

## Excerpts from Hearing Transcripts and Risk Assessments Illustrating Issues for Former Indeterminate SHU Prisoners

### Hunger Strike Participation

*Prisoner B:* Petition to Advance denied (12/2014) based solely on hunger strike rule violation.

*Prisoner C:* Commissioners: There's some indication you're aligned with gangs as recently as 2013 "with the counseling chrono that indicates the hunger strike as a means to effectuate a change in the institution."

*Prisoner E:* (Comprehensive Risk Assessment) - Several references to the hunger strike. Prisoner "has a history of receiving the following RVRs" - the last one "inciting a mass disturbance hunger strike." Under Psychological Development: "more recent attempts to incite a mass disturbance/hunger strike". . . . "In 2013 the inmate engaged in a hunger strike, demonstrating an ongoing willingness to disregard institution rules and engage in antisocial behavior as a means of trying to advance his cause or wishes."

*Prisoner F:* (Comprehensive Risk Assessment) – No clear indications of improved behavior, given recent RVR for promoting gang activities [hunger strike – no other 115s since 2000]. "There is evidence [prisoner] continues to harbor violent ideation and intent as evidenced by a more recent disciplinary action for promoting gang activities." Conclusion – High Risk, based on, among other things, "shows no interest in following a positive behavioral course or proving his determination to lead a more productive life (continued accrual of disciplinary actions; failure to acknowledge gang status)."

(Parole Hearing) - Commissioner: Your record "just screams gang activity. And there's a lot of hunger strikes and all this stuff." "You've already admitted you were involved in a hunger strike that you weren't written up for. So for you to say you've been good for five years is not true." Prisoner: "That was a peaceful protest to begin with. I didn't hurt anybody." Commissioner Fritz: That's prison politics, sir. That's prison politics." . . . Fritz: "You're still involved in prison politics. You might not think that's a big deal. We think it's a big deal." . . . Prisoner: "Participating in the hunger strike is something that's seen very negative. I will tell this Board right here that, yes, it was necessary for me because I had been there 18 years, 18 years and had continuously gotten written up for nothing." Decision: Mainly, the prisoner was not honest with the panel about in-prison behavior – "hunger strikes, we finally got you to admit they're involved in politics."

*Prisoner G:* Hearing Decision: Denial based on serious misconduct in prison, "although your last 115 is now 2013 but again, that shows allegiance to gangs. Hunger strike in 2013, hunger strikes in 2011." [Before that, no RVRs since 2000].

*Prisoner H:* [Letter describing interview with FAD psychologist]: "She opposed the hunger strikes and said you are only being released because some judge thought all your lawsuits costed the state too much money not because of your good behavior."

Parole Hearing - . Commissioner: "You got a 115 for hunger strike in 2014, two years ago, still devoted to gang agenda, still deeply involved in prison politics, weren't you?" Prisoner: "The gang stuff is behind me." Commissioner: "Yeah, less than two years ago, you participated in a hunger strike."

*Prisoner J:* Commissioner: “He participated in the recent hunger strike and refuses to debrief which suggests that he continues to have a criminal mindset creating a connection to current dangerousness....” Commissioner asks about 128B alleging participation in a mail drop scheme relating to hunger strikes. Prisoner: “There was nothing surreptitious about the hunger strikes; that was all above board.” Commissioner: “So you were not involved in communication using an attorney as a mail drop?” Prisoner: “No, that’s ridiculous.”

*Prisoner K:* [Status: designated “inactive” by CDCR]. (Comprehensive Risk Assessment) - RVR in 2013 (hunger strike) “suggests some fairly recent behavioral instability.”

