Program in the year 2000, which was seven years  
21 ago at this date. Your misconduct in prison consisted,  
22 until recently, of five 115's. Then you received a  
23 sixth in 2004 for participating in a North-South riot.  
24 Since 2004, you displayed positive behavior by

25 **PHILLIP MENDOZA C-47764 DECISION PAGE 3 10/2/07**

1 discontinuing any 115's. So you're to be commended for  
2 that. As to the psychological report dated August 13<sup>th</sup>  
3 of 2007 by Dr. John T. Rouse, R-O-U-S-E, his report does  
4 basically support your parole, but his report also gives  
5 the assessment of dangerousness as being lower than that  
6 of the average inmate and more consistent with that of  
7 the average citizen in the community which, in fact, is  
8 not an acceptable assessment for this Panel because the  
9 average citizen in the community has not done any  
10 crimes. So, it's difficult to assess the validity of  
11 this report. However, he does assess you as having a  
12 Global Assessment of Functioning of 90, which is high.  
13 On Axis I, he diagnosed you with marijuana abuse in  
14 institutional remission and an Axis II no diagnosis.  
15 So, basically, the report is favorable to your release.  
16 As to parole plans, you do appear to have parole plans  
17 for residence. That would be with your ex-wife or your  
18 brother and you do appear to have family support and the  
19 support of friends, which were read into the record.  
20 You have two job offers, one with an auto detailer and  
21 one with M.D.M. Enterprises, a warehousing enterprise.  
22 And you do appear to have marketable skills. As to  
23 Penal Code 3042 responses, responses indicate opposition  
24 to finding of parole suitability, specifically by the  
25 **PHILLIP MENDOZA C-47764 DECISION PAGE 4 10/2/07**

1 District Attorney of Los Angeles County and the Los  
2 Angeles Sheriff's Department. In a separate decision,  
3 the hearing Panel finds it is not reasonable to expect  
4 that parole would be granted at a hearing during the  
5 following two years. Specific reasons for this finding  
6 are as follows. This offense was carried out in a  
7 callous manner. On July 18<sup>th</sup>, 1981, at approximately  
8 02:00 hours, six members of the Compton Varrío Setenta,  
9 CV70, gang were particularly vulnerable as they rode in  
10 a pickup away from a Jack-In-The-Box, three in the cab,  
11 and three in the open bed, including the victim, Richard  
12 Pompas. As the pickup departed through the alley, a  
13 white Toyota containing the driver, Cabrerra, a  
14 passenger, Colorubio, and you, sir, in the rear seat,  
15 drove into the alley wearing straw hats and dark  
16 jackets. All of you were members of the Compton Varrío  
17 Largo rival gang. You brought up a rifle that you were  
18 transporting, loaded, and as Cabrerro turned around and  
19 followed the pickup, blinking his headlights, Morales,  
20 driving the pickup, slowed down, thinking that you were  
21 homeboys. Solis, Lauro, and Pompas stood up to see.  
22 Their hands were at their sides. They were weaponless.  
23 This offense was carried out in a dispassionate and  
24 calculated manner. You stared at them and then started  
25 **PHILLIP MENDOZA C-47764 DECISION PAGE 5 10/2/07**

1 shooting, firing four shots into the rear of the pickup,  
2 three of them hitting Mr. Pompas and one shattering the  
3 back window of the truck. Pompas cried, "They shot me."  
4 And as the Toyota pulled alongside, you fired two more  
5 rounds striking the driver's door. No one in the pickup  
6 had a weapon and had not said anything before the  
7 shooting. The pickup waved to alert a police unit that  
8 pursued the Toyota. After a u-turn where you pushed the  
9 rifle out of the window and the rifle discharged upon  
10 landing in the gutter, the Toyota stopped and you  
11 admitted to the shooting. This offense was carried out  
12 in a manner demonstrating exceptionally callous  
13 disregard for human suffering. Shot in the lower right  
14 abdomen and the right shoulder, the victim died at the  
15 hospital shortly after the crime. Public safety was at  
16 high risk from the gunfire and the motive for this crime  
17 was very trivial in relation to the offense. It was a  
18 gang shooting. Sir, the District Attorney referenced  
19 your dry affect in this hearing. The Panel feels that  
20 actually that's part of your demeanor, that you have a  
21 very dry demeanor naturally. And that became more  
22 apparent whenever you read your statement at the end of  
23 the hearing. The Panel feels that you have shown some  
24 remorse, but this Panel feels very seriously that you  
25 **PHILLIP MENDOZA C-47764 DECISION PAGE 6 10/2/07**

1 need to do more soul searching. Sir, you joined the  
2 gang at 13 years of age by your own admission. You were  
3 an active gang member for a long time, yet, today you  
4 are still claiming that you shot in self-defense. Sir,  
5 it's just not reasonable that the vehicle you were in  
6 came up behind blinking its lights, the vehicle that you  
7 were behind, and that you didn't know that, in fact,  
8 this was going to result in a gang confrontation. It  
9 just does not make sense. And the claim of self-  
10 defense, sir, did not fly with this Panel today. And,  
11 sir, you were asked very specific questions. "Would you  
12 have done the same thing today?" And you answered, "I  
13 honestly don't know." And that may well be an honest  
14 answer, but sir, it shows that you need more  
15 introspection into this crime. And in reference to  
16 questions about your participation in AA, in which you  
17 don't know any of the steps, you said, "Stories didn't  
18 pertain to me. You know, I'm not part of that. And  
19 they didn't help me in any way." You didn't get  
20 anything out of that. That also shows us that you have  
21 not gotten the insight that you need to have from your  
22 criminal history, in gangs, and also the commitment  
23 offense. And then when asked, "Why did you fire into  
24 the side of the pickup?" There was no threat at that  
25 **PHILLIP MENDOZA C-47764 DECISION PAGE 7 10/2/07**

1 time. You fired a rifle into the side of that pickup.  
2 And you said, "I don't know." In order to believe that  
3 you understand the nature and magnitude of the  
4 commitment offense and, therefore, will not be  
5 unpredictable as you were on July 18<sup>th</sup> of 1981, the  
6 Panel does need cogent answers to these important  
7 questions, sir. Not made up, but answers that you  
8 arrive at with insight. And we would recommend that you  
9 review the transcript of this hearing you will get and  
10 that you think about your answers today. Because this  
11 Panel does take you very seriously and we want you to  
12 take this process seriously. We feel that you need more  
13 self-help and we are ordering a new psychological  
14 evaluation with the benefit with the forensic assessment  
15 division instrumentation that we now have and we feel  
16 that will be of benefit to you also. We recommend that  
17 you be very frank with the clinician. In denying you  
18 parole for two years, we're placing you on the October  
19 2009 calendar for your next subsequent hearing. We  
20 recommend no more 115's or 128A's, that you stay  
21 discipline free, that you get self-help, and that you  
22 participate in more self-help, as much as you can, sir.  
23 And whenever there's no programming available, you can  
24 read. Read some books and bring book reports that say  
25 **PHILLIP MENDOZA C-47764 DECISION PAGE 8 10/2/07**

1 what you've learned and what kind of insight that's  
2 given you. You may need to and want to read about gangs  
3 and find out maybe some more things than you've thought  
4 about as to what others have learned. And we recommend  
5 that you earn positive chronos. Commissioner Sims, do  
6 you have anything to add?

7 **OBSERVING COMMISSIONER SIMS:** I'd just like to  
8 commend you with your letters of support. They were  
9 very organized. They were very thoughtful. They  
10 provided you with a job, financial support, housing.  
11 That's what the Panel is looking for, so from that  
12 perspective you were right on target and I'm hoping  
13 that—and the other thing that I was really impressed  
14 with was that they were up-to-date. That means a lot to  
15 the Panel. So congratulations and, hopefully, when you  
16 come up for parole again you'll still have some more  
17 recent letters and I think that will help you as far as  
18 one of these days being granted parole, so I commend you  
19 for that. And you're very well organized and very  
20 thoughtful and you have lots of family support. I  
21 applaud you for that.

22 **PRESIDING COMMISSIONER BRYSON:** Commissioner  
23 Weaver, do you have anything to offer?

24 **DEPUTY COMMISSIONER WEAVER:** I think you covered it

25 **PHILLIP MENDOZA C-47764 DECISION PAGE 9 10/2/07**

1 all. Commissioner Bryson and I wish you well.