(Parole Hearing) – Commissioner: Most recent 115 was in 2013 for hunger strike – “Why did you do that, what was it supposed to accomplish?” Prisoner: It was to bring awareness to how they were circumventing the judicial system. Commissioner: “The hunger strike was against the rules, it’s breaking the law, right? So why’d you do it?” Prisoner: “Because it was the only means available.” Commissioner: “So it was a means to an end?” Prisoner: “It was a peaceful means.” Commissioner: “Okay. Well, you know, the ends justify the means and that’s a justification that terrorists use, right?” Prisoner answers citing the *Gomez* court decision on a hunger strike 115.

*Prisoner O:* (Comprehensive Risk Assessment) - “Although his last act of violence may have been long ago (1996), ongoing gang involvement and activity (as evidenced by RVRs in 2012-2013) [these are hunger strike related] could certainly indicate an increased risk for future violence. Conclusion – high risk.

*Prisoner P:* Hearing Decision: “We’re not convinced it’s been a lengthy period of positive rehabilitation. You’re still resorting to that criminal minded thinking, adhering to the gang rules about, you know, we’re going to do this hunger strike or we’re going to do this kind of thing, you know. You’re still susceptible to that at an age you shouldn’t be. Significant weight to serious misconduct in prison. Most recent was 2013 (hunger strike), with two elements: impulsivity and criminal-minded thinking – same elements we saw in the life crime. Here as late as 2013 you’re still susceptible to peer pressure, this whole hunger strike thing. It’s all supporting this criminal-minded thinking stuff that’s going on and actually gives weight and actually gives, in their mind, validation in the prison gangs. Even though it looks like you tried to separate yourself out by then, you’re still willing to do those things and suffer the consequences of that for them, not for you. Tells us you haven’t developed the necessary skill sets to abate that impulsivity. This is what makes you a current danger to society” Prisoner needs more gang awareness work – gave superficial answers to why you were in the gang and so forth. Concerned that you’re susceptible to that kind of thinking, based on 2013 115 for hunger strike.

## **Debriefing**

*Prisoner A* (he debriefed): Commissioner: Why did you debrief? Prisoner: “I felt like everyone there was basically dying on the vine and for me, . . . I decided if . . . I’m going to sit here and die, there’s no point in it, right?” “The officer that was always on me was – he was always reading my letters, interrupting my visits. He basically made my life a living hell and pretty much everybody else in there . . . because the reality was that it angered me as an individual because I really had no connection to society no more. It was – all my family ties were disappearing and I felt like I was doing nothing to help, you know, foster them anymore.” “My mother and father passed away while I was in there. And the whole time I could never hug them. I could never kiss them, you know, and those were the things that actually mattered to me.” Commissioner: After debriefing, any threats from EME? Prisoner: “They sent death threats. They threatened my ex-fiancee, you know. It made – they made her life

a living hell, and that put a strain on our relationship, and eventually we separated because of it. I felt, I feared for her life, you know.”

*Prisoner C:* “We asked you here today why you have not debriefed, which is not a necessity, but [given the volume of confidential reports], it puts the onus on you to demonstrate to us that you’re no longer part of a gang or associating with these individuals.” We need to see a “clean and clear break from gang ties and gang involvement.” Three-year denial, we hope you “address your gang ties and gang break in that time.”

*Prisoner D:* (Comprehensive Risk Assessment) – “He claims that he now wishes to obtain emotional support from [family] rather than from gang associates. However, he has not made a strong statement that he is breaking all ties from his former gang. . . . He would benefit by making a strong statement that he is severing all relationships with gang members and replacing them with emotional bonds with prosocial family members and friends.” . . . “He claims that he has dissociated from the gang although he has never made a compelling statement that he has cut ties with his group.” . . . “His verbalizations that he is adopting a prosocial lifestyle will not be fully credible until he completely severs his loyalty to and relationships with gang members.”

*Prisoner E:* (Comprehensive Risk Assessment) – High risk based on his "gang affiliation and an unwillingness to acknowledge that affiliation at this time".