2 **PRESIDING COMMISSIONER BRYSON:** Good luck, sir.

3 That concludes this hearing. The time is now 17:17.

4 **A D J O U R N M E N T**

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21 **PAROLE DENIED FOR TWO YEARS**

22 **THIS DECISION WILL BE FINAL ON: JAN 30 2008**

23 **YOU WILL BE PROMPTLY NOTIFIED IF, PRIOR TO THAT DATE,**

24 **THE DECISION IS MODIFIED.**

25 **PHILLIP MENDOZA C-47764 DECISION PAGE 10 10/2/07**

**CERTIFICATE AND**

**DECLARATION OF TRANSCRIBER**

I, BETTE L. GALLANT, as the Official Transcriber,  
hereby certify that the attached proceedings:

In the matter of the Life )	CDC Number: C-47764
Term Parole Consideration )	
Hearing of: )	
)	
PHILLIP MENDOZA )	
)	

CALIFORNIA STATE PRISON - SOLANO

VACAVILLE, CALIFORNIA

OCTOBER 2, 2007

2:45 P.M.

were held as herein appears. Further, this transcript is a true, complete and accurate record, to the best of my ability, of the recorded material provided for transcription.

*Bette L. Gallant*

-----  
BETTE L. GALLANT  
November 2, 2007  
WPU, Inc.

# EXHIBIT COVER PAGE:

Exhibit:           B          

Description of this exhibit: Superior Court's Order, Aug. 13, 2008.

Number of pages of this exhibit:           4           pages

**JURISDICTION: (Check only one)**

Municipal Court

Superior Court

Appellate Court

State Supreme Court

United States District Court

United States Circuit Court

United States Supreme Court

California Department of Corrections, 602 Exhibit.

**SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES**

**DEPT 100**

Date: AUGUST 13, 2008  
Honorable: PETER ESPINOZA  
NONE

Judge JULIE A. RAMIREZ  
Bailiff NONE

Deputy Clerk  
Reporter

(Parties and Counsel checked if present)

BH 005333

In re,  
PHILLIP MENDOZA,  
Petitioner,  
On Habeas Corpus

Counsel for Petitioner:

Counsel for Respondent:

Nature of Proceedings: ORDER RE: PETITION FOR WRIT OF HABEAS CORPUS

The Court has read and considered the Petition for Writ of Habeas Corpus filed on June 13, 2008 by the Petitioner. Having independently reviewed the record, giving deference to the broad discretion of the Board of Parole Hearings ("Board") in parole matters, the Court concludes that the record contains "some evidence" to support the determination that the Petitioner presents an unreasonable risk of danger to society and is, therefore, not suitable for release on parole. See Cal. Code Reg. Tit. 15, §2402; *In re Rosenkrantz* (2002) 29 Cal.4<sup>th</sup> 616, 667.

The Petitioner was received in the Department of Corrections on May 21, 1982 after a conviction for murder in the first degree with a firearm. He was sentenced to 27 years to life. His minimum parole eligibility date was April 15, 2000.

The record reflects that the Petitioner shot the victim, Richard Pompas, three times in the abdomen and shoulder, killing him. The Petitioner and his crime partners were driving near a fast food restaurant when the saw the victim and members of a rival gang drive by them. The two groups exchanged gestures and the Petitioner's crime partner turned the vehicle they were in to follow the other car. The Petitioner, who was riding as a passenger, took out a shotgun that he was carrying and fired several shots at the other vehicle, hitting the victim and the back window. The Petitioner and his crime partners then stopped near the other vehicle and the Petitioner fired at the other group two more times, hitting the side doors. The Petitioner claims he saw one of the passengers in the other vehicle reach for a weapon and that he fired in self defense.

The Board found the Petitioner unsuitable for parole after a parole consideration hearing held on October 2, 2007. The Petitioner was denied parole for two years. The Board concluded that the Petitioner was unsuitable for parole and would pose an unreasonable risk of danger to society and a threat to public safety. The Board based its decision on several factors, including his commitment offense and his institutional behavior.

The Court finds that there is some evidence to support the Board's finding that the Petitioner's motive was very trivial in relation to the offense. Cal. Code Regs., tit. 15, §2402, subd. (c)(1)(E). Although the Petitioner claims he saw a member of the rival gang reach for a weapon, the record does not support his claim. Therefore, the Petitioner's apparent motive was that the passengers were members of a rival gang who had

Minutes Entered  
08-13-08  
County Clerk

**SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES**

**DEPT 100**

Date: AUGUST 13, 2008  
Honorable: PETER ESPINOZA  
NONE

Judge JULIE A. RAMIREZ  
Bailiff NONE

Deputy Clerk  
Reporter

(Parties and Counsel checked if present)

BH 005333

In re,  
PHILLIP MENDOZA,  
Petitioner,  
On Habeas Corpus

Counsel for Petitioner:

Counsel for Respondent:

gestured toward him and his crime partners. There is no evidence in the record to suggest that the victim or his fellow passengers had harmed the Petitioner or his crime partners in any way. Further, after the Petitioner fired the initial shots, he and his crime partners pulled up next to the other vehicle and stopped, so that the Petitioner could fire shots at them again. The victim's rival gang membership is a very trivial motive for firing multiple shots at him and killing him.

The Court also finds that there is some evidence to support the Board's finding that the Petitioner's negative institutional behavior weighs against his suitability. Cal. Code Regs., tit. 15, §2402, subd. (c)(6). The Petitioner has received six 115s in prison, including one in 2004 for participating in a riot. This somewhat recent and potentially violent rule violation is some evidence that the Petitioner may continue to present an unreasonable risk of danger to society.

The Board also considered the Petitioner's gang involvement from an early age and his prior conviction for being drunk in public. While these factors, alone, may not justify a finding of unsuitability, the Board may properly consider them as relevant to a determination of whether the Petitioner is suitable for parole. Cal. Code Regs., tit. 15, §2402(b). Additionally, the Board considered the Petitioner's version of the offense showed of a lack of insight and remorse. The Petitioner does not dispute that he shot the victim and, thus, his story about seeing someone reach for a weapon, which is not substantiated by the record, may be considered by the Board as demonstrating a lack of insight. See *In re McClendon* (2004) 113 Cal.App.4<sup>th</sup> 315, 322.

The Board also considered the Petitioner's post-conviction gains, including his participation in anger management courses; his vocations in mill and cabinet, dry cleaning, welding, and sewing machine repair; the GED he earned in prison; as well as his certification as a customer service specialist. The Board also considered the Petitioner's psychological report, which indicated that he presents the same risk of violence as the average citizen. However, they still concluded that the Petitioner would pose an unreasonable threat to public safety. Penal Code §3041(b). The Court finds that there is some evidence to support this determination because of the extremely trivial nature of his commitment offense, as well as his somewhat recent, potentially violent misconduct in prison.

The Court finds that the Board did not err in denying the Petitioner parole for a period of two years. The Board must articulate reasons that justify a postponement, but those reasons need not be completely different from those justifying the denial of parole. See *In re Jackson* (1985) 39 Cal.3d 464, 479. The Board indicated

**SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES**

**DEPT 100**

Date: AUGUST 13, 2008  
Honorable: PETER ESPINOZA  
NONE

Judge JULIE A. RAMIREZ  
Bailiff NONE

Deputy Clerk  
Reporter

(Parties and Counsel checked if present)

BH 005333

In re,  
PHILLIP MENDOZA,  
Petitioner,  
On Habeas Corpus

Counsel for Petitioner:

Counsel for Respondent:

that the Petitioner was denied parole for two years because of his commitment offense; his failure to fully participate in substance abuse programs; his history of gang involvement; his somewhat recent serious rule violation; as well as his lack of insight regarding the commitment offense. These reasons were sufficient to justify a two-year denial.

Accordingly, the petition is denied.

The court order is signed and filed this date. The clerk is directed to send notice.

A true copy of this minute order is sent via U.S. Mail to the following parties:

Phillip Mendoza  
C-47764  
California State Prison, Solano  
P.O. Box 4000  
Vacaville, CA 95696-4000

Department of Justice – State of California  
Office of the Attorney General  
110 West A Street, Suite 1100  
San Diego, CA 92101  
Attn: Ms. Cynthia Lumely

<b>SUPERIOR COURT OF CALIFORNIA COUNTY OF LOS ANGELES</b>	Reserved for Clerk's File Stamp
COURTHOUSE ADDRESS: Clara Shortridge Foltz Criminal Justice Center 210 West Temple Street Los Angeles, CA 90012	<b>CONFORMED COPY OF ORIGINAL FILED Los Angeles Superior Court</b>
PLAINTIFF/PETITIONER:  PHILLIP MENDOZA	AUG 14 2008 John A. Clarke, Executive Officer/Clerk BY  , Deputy Carmen Sortillon
<b>CLERK'S CERTIFICATE OF MAILING</b> CCP, § 1013(a) Cal. Rules of Court, rule 2(a)(1)	CASE NUMBER:  BH005333

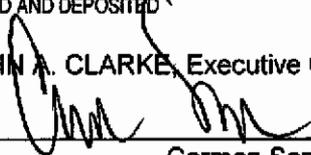
I, the below-named Executive Officer/Clerk of the above-entitled court, do hereby certify that I am not a party to the cause herein, and that this date I served:

- |  |   |
|--|---|
| <input type="checkbox"/> Order Extending Time            | <input checked="" type="checkbox"/> Order re: Petition for Writ of Habeas Corpus  |
| <input type="checkbox"/> Order to Show Cause             | <input type="checkbox"/> Order re: Request for Stay   |
| <input type="checkbox"/> Order for Informal Response     | <input type="checkbox"/> Order re: Appointment of Counsel   |
| <input type="checkbox"/> Order for Supplemental Pleading | <input type="checkbox"/> Copy of Petition for Writ of Habeas Corpus /Suitability<br>Hearing Transcript for the Attorney General |

I certify that the following is true and correct: I am the clerk of the above-named court and not a party to the cause. I served this document by placing true copies in envelopes addressed as shown below and then by sealing and placing them for collection; stamping or metering with first-class, prepaid postage; and mailing on the date stated below, in the United States mail at Los Angeles County, California, following standard court practices.

August 14, 2008  
DATED AND DEPOSITED

JOHN A. CLARKE, Executive Officer/Clerk

By:  , Clerk  
Carmen Sortillon

Phillip Mendoza  
C-47764  
California State Prison, Solano  
P.O. Box 4000  
Vacaville, CA 95696-4000

Department of Justice – State of California  
Office of the Attorney General  
110 West A Street, Suite 1100  
San Diego, CA 92101  
Attn: Ms. Cynthia Lumely



IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA  
SECOND APPELLATE DISTRICT  
DIVISION ONE

In re

PHILLIP MENDOZA,

on

Habeas Corpus.

B210270

(L.A.S.C. Nos. A620991, BH005333)

ORDER

COURT OF APPEAL - SECOND DIST.

**FILED**

SEP 13 2008

JOSEPH A. LANE Clerk

P. SILVA Deputy Clerk

THE COURT\*:

The petition for writ of habeas corpus, filed August 27, 2008, has been read and considered.

The petition is denied.

---

\*MALLANO, P. J.

---

ROTHSCHILD, J.

Court of Appeal, Second Appellate District, Div. 1 - No. B210270  
S167161

**IN THE SUPREME COURT OF CALIFORNIA**

**En Banc**

---

In re PHILLIP MENDOZA on Habeas Corpus

---

The petition for review is denied.

SUPREME COURT  
**FILED**

NOV 12 2008

Frederick K. Ohlrich Clerk

\_\_\_\_\_  
Deputy

**GEORGE**  
\_\_\_\_\_  
Chief Justice

# EXHIBIT COVER PAGE:

Exhibit:           D          

Description of this exhibit: Psychological Assessments and Board Reports.

Number of pages of this exhibit:   20   pages

## JURISDICTION: (Check only one)

Municipal Court

Superior Court

Appellate Court

State Supreme Court

United States District Court

United States Circuit Court

United States Supreme Court

California Department of Corrections, 602 Exhibit.

CALIFORNIA STATE PRISON – SOLANO  
Vacaville, California

PSYCHOLOGICAL EVALUATION FOR THE BOARD OF PAROLE HEARINGS

PSYCHOSOCIAL ASSESSMENT

I. **Identifying Information:**

Mr. Phillip Mendoza is a 44-year-old Hispanic male who was administered a psychological evaluation at the request of the Board of Parole Hearings. Mr. Mendoza has an upcoming fourth subsequent Board hearing which is scheduled for October 2, 2007. He is serving a life term for PC 187, murder in the first degree, which occurred on July 18, 1981. He was given a term of 25 years-to-life, and his term in the California Department of Corrections and Rehabilitation began on May 21, 1982. He has been confined for approximately 25 years. Information for this Board of Parole Hearings evaluation was obtained from a review of Mr. Mendoza's Central File, a review of his Unit Health Record, and a clinical interview with Mr. Mendoza on the date of August 13, 2007.

II. **Background Information:**

The circumstances of Mr. Mendoza's commitment offense, as reported by his Initial Probation Officer Report, indicates that during the course of a gang-related incident, Mr. Mendoza fired a rifle numerous times into a truck carrying other youths, fatally wounding the victim. Mr. Mendoza was 17 years of age at the time. According to records, Mr. Mendoza had arrests for being drunk in public and assault with a deadly weapon. He readily admitted to street gang membership and participation in a gang since the age of 15.

Mr. Mendoza's statements in regard to his commitment offense were consistent with those provided in his initial parole consideration hearing of 1999. He accepted culpability for his commitment offense but reported that he had no intention of killing anyone. He stated that he fired into the truck, not at a specific person but more at the truck. He expressed remorse for the victim and the victim's family. He stated, "When I think about it, I think about the utter stupidity of it. At the time, I was living that lifestyle. That's how you grew up. Now, I know there is a different way." Since 2004, Mr. Mendoza has been disaffiliated from the gang life. He stated, "Out of sight, out of mind."

### **III. Family History:**

Mr. Mendoza was born in Lynwood, California, the youngest of three children born out of his parents' intact marriage. He has a 57-year-old brother who is alive and living in Southern California. His older sister died at age 21 in 1972 from a drug interaction. His mother is also alive and living in Southern California. His father is deceased. According to Mr. Mendoza, his parents' marriage was intact up until the time of his father's death. He denied any specific early developmental issues. According to him, he transcended developmental milestones, that is walking, talking, etc., at a normal pace. Records indicate that both his brother and his father have criminal records, although there is no indication of substance abuse or mental illness in his family of origin. Mr. Mendoza acknowledged an early history of gang membership beginning at age 15. As stated above, he claimed he has disaffiliated himself from gang involvement since 2004.

### **IV. Marital History:**

Mr. Mendoza married his wife in 1992, and this marriage ended in the early part of this year, 2007. He stated that he has a son, from another relationship, who is currently 26 years of age and living in Southern California. Mr. Mendoza stated that he does have contact with his son.

### **V. Military History:**

Mr. Mendoza has never served in the military.

### **VI. Psychosexual Development:**

Mr. Mendoza's psychosexual development is unremarkable. He described his sexual preference as heterosexual. He denied any history of sexual abuse or molest or any history of deviant, aberrant, or aggressive sexual behavior. His records do not indicate any sexual offenses or arrests.

### **VII. Education:**

Mr. Mendoza completed the 11<sup>th</sup> grade at West Centennial High in Compton, California. He dropped out to help support his son. He obtained a General Equivalency Diploma (GED) in prison in 1989. He was involved in Vocational Welding and Vocational Sewing Machine Repair. He earned vocational certificates in Vocational Dry Cleaning and Vocational Mill and Cabinetry.

**VII. Education, continued:**

Mr. Mendoza has also participated in Project Pride, an Anger Management Program in 2006, Alcoholics Anonymous (AA) in 2001, and the Laubach Literacy Program as a volunteer tutor.

**VIII. Employment History:**

Prior to his incarceration at the age of 17, Mr. Mendoza worked as a machine operator in a candy factory and as a construction worker. Subsequent to his incarceration, he has had a number of jobs with laudatory chronos. His latest job was working in the Prison Industry Authority (PIA) Laundry where he did, indeed, receive laudatory chronos for his work.

**IX. Substance Abuse History:**

Mr. Mendoza admitted marijuana and alcohol abuse prior to his incarceration. He also received a serious disciplinary in 1987 for marijuana possession. He reported that he participated in AA until sometime around 2001, but stopped because he believed he did not need such a program after so much time had gone by. He states that he has remained clean and sober and has not abused any substances since 1987, a period of 20 years.