*Prisoner G:* Commissioner: “All the while the Panel sees that this mentality that you have is you know what, I’m not going to give up these crime partners because I got a certain code I got to live with in here. I’m not going to debrief because I don’t want to be known as a snitch. These are all the same codes that demonstrate an allegiance to this behavior and you’ve chosen that route for yourself after 29 years. And I tell you, you’re going to die in prison with that mentality.” “Obviously, you’re comfortable with dying in prison because your behavior is that. If somebody told me after 29 years, I need to debrief, and the person that holds the key, hey the easiest way to get out of here is to debrief. No, I’m not going to debrief. I don’t know nothing. I’m not going there. I’m good.” Prisoner: “What happens when they kill my family and then my mistakes . . .” Commission Zarrinam: “Sir, sir, this is not a conversation.” “So there are issues that the Panel sees. These and it’s – you can do it on a general population yard. I’m not saying debriefing is the sole way of doing it, but . . .” Decision: Denial for 5 years; can request an earlier date if there’s a change in circumstance or new information. “And I’ll tell you how you can get to that date quicker. The fastest way to get it fast is to disassociate from gangs totally and make a clear line and clean break between yourself and prison gangs and that will be one huge step closer to going and seeing your family.”

*Prisoner H:* (Comprehensive Risk Assessment) - High Risk rating “impacted significantly on his current validation as a prison gang member and his reluctance, inability and unwillingness to disassociate.”

(Prisoner’s letter describing the interview with the psychologist): “She tells me that I have to debrief, the Board will not parole a non-SNY validated person.” He argued that if she convinces each individual she interviews to debrief, they’re all going to tell on the person ahead or behind them on the interviews, and thus they all will have 1030s and will not be released by the Board, making the process a sham. Prisoner says he should not be given the power to sabotage someone else’s mainline status or especially their parole date. She described general population yards as gang yards; said the SNY is closer to how the community exists, with drug users, bullies, road rage, and others who have no rules – “that’s how we see SNY vs. GP.” Prisoner asked, are you saying I cannot be rehabilitated on the GP? She replied ‘YOU can’t!’ ‘Disassociate and go home to your family!’”

“I asked about the recent news of people debriefing before their parole hearings and instead of being favorable to them the Board accused those men of trying to manipulate the Board. She said you guys are being manipulated by all those lifer magazines and lawyers. She read them and doesn’t agree with how the FAD is represented.” “She asked ‘Why do you refuse to disassociate?’ I explained . . . all I know is cell living [having been locked down for most of his time.] Therefore I want to live with someone who respects and prioritizes cleanliness, drug-use sobriety, and won’t be a problem (violently). Why would I exchange that for all the recklessness going on in the SNY – especially with the validation of those guys now too?” [She continues to pressure him to debrief.] “If I debrief and give up information true or untrue on fifty other inmates, that’s fifty families that will have to go through what my family is going through now. And for what? To help them (PBSP SHU staff) keep this place . . . [illegible]”

(Parole Hearing): – Commissioner, going over prisoner’s parole package, including relapse prevention plans: “I’ve got to ask you though, I don’t know how you can relapse from the gang if you haven’t basically denounced the gang yet. . . All of this stuff globally is great, but if you haven’t done the basic thing, then it really doesn’t mean a whole bunch.” Prisoner: “I like being in GP.” Commissioner: “You can stay in the general population and renounce the gang.” Prisoner: “Well I have. I’ve separated myself since I’ve been here.” Commissioner: “There’s nothing documented that you’ve been through any kind of debriefing process, or that you’ve renounced here, that you’re no longer affiliated. You were revalidated in 2014.” Prisoner: “I don’t know how you can renounce your gang affiliation while you’re still in GP.” Commissioner: “The point is you haven’t bothered to even check. Have you sat down with the Gang Unit and say, okay how do I do this? I want to stay in GP but I don’t want to be a part of? Have you tried to ask anybody about it?” Decision: “You have done nothing to separate yourself from gang affiliation. . . . So one of the primary things you have to do [as noted in the CRA] your rating was impacted significantly on your current validation as a prison gang member and your reluctance, inability or unwillingness to disassociate. And that’s what our thoughts are, that either you don’t want to do it, you don’t know how to do it, or you just don’t care . . .”