**X. Medical and Psychiatric History:**

Mr. Mendoza's medical history is not significant for any major illnesses. He denied any accidents, surgeries, or hospitalizations.

His psychiatric history is equally unremarkable. Again, he denied any history of mental health complaints or treatment.

**XI. Current Mental Status/Treatment Needs:**

Mr. Mendoza is a short, stocky, well-developed, Hispanic male of the stated age of 44 years. He arrived on time for his appointment at the Program Complex on Yard 4. He was dressed appropriately in prison attire and was adequately groomed. His gait and station were normal, and he ambulated without any difficulty. Mr. Mendoza was polite, respectful, and cooperative; and he participated appropriately in the interview process. He did not seem overly defensive nor did he appear minimizing of his life crime. Rather, he appeared forthright and open. He spoke in a clear, organized, and coherent manner with normal tone and inflection. He had good command of the English language and did not require any assistive aides for effective communication. On the date of this evaluation, he was alert and fully oriented in all spheres. His thinking was clear, organized, and logically

**XI. Current Mental Status/Treatment Needs, continued:** goal-directed. He denied any abnormal ideation or perceptual disturbance in the form of delusions or hallucinations. His memory was intact. His insight and judgment were within normal limits, and he impressed this examiner as being able to function intellectually within the average expectable range. Mr. Mendoza's mood was euthymic, and his affect was unrestricted and variable in range. Indeed, there was nothing in his speech, thoughts, or behavior to indicate or demonstrate that he was suffering from any type of serious mental disorder.

**XII. Diagnosis (DSM IV-TR):**

AXIS I	305.20	Marijuana abuse (in institutional remission).
AXIS II	V71.09	No diagnosis on Axis II.
AXIS III		None by report.
AXIS IV		Stressors of incarceration.
AXIS V		GAF = 90.

**XIII. Assessment of Dangerousness:**

At the time of Mr. Mendoza's life crime, his most salient risk factors for risk of dangerousness in the community were his youth and immaturity, his distorted thinking processes, his substance abuse, and his gang affiliation. Also, because of the latter, his early adaptation to prison was made much more difficult. However, within the past years, Mr. Mendoza has changed and presents as a reflective, mature, 44-year-old man who seems to have developed appropriate insight and judgment as it relates to the factors that contributed to his life crime. As such, he has endeavored to make the most appropriate personal, social, and behavioral adjustments in this institutional environment.

Mr. Mendoza has upgraded educationally and vocationally and has demonstrated a sustained level of impulse and behavioral control. As a result, it is the reasoned opinion of this examiner that there is a high degree of certainty that Mr. Mendoza's risk of dangerousness in this institutional environment is lower than that of the average inmate and more consistent with that of the average citizen in the community. There are no mental health issues that the Board should be concerned with in regard to

XIII. **Assessment of Dangerousness, continued:** Mr. Mendoza's mental health status. Further, it is the opinion of this examiner that Mr. Mendoza would be a suitable candidate for parole.

Respectfully Submitted,

Handwritten signature of John T. Rouse, Ph.D. and the date 8/20/07.

John T. Rouse, Ph.D.  
PSY 11264  
Forensic Psychologist  
CSP Solano Mental Health Department  
California Department of Corrections and Rehabilitation

**CALIFORNIA STATE PRISON – SOLANO  
Vacaville, California**

**PSYCHOSOCIAL EVALUATION  
FOR THE BOARD OF PRISON TERMS**

**I Identifying Information**

The inmate is a 41 year old married Mexican man born on August 2, 1963. He is serving a 25 year to Life term for first degree murder. His sentence start date was in 1982, when he was 17 years old. He said he was a member of the Compton Largo gang. He identified his religion as Catholic.

**II Developmental History**

He was born and grew up in Compton, California. At the time of his birth, other family members were his mother, father, older brother and older sister. They had cats and dogs as pets. He denied any natal, perinatal or early developmental issues. He contracted chicken pox at the age of 7 or 8. He did have friends, whom he met at school or in the neighborhood. He denied being either a bully or victim of abuse. He also denied fire setting, enuresis, animal torture and taking unusual risks.

**III Education**

He denied requiring Special Education or SED services as a child. He dropped out of school in the 11<sup>th</sup> Grade to support his girl friend and baby. However, he went on to earn his GED in prison, in 1987. He would be interested in studying history now.

**IV Family History**

The inmate's mother is alive and working as a teacher's aide. When the inmate was about 21, his father died of diabetic complications. He had been a foreman for a company that manufactured pallets. The inmate's parents stayed together until the father's death, and the mother has not remarried. The inmate was the youngest child. His older sister died in 1973 of complications arising from a combination of medications and alcohol. The inmate is in touch with his mother and brother, and talks to his mother about once a week.

**V Psychosexual History**

He identified himself as heterosexual. He denied being a sexual predator or victim in prison. He recalled reaching puberty about the same age as his friends, around 13 years. This was when he had his first sexual experience, and began going steady. He married at age 29. He said his ideal partner was his wife.

## **VI Marital / LTA History**

He married for the first and only time on October 29, 1982, in prison. There were no children from this union, but he does have one son out of wedlock. This child is now 23 years old, and is in touch with the inmate's mother.

## **VII Military History**

The inmate did not serve in the military.

## **VIII Employment**

He reported no trade union affiliations. As a child, from the ages of 6 to 10 he would go to his father's work place and help. As an adult, he worked for Hawaiian Host (produced chocolate covered Macadamia nuts) and on and off in construction. In prison, he worked in Laundry for two years, Optical for two years, Textile for five years and lead man for two, Vocational Dry Cleaning, and Vocational Mill and Cabinet. He said that in prison he had always been working or wait-listed for a job. If released, he would prefer to work in construction.

## **IX Substance Abuse History**

The inmate admitted to abuse of alcohol and marijuana. In prison he has received two 115's for marijuana, the last in 1987. He said he has attended AA, but does not feel there is a need now. Substance abuse was not involved in his life crime.

## **X Behavioral / Psychiatric / Medical History**

He reported that he had no psychiatric history. He denied any significant head injuries or other psychical conditions that would affect psychological functioning. He did admit to assault in the community and, of course, his life crime of murder.

## **XI Plans If Granted Release**

If released, the inmate would prefer to live with his wife in Covina, California. He felt he could find janitorial work to support himself.

# **MENTAL HEALTH EVALUATION**

## **I Mental Status / Treatment Needs**

### **Physical**

The inmate is a 41 year old Mexican man who is 5'7" tall and weighs 171 pounds. Aging, nutrition and hygiene were within normal limits. His hair and moustache were regulation cut. He has a gang tattoo on his right arm. He has another tattoo

on the web of his left hand. He has a significant scar just below his right knee, where he was cut by a broken bottle while playing as a child.

### **Movement**

Goal directed movement was well coordinated. He said there were no physical impediments to his movement.

### **Conversation**

The inmate was raised in a bilingual household where both English and Spanish were spoken. His English is slightly inflected and he is soft spoken. Articulation, volume and melody are within normal limits. Speech was fluent and was not pressured. Turn taking and eye contact were within normal limits. His approach to the interviewer was pleasant, cooperative and appropriate.

### **Thinking**

He appeared to have a good fund of knowledge, and said he reads both fiction and history. The course of logic was goal directed. Estimated IQ was above average. Short term and long term memory were fair. He was oriented to person, day, date, time and place.

### **Affect / Mood**

He described his usual mood as "happy". There was a good match between emotional expression and underlying mood. Modes of expression were facial, gestural and vocal. Intensity, range and regulation of emotion were within normal limits.

### **Perception**

The inmate denied hallucinations and delusions.

### **Insight**

He recognized his own role in his life crime, and spoke freely of the events that led to his imprisonment. He said he had jobs in prison and had never been fired from them, which speaks to his good judgment.

## Diagnosis (DSM IV-TR)

AXIS I	305.20	Cannabis Abuse, In Institutional Remission
AXIS II	V71.09	No Diagnosis
AXIS III		No Known Medical Conditions
AXIS IV		Incarcerated
AXIS V		GAF Past Year:

## II Review of Life / Controlling Crime

According to the record, on July 18, 1981, the inmate was riding in the codefendant's car when they came abreast of a truck with rival gang members. The inmate fired a .22 caliber rifle four to seven times at the occupants of the truck, fatally wounding one of them. The people in the truck chased the car until the police, who also gave chase, caught them. The victim has been shot in the lower right abdomen and right shoulder. He was taken to the hospital, where he died shortly thereafter.

According to the inmate, at 17 he was a member of the Largo 36 gang. He was a passenger in a car driving toward his house. A truck in front of them was moving slowly and pulled over to the curb. They were about to move around it when the males in the back of the truck stood up. One made a move that seemed to the inmate he was pointing a gun at him. Someone yelled in Spanish, "Here we are the Seventies". The inmate recognized them as rival gang members. He ducked, grabbed a rifle and fired once. He told the driver to go, and they "took off". The truck started chasing them. He heard the police siren and took the gun out. The police stopped them and they were arrested. He said that he felt he had to fire the rifle for his own protection, having been jumped by gang rivals on several earlier occasions.

## III Estimated Dangerousness

### Prior Crime History:

The inmate was 17 at the time of the life crime, and this was his first adult conviction. In 1980 he was arrested, counseled and released for Drunk in Public. In 1981 he was charged with Assault With a Deadly Weapon. He brought a gun to his cousin. The case was dismissed.

### Prison Performance This Term:

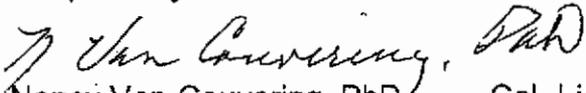
He received two 115's, for marijuana, the latest being in 1987. Until 1999 he had five 115's and eight 128's. Then, recently he has a 115 pending for a melee in 2004. He worked in Laundry for two years, Optical for two years, Textile for five

years and as Lead Man for two, Vocational Dry Cleaning, and Vocational Mill and Cabinet. He said that in prison he had always been working or wait-listed for a job. He has maintained contact with his family.

**Estimated Future Dangerousness in the Community / Significant Risk Factors:**

In prison, the inmate has developed a commendable work ethic. There has been no recent evidence of substance abuse, his most recent 115 for this was in 1987. To all appearances his gang participation was terminated some years ago. However, there is the pending 115 which may reveal that he still is involved. He is a little old now for such activities. Participation in AA/NA should be a condition of parole, in view of his earlier record. Any further gang contacts must be prohibited, which may be difficult if family members are still involved. If the inmate stays sober and avoids gang participation, the estimated risk of future dangerousness is low.

Respectfully Submitted,



Nancy Van Covering, PhD Cal. Lic. PSY3998

Forensic Psychologist

MDO / Forensic Mental Health Unit

California Department of Corrections

THE PRISONER EVALUATION REPORT  
SUBSEQUENT PAROLE CONSIDERATION HEARING  
OCTOBER 2007 CALENDAR

MENDOZA, PHILLIP

C-47764

I. COMMITMENT FACTORS:

A. Life Crime:

Murder First Degree, Penal Code (PC) 187, with Use of a Weapon (PC) 12022.5, to wit a .22 caliber rifle. Los Angeles County Superior Case Number: A-620991-A. Term: 25 years to Life plus 2 years to run consecutive to the base term, total term: 27 years to Life. Received California Department of Corrections and Rehabilitation (CDCR) on May 21, 1982. Minimum Eligible Parole Date (MEPD): September 22, 2000. Victim: Richard Pompas, age 19.

1. Offense Summary:

On July 18, 1981, Mendoza was a passenger in the rear seat of a Datsun driven by co-defendant Anthony Cabrera. Both were members of the Largo 36 Street Gang. Mendoza fire a .22 caliber rifle out the car window as they drove past a pick-up truck occupied by a rival gang. Victim, Richard Pompas was fatally wounded in the drive-by shooting as described above. The chase attracted the attention of the Compton Police who caught the Datsun and arrested the occupants of the car.

Information taken from the Probation Officer's Report (POR) page 4 and 5.

2. Prisoner's Version:

In an interview in preparation for this Board Report, Mendoza stated that his version remains the same as given during his Initial Parole Consideration Hearing August 1999. That report states the following: Inmate Mendoza states he had the rifle in the car because he was transporting it from his mother's home to his own home. When they encountered the truck with the rival gang in it, Mendoza states he only fired because he thought he saw a gang member reaching for a gun. Mendoza states he fired at the truck, not the person.

3. Aggravating & Mitigating Circumstances:

a. Aggravating Factors:

1. During the commission of the crime the inmate had clear opportunity to cease but instead continued.
2. The manner in which the crime was committed created a potential for serious injury to persons other than the victim of the crime.

b. Mitigating Circumstances:

None.

B. MULTIPLE CRIMES:

N/A.

II. PRECONVICTION FACTORS:

A. Juvenile Record:

10/10/80-Drunk in Public; counseled and released. LASO, (PA) 647(F) age 17.  
2/10/81-ADW; dismissed on 5/6/81. LASO, (PC) 245 (A).

B. Adult Convictions and Arrests:

The instant offense appears to be defendant's first adult arrest.

C. Personal Factors:

Inmate Mendoza was born in Lynwood, California, on August 2, 1963 to Ray and Julia Mendoza. He attended local schools. At Montclair High School, he was asked to leave due to his behavior. While at Dominguez High School, Mendoza was kicked out for gang related activity and at Centennial High School he dropped out of school to support his kid. His mother sent him to live with an uncle at one time to get him away from the gangs at the school. Two of the rival gang members on the pick-up truck in the instant offense had beaten Mendoza at Dominguez High School. Despite all the gang activity, Mendoza was able to maintain a B average in high school. He left school after the 11<sup>th</sup> grade to support his common-law-wife and one-year-old son. He has some sporadic work

experience in construction and operating a machine for a candy manufacturer. Mendoza admits to experimentation with marijuana, LSD, PCP, amphetamines, paint sniffing, and alcohol.

The above information was taken from pages 1-3 of the POR and the February 16, 1984 Psychiatric Report.

III. POSTCONVICTION FACTORS:

A. Special Programming/Accommodations:

None.

B. Custody History:

From May 11, 2003 through August 13, 2004, Mendoza remained housed at Correctional Training Facility. During this time he was in the Ad-Seg Unit due to his being the victim of an assault by unknown assailants. Mendoza remained in the Ad-Seg Unit until his transfer on August 14, 2003 to California State Prison-Solano (CSP-SOL). Upon reception at CSP-SOL, he appeared before the Unit Classification Committee (UCC) on August 20, 2003. UCC acted to reduce his custody from MAX to Medium A, and placed him on Support Services and Prison Industries work wait lists. On June 23, 2006, he would be assigned to Prison Industry Authority (PIA) Laundry work waiting list (8/20/03). However, it should be noted that his placement into a work on July 25, 2004 Inmate Mendoza was placed in Administrative Segregation Unit (ASU) for his participation in a North/South Riot Requiring the Use of Force. As a result of the allegations against him, he was issued a Rule Violation Report, which as of this dictation is pending adjudication/disposition. He was found guilty.

C. Therapy and Self-Help Activities:

None noted.

D. Disciplinary History:

All documents from the previous hearings remain valid. Since his last Board of Prison Terms hearing on December 18, 2003, Mendoza has a pending Rule Violation Report for his alleged participation in a North/South Riot Requiring the Use of Force.

E. Other:

N/A.

IV. FUTURE PLANS:

A. Residence:

Mendoza stated he plans to reside with his wife, Mrs. Leslie Mendoza at 1536 North Varnell Street, Covina, CA. 91722; telephone number: (626) 967-1361.

B. Employment:

Mendoza states that his parole plans are the same as stated during the December 2003 Hearing. Mendoza stated he hopes to receive employment as a janitor. Mendoza states his letters of support and job offers will be submitted to the BPT at the time of the hearing.

C. Assessment:

Mendoza indicates his last letters of support were from Sandra Arias, cousin dated August 9, 2002, Beatrice Kole, cousin, dated September 6, 2002 located in the Miscellaneous Section of Central File. He does not yet have a firm offer of employment or updated letters of support. Once received he will provide updated information at his next hearing. Inmate stated he keeps himself busy by participating in the Hobby Programs (leather crafts) making flashlight holders and key holders.

V. USINS STATUS:

Mendoza is a United States Citizen.