*Prisoner I:* [Prisoner had been designated “inactive” by CDCR]. Commissioner: The transcript “shows your criminal mindset . . . that you are unable or unwilling to disclose information about who you are, what you’ve been doing, what you’re involved in in prison.” “You’re kind of playing both sides.” “You say that you’re – it says that you’re inactive. They don’t find any information about what you’re doing as far as gang activity, but you present yourself as a gang member, and you go with it. You still associate.” Perhaps just pretending you’re not. . . . Until you can show that all that is behind you and you have “rid yourself of gang ties, gang activity, that type of behavior and a criminal mindset,” you’re still a danger and will continue to be “until all that information has been released . . . - what you were involved in before you came to prison.”

*Prisoner J:* Commissioner – “He ... refuses to debrief which suggests that he continues to have a criminal mindset creating a connection to current dangerousness.” “He does not want to implicate anyone”. Admits he was gang captain but then just quit associating – this strains credulity. . . . “I mean just the way he acts, the fact that he would be in the SHU indeterminate for 20 years when he knows all he has to do is talk about his association and if he’s truly not involved with them. Why anyone would suffer 20 years of that for as a conscientious objector, he doesn’t rat on people, just evidences real criminal thinking . . . .”

“So that’s your story. You’re not involved since 2002 and you’re just a conscientious objector. You’re not going to rat on anyone.” . . . “You have a street mentality, a moral compass that tells you no matter what these people have done, no matter how bad it is, you’re not going to rat on them. . . .”

*Prisoner M:* [We have only the Decision section of transcript, but it appears prisoner has been designated “inactive” by CDCR] Commissioner: “So it’s really truly unclear whether you have disassociated with the gangs or not because there’s nothing that shows in the file that you’ve done any kind of disassociation, debriefing, criminal gangs anonymous, really anything that shows that other than what you testified to.” “I have big problems with your story about disassociation because, quite frankly, again I don’t believe you that you just told the guys, hey, I’m now a Christian and I’m going to bow out, and they’re like, okay cool, see you later. I really have a hard time believing that, sir.” “With respect to your discussion about debriefing, you know, in 2009, the Commissioner practically begged you to debrief, you fought him on it. You still have a criminal mentality. You had it then and you have it today, because you don’t want to be a rat, because it’s part of your moral makeup that you not debrief. “Saying it’s against my morals to debrief is completely unacceptable. . . . I believe you haven’t debriefed because if you’re not still active active, you’re still associated. You’re still hanging out with those guys. And you know very good and well to debrief, you have to fess up everything, you have to rat or be a snitch, and that goes against your gang mentality.” . . . “And if you have gang involvement still, those should probably end, and if not you need to think long and hard about debriefing, because even though we know people debrief, they get on an SNY yard, they still are active, the majority don’t. And at least it shows that you’ve taken that step, because then you have crossed the line with the gang, and then there is no going back for you; it’s a large part. Right?” Panel recommends . . . “that you make a decision as it relates to your gang affiliation . . . and if in fact you have distanced yourself, then do whatever process is necessary to have some documentation that demonstrates that you’re no longer part of any prison gangs, whether that means debriefing, whether that means distancing, whether that means getting a chrono from the gang unit saying they’ve observed you over a period of time, and they haven’t seen you involved in gang activity. There needs to be some documentation that’s going to basically support your verbal that I’m not affiliated because that’s just not enough.” [Discussion on debriefing dominated this decision although it appears there were other reasons for denial. Those were tossed off in an incidental comment at the end of the hearing.]

*Prisoner N:* [Designated as “inactive” by CDCR] (2014 Hearing): Prisoner says gang issues are moot now because he’s inactive. Commissioner