VI. SUMMARY:

- A. Prior to release, the prisoner could benefit from 1.) Becoming and remaining disciplinary free, 2.) Upgrading vocationally and educationally, and 3). Participate in self-help and therapy.
- B. This Board Report is based on a (1) hour interview with the prisoner and a complete review of the Central Files lasting (2) hours.
- C. Mendoza will be afforded an opportunity to examine his Central File on July 19, 2007, but declined.
- D. No accommodation for the purpose of effective communication was required per the Armstrong Remedial Plan (ARP).

Prepared by:

Reviewed by:

Reviewed by:

  
J. ROBINSON  
CCI

  
R. LONG  
CCII

  
S. MILLER  
C&PR

- DOCUMENTATION HEARING
- PAROLE CONSIDERATION HEARING
- PROGRESS HEARING

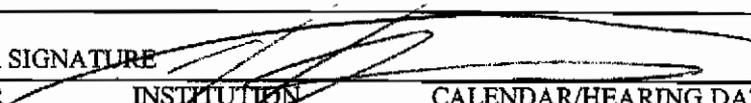
**INSTRUCTIONS**

TO CDC STAFF: DOCUMENT EACH 12-MONTH PERIOD FROM THE DATE THE LIFE TERM STARTS TO PRESENT.

TO BPT STAFF: FOR EACH 12-MONTH INCREMENT APPLY THE GUIDELINES UNDER WHICH THE PAROLE DATE WAS ORIGINALLY ESTABLISHED, i.e., 0-2 MONTHS FOR PBR AND 0-4 MONTHS FOR BPT. SEE BPT 2290 - 2292, 2410 AND 2439.

POST CONVICTION CREDIT			REASONS
YEAR	BPT	PBR	

2/3/05 to 8/15/05			<ol style="list-style-type: none"> <li>1. <u>Placement:</u>  Remained housed at California State Prison-Solano, Level II (CSP-SOL II).</li> <li>2. <u>Custody:</u>  Remained at Medium A custody.</li> <li>3. <u>Vocational Training:</u>  None noted.</li> <li>4. <u>Academics:</u>  None noted.</li> <li>5. <u>Work Record:</u>  Inmate Mendoza was placed on the Support Services (SS) II and Prison Industry Authority (PIA) Laundry waiting lists.</li> </ol>
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CORRECTIONAL COUNSELOR SIGNATURE 	DATE 8/9/07		
NAME	CDC NUMBER	INSTITUTION	CALENDAR/HEARING DATE

MENDOZA, PHILLIP

C-47764

CSP SOLANO

OCTOBER 2007

JR: tb

# EXHIBIT COVER PAGE:

Exhibit:     E    

Description of this exhibit: Court of Appeal Opinion--Criminal Conviction  
dated Jun. 16, 1983.

Number of pages of this exhibit:     21     pages

**JURISDICTION: (Check only one)**

Municipal Court

Superior Court

Appellate Court

State Supreme Court

United States District Court

United States Circuit Court

United States Supreme Court

California Department of Corrections, 602 Exhibit.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA  
SECOND APPELLATE DISTRICT  
DIVISION ONE

THE PEOPLE,  
  
Plaintiff and  
Respondent  
  
v.  
  
PHILLIP VALENTE MENDOZA,  
  
Defendant and  
Appellant.

---

) 2 Crim. No. 42814  
)  
) (Super. Ct. No. A-620991)  
)  
)  
)

COURT OF APPEAL-SECOND DIST.  
**FILED**  
JUN 16 1983  
CLAY ROBBINS, JR. *Clerk*  

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*Deputy Clerk*

APPEAL from a judgment of the Superior Court of Los Angeles County. Edward M. Ross, Judge. Affirmed in part and reversed in part with directions.

Penina Smith Van Gelder, under appointment by the Court of Appeal, for Defendant and Appellant.

John K. Van de Kamp, Attorney General, William R. Weisman and Craig E. Veals, Deputy Attorneys General, for Plaintiff and Respondent.

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A jury found defendant guilty of murder first degree, and the armed and use allegations to be true.<sup>1</sup> He appeals from the judgment.

About 5 a.m. on July 18 Richard Pompas, age 19, died of three gunshot wounds.

At 2 a.m., Thomas Morales drove his pickup into a Jack in The Box parking lot; seated in the cab with him were Henry Lopez and Frank Ramos, in the open bed were Ruben Solis, Joey Lauro and Pompas; all were members of the Compton Varrio Setenta (CV 70) gang; some went into the restaurant but Morales talked with a friend about 20 minutes during which a white Chevrolet came by and the occupants said something and gave them the "finger" which gesture was returned; later all but the friend got into the truck. Lauro, Pompas and Solis<sup>2</sup> sat in the open bed; as the pickup departed through the alley, a white Toyota

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<sup>1</sup> Codefendant Cabrera who was charged by separate information with murder, was tried with defendant; Cabrera was found guilty of being an accessory after the fact, a lesser included offense in murder.

<sup>2</sup> Defendant testified that among those in the bed of the truck he recognized someone he knew as "Artie" (Arthur Nooniez), a member of the Setenta, who with others had beaten him up at Dominguez High School; he identified the man he knew as "Artie" as one of those who had testified, thus it is likely that he knew either Solis or Lauro as "Artie" because he claimed he did not know Pompas.

containing the driver, codefendant Cabrera, a passenger, Coborubio and defendant, <sup>Mendoza</sup> seated in the rear, drove into the alley; they wore straw hats and dark jackets and all were members of the Compton Varrío Largo, a gang rival to Setentas;<sup>3</sup> defendant "brought up" a "weapon or gun," two and one-half to three feet long, and Cabrera turned around and followed the pickup.

Cabrera caught up to about 45 feet of the pickup and blinked his headlights and parking lights off and on four or five times at the truck; Morales slowed down; having observed the blinking lights of the Toyota and thinking that its occupants were friends from CV 70, Solis said "Wait up . . . here comes some homeboys," and he, Lauro and Pompas stood up to see who they were; they had their hands at their sides and had no weapons; as the Toyota drove up they did not recognize the occupants, but defendant stared at them then started shooting with the

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<sup>3</sup> Deputy Grani, a qualified expert on gangs and dealing with street gangs since 1979 in a sheriff's detail called "Operation Safe Streets," identified those in the pickup as members of the Compton Varrío Setenta gang, and the three in the Toyota as members of the Compton Varrío Largo gang. He testified that these two gangs were rivals and had been for years; he believed defendant to be an active Largo member; he delineated the area of each gang and placed Jack in The Box closer to Largo turf.

rifle pushing the rifle barrel out the back window; defendant fired four shots into the rear of the pickup three of which hit Pompas and one shattered the back window of the truck; Pompas cried "They shot me." Morales heard shots from the rear, turned to the left and saw the white Toyota coming up on his side with the barrel of a gun sticking out of the window; Morales ducked down and as the Toyota passed, defendant fired two more shots which struck the driver's door; Solis yelled at Morales to follow the Toyota. No one in the pickup had any kind of weapon; no one in the truck said anything to the occupants of the Toyota before the shooting.

As Morales pursued the Toyota he saw a police car and waved the officers on toward it; believing something was wrong, the officers pursued the Toyota; Officer Markey turned on his lights and siren and after a distance the Toyota slowed because of a deadend requiring a turn at which time defendant seated in the rear pushed out of the window a rifle which fell to the ground discharging and landing in the gutter; the Toyota stopped shortly thereafter. The three in the Toyota were ordered out and prone on the ground for a pat-down search for weapons; Officer Markey was unaware that a shooting had occurred

but asked defendant "Who did the shooting?" and defendant replied "I did"; the pickup had pulled up and some one yelled that somebody had been shot, and defendant said "Yeah, I did it." Near where the rifle was retrieved from the gutter was a spent .22 caliber casing. A bullet had shattered the truck's back window, and two bullet holes were in the driver's door. There were no bullet holes in the Toyota; three spent .22 shell casings were in the Toyota -- on the rear window ledge, underneath the rear seat and on the center rear seat; the spent casing shells had been fired from the rifle.

#### DEFENSE

Defendant and Cabrera were friends and members of the Largo gang; he had been at his mother's and was taking home a loaded rifle which he had there to protect her against burglaries; he started home with a friend who was drunk then got out of the car, wrapped the rifle in his jacket and flagged down Cabrera. Cabrera was driving Coborubio to the Jack in The Box because the latter was hungry; as he approached the restaurant defendant flagged him down for a ride home and defendant threw his rifle on the seat; he made a right turn into the alley and into

the Jack in The Box parking lot but instead of stopping, defendant unwrapped his rifle and he made a U-turn and drove out of the alley and returned to Chester street following within 45 feet of the pickup which was going slowly; someone in the pickup motioned them to stop. As they approached, those in the back of the pickup stood up and yelled some words one of which was "Setentas"; knowing of the Largo-Setenta rivalry defendant grabbed his loaded rifle; when he saw one of them stand up, open his shirt and go for his waistline producing something he thought was a gun held in a two-handed pistol grip, he was very scared and thought the person was going to shoot him although he did not actually see a gun, so he ducked and fired once; he told Cabrera "Go, go" because he was afraid they would shoot him; the pickup pursued them then the police; when he heard the siren he panicked and threw the rifle out of the car; he did not plan to shoot anyone or discuss it; he had been in the car only a minute before he saw the truck; he fired to protect himself because he felt his life was threatened.

Asked on cross-examination if it wasn't true that he recognized two people in the pickup truck as Setenta members who jumped him at Dominguez High School and beat

him up, defendant answered "No"; later on recross-examination he admitted he knew they were Setentas "when they yelled" before he fired but when he was arrested he recognized one of the "guys" from Dominguez High who beat him up whose name was "Artie" (Arthur Nooniez), one of those who had testified in court.

## I

SUFFICIENCY OF THE EVIDENCE

Claiming that there is insufficient evidence to sustain the verdict, appellant relies primarily on defense testimony and advances a factual argument that he shot in self-defense and acted as would a reasonable person faced with the appearance of such imminent danger.

The basic principles governing judicial review of a criminal conviction challenged as lacking evidentiary support are articulated in People v. Johnson, 26 Cal.3d 557: "the court must review the whole record in the light most favorable to the judgment below to determine whether it discloses substantial evidence -- that is, evidence which is reasonable, credible, and of solid value -- such that a reasonable trier of fact could find the defendant guilty beyond a reasonable doubt." (P. 578.)

Appellant relies on his claim that he saw one of those in the bed of the pickup go for his waistline and hold what he thought was a gun, although he did not actually see a weapon, and started firing. However, he also testified that before he fired his rifle he knew the occupants of the pickup were Setentas; "Artie," one of those who testified in court (Solis or Lauro) stood up in the back of the truck with Pompas; "Artie" was one of the Setenta "guys" who previously beat him up at Dominguez High School. He explained that one gang member "backs up" another who is injured by a member of a rival gang, "back up" means "if somebody were to get into a fight or something some kind of a hassle, if you were his friend you'd help him"; he and Cabrera were Largo members and Cabrera "backs up" Largo; he believes in "pay back" which means "getting even" and when he or one of the other Largo members gets shot at or beat up or injured, the common thing to do is go back and do the same thing to the opposite side.

As we are required to do, we view the evidence in a light most favorable to respondent and presume in support of the judgment the existence of every fact the trier could reasonably deduce from the evidence. (People

v. Johnson, 26 Cal.3d 557, 576.) When defendant and Cabrera, who obviously was "backing up" defendant, saw the pickup containing Setentas pull out of the alley from Jack in The Box, a site closer to Largo turf, onto Chester Street, instead of going into the restaurant as he originally intended, Cabrera, after defendant "brought up" his loaded rifle, promptly turned around to follow the pickup; Cabrera pulled up within 45 feet of the pickup and, to get the driver to slow down, turned his lights off and on five or six times; this accomplished two things -- Morales slowed down, and it led those in the bed of the truck to believe that the occupants of the Toyota were friendly Setentas, and they stood up and identified themselves making clear targets of themselves -- defendant looked at them and started shooting commencing an unprovoked and deadly assault on unarmed defenseless persons resulting in one death. Defendant had a loaded rifle and figured it was time to "pay back" or "get even" for the beatings he had taken from Setentas, in particular "Artie"; he fired four shots into the rear of the truck three of which wounded Pompas who was standing near "Artie," defendant's old antagonist; one shot shattered the back window of the truck; defendant still was not

satisfied for as he passed the truck he fired twice more, into the cab hitting the door of the driver's side. We conclude from the foregoing that substantial evidence supports the conviction, that is, that a reasonable trier of fact could find defendant guilty beyond a reasonable doubt. (People v. Johnson, 26 Cal.3d 557, 579.)

## II

MOTION TO DISMISS

At the close of the prosecution's case-in-chief, defendant moved to reduce the murder charge to manslaughter and to dismiss pursuant to section 1118.1, Penal Code, which motion was denied. There was ample evidence before the trial court to establish that the homicide was a deliberate and premeditated act committed without legal justification; and there was no evidence that defendant killed in self-defense. "There is enough to go to the jury," said the court, and appellant concedes this but argues it failed to discharge its "decision-making responsibilities" and foisted upon the jury the "entire burden in this complex case." We do not concur with appellant's view that the case was "complex" or that reasonable jurors properly instructed were not able to

properly comprehend the issues or had difficulty in making a determination.

### III

#### PREMEDITATION

Citing what he claims to be mitigating factors, appellant contends that they should have tipped the balance in favor of reduction to second degree murder thereby favoring the presumption that an unjustified killing of a human being constitutes second degree murder. He argues that there is inadequate evidence of premeditation, and his shooting of Pompas did not satisfy the criteria of People v. Anderson, 70 Cal.2d 15. The California Supreme Court in Anderson set up the type of evidence it has found sufficient to sustain a finding of premeditation and deliberation; it falls into three basic categories: (1) facts showing prior planning activity; (2) facts suggesting motive; and (3) facts about the manner and nature of the killing from which a preconceived design may be inferred. "Analysis of the cases will show that this court sustains verdicts of first degree murder typically when there is evidence of all three types and otherwise requires at least extremely strong evidence of

(1) or evidence of (2) in conjunction with either (1) or (3)." (People v. Anderson, 70 Cal.2d 15, 26-27; People v. Haskett, 30 Cal.3d 841, 849, fn. 1.) There is solid evidence of the three types sufficient to sustain the verdict of first degree murder.

Without recounting the evidence prior to the shooting, it is clear that Cabrera who "backs up" Largo and who intended to go into Jack in The Box, abruptly changed his mind after defendant got into his car with the loaded rifle and the pickup containing Setentas drove out of the alley; defendant "brought up" his rifle while Cabrera turned around and they pursued the truck Cabrera signaling the driver of the pickup to slow down by blinking his lights which led those in the bed of the truck to believe they were friends, thus they stood up unarmed and defenseless making a target for defendant who, to "pay back" for past beatings by Setentas, deliberately opened fire pushing the rifle through the window, and continued to fire even after passing those in the bed of the pickup, firing two shots in the cab making two bullet holes in the driver's door. The evidence well established a substantial degree of planning activity although it took place only minutes before the shooting, a motive for the

unprovoked assault on those in the truck and a deliberate execution of a preconceived plan to kill.

## IV

EVIDENCE OF GANG MEMBERSHIP  
PROPERLY ADMITTED

Appellant's contention that the court did not properly weigh the gang evidence, which was "extremely inflammatory," for prejudice against probative value under section 352, Evidence Code, is without merit. On this record we find no abuse of discretion. (People v. Russel, 69 Cal.2d 187, 195.) This killing arose out of gang rivalry; virtually all of the testimony, defense and prosecution alike, is interspersed with references to gang membership and practices.

Unlike People v. Perez, 114 Cal.App.3d 470 and In re Wing Y., 67 Cal.App.3d 69, in which gang evidence was not relevant, the shooting of Richard Pompas was an exercise in gang violence that constituted the crime. Gang membership was an integral and unavoidable fact relevant to motive; evidence of gang membership and practices was received for the sole purpose of establishing defendant's motive to kill the victim. Motive could not have been proved without the evidence; it was

necessary to aid the prosecution in rebutting the presumption of innocence by establishing a reason for defendant's criminal behavior. (People v. Plasencia, 140 Cal.App.3d 853, 862.) "[I]t has repeatedly been held that it is proper to introduce evidence which is even unpleasant or negative pertaining to an organization in issue which is relevant on the issue of motive or the subject matter at trial." (People v. Frausto, 135 Cal.App.3d 129, 140.) Such admissible gang evidence includes hostilities existing between two gangs. This is not the case of People v. Cardenas, 31 Cal.3d 897, in which the crime (attempted robbery) was not a gang operation. (P. 906.) In the case at bench defendant's gang membership and that of Cabrera and their activities, his prior confrontations with the rival gang members, gang rivalry, hostility and violence and a gang member's method of dealing with an injury inflicted by a rival member -- the "pay back" or "get even" motive -- were the crux of this case. Not only was the evidence relevant but in the context of this case whatever prejudice flowed from it was minimized by an instruction given on at least three separate occasions during trial that the evidence was being offered solely for the jury's determination of

whether or not defendant had a motive for the killing.

The same may be said of the testimony of Cabrera's witnesses, Babe and Padilla (Cabrera's fiancée) relative to Cabrera's and their gang connections and about Padilla's brother Santos, a Largo member, who previously had been jumped at least once by Setenta gang members and shot by that group hospitalizing him. Based on their testimony defendant moved for a mistrial which was denied. The motion was properly denied. The testimony was relevant, and its prejudicial effect could be only minimal in the face of the mass of gang activity evidence produced by witnesses on both sides.

V

INSTRUCTIONS

Appellant cites error in the trial court's failure to give various instructions. The court is under no duty to give an instruction relating to issues and questions not raised by the evidence. (People v. Cantrell, 8 Cal.3d 672, 685.) First, appellant claims error in the trial court's failure to give CALJIC 5.12.<sup>4</sup> Viewing the defendant's account of events upon

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<sup>4</sup> Revised CALJIC 5.12 provides: "The killing of another person in self-defense is justifiable and not unlawful: [¶] 1. When the person who does the killing has reasonable ground to believe and does believe that

which he requested the instruction, we agree with the trial court that it was not reasonably susceptible of an interpretation that defendant had a reasonable apprehension of death or great bodily injury or a reasonable belief that it was necessary to kill the victim to prevent death or great bodily injury. We also agree with respondent that defendant's "shoot first and ask questions later" response to the situation was not a reasonable one. In any case, failure to give CALJIC 5.12 could result in no prejudice to defendant because the jury was given a series of instructions in the context of manslaughter making it clear that defendant could not be convicted of murder if there was a valid claim of self-defense (CALJIC 5.51, 5.31, 8.40, 8.50, 8.72). The jury gave credence to the evidence that established that defendant himself precipitated the events that led to the use of deadly force and that his use of deadly force against his defenseless victims was unjustified and excessive, rejecting any claim of self-defense; and found that he

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Footnote 4 continued

there is imminent danger that the other person will kill him or cause him great bodily injury, and [¶] 2. A reasonable person under the same circumstances would believe that it was necessary to kill the other person to prevent death or great bodily injury to himself. . . ."

committed the homicide with malice aforethought. A close review of the record reveals that it is not reasonably probable that a result more favorable to defendant would have been reached had the instruction been given. (People v. Brigham, 25 Cal.3d 283, 292; People v. Watson, 46 Cal.2d 818, 836.)

Likewise, the failure to give CALJIC 5.15<sup>5</sup> was harmless. To the extent that the manslaughter instructions (CALJIC 5.51, 5.17, 5.31, 8.40, 8.50, 8.72) introduced an issue of self-defense, the court erred in failing to give CALJIC 5.15. (People v. Piniero, 129 Cal.App.3d 915, 920; People v. Banks, 67 Cal.App.3d 379, 384.) However, the essence of the instruction was brought to the attention of the jury by means of other instructions -- the general burden of proof instruction (CALJIC 2.90), CALJIC 8.50 and numerous others informing the jury that a finding of justification would preclude a conviction for murder but not for manslaughter and that if the jury was "satisfied beyond a reasonable doubt that the killing was unlawful" (CALJIC 8.72) but unsure whether the crime was murder or manslaughter, a conviction only for

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<sup>5</sup> "Upon a trial of a charge of murder, it is a defense that the homicide was justifiable. The burden is on the prosecution to prove beyond a reasonable doubt that the homicide was not justifiable."

the latter offense was possible. Finally, the jury was instructed that all instructions were to be considered as a whole. Inasmuch as the principle embodied in CALJIC 5.15 was clearly brought to the jury's attention (People v. Sanchez, 30 Cal.2d 560, 571 and People v. Adrian, 135 Cal.App.3d 335, 341-342) we find the failure to give the instruction harmless.

Nor was error committed in the court's refusal to give CALJIC 8.73 to the effect that the jurors could consider evidence of provocation in determining whether he committed first or second degree murder. The defense was predicated on defendant's account -- that he just happened to see several members of Setenta in the bed of the pickup and, aware of the Largo-Setenta rivalry, reasonably acted in self-defense by raising his loaded rifle, which he just happened to have with him, when he saw one of the members make a gesture to the waistline and bring out what he thought was a gun, although he did not actually see a weapon. There appears to be little or no evidence of provocation. On the other hand, the prosecution's evidence established that defendant with his loaded rifle intentionally pursued the pickup signaling it, knowing that it contained members of a rival gang and, in

approaching and passing the pickup deliberately commenced an unprovoked and deadly assault against unarmed persons resulting in one death.

The jury was instructed that second degree murder is the unlawful killing of a human being with malice aforethought but without deliberation or premeditation; that deliberate and premeditated murder is murder perpetrated in response to "A cold, calculated judgment and decision," and that "a mere unconsidered and rash impulse, even though it include an intent to kill, is not such deliberation and premeditation as will fix an unlawful killing as murder of the first degree"; and finally, that if there was "a reasonable doubt whether such murder was of the first or of the second degree, you must give defendant the benefit of that doubt and return a verdict fixing the murder of the second degree." The law embodied in CALJIC 8.73 was clearly set forth in other instructions given to the jury, thus we find the failure to give the requested instruction harmless. (People v. Rocha, 80 Cal.App.3d 972, 980; People v. Clark, 202 Cal.App.2d 513, 518.)

Finally, appellant cites as error the court's refusal to give CALJIC 3.31.5 relating to concurrence of

act and mental state. The jury was given an equivalent instruction in CALJIC 3.31.

## VI

### SENTENCE

Appellant was 17 years old when he killed Pompas, and on May 13, 1982, when sentenced to state prison, was 18. He claims denial of due process in the imposition of a state prison sentence without the court first having obtained a Youth Authority diagnostic report. In doing so, the court followed the prevailing law. (People v. Jones, 98 Cal.App.3d 694.) Two and one-half months later, on July 29, 1982, the Supreme Court decided People v. Black, 32 Cal.3d 1, which overrules Jones and requires that one under 18 when the crime was committed, but attaining the age of 18 at the time of sentence "be remanded [to the Youth Authority] for evaluation and report concerning his amenability to training and treatment by the Youth Authority prior to being sentenced." (P. 4.) We are urged by the Attorney General to give Black prospective effect only but it is readily apparent from the Supreme Court's use of Black in People v. Spears, 33 Cal.3d 179, 283 that retroactive application

of People v. Black, 32 Cal.3d 1, was intended. Under the compulsion of Black we conclude that the trial court erred in refusing to remand defendant to California Youth Authority for evaluation prior to sentencing.

The judgment is reversed only as to penalty and the cause is remanded to the superior court with directions to refer defendant to the Youth Authority and thereafter to determine the appropriate disposition pursuant to section 707.2, Welfare and Institutions Code. In all other respects the judgment is affirmed.

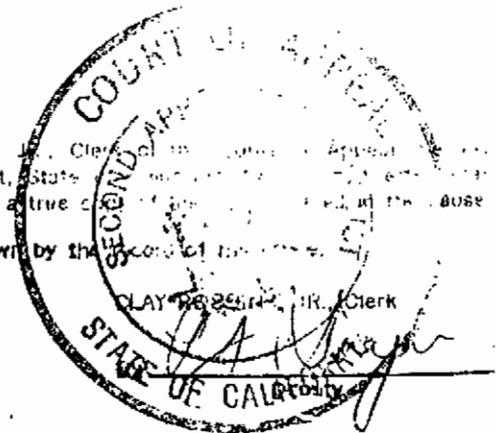
LILLIE, Acting P.J.

We concur:

HANSON (Thaxton), J.

DISCO, J.\*

CLAY ROBINS, J., Clerk of the Court of Appeal, Second Appellate District, State of California, certifies that the preceding is a true and correct copy of the original as shown by the records of the court.



\*Assigned by the Chairperson of the Judicial Council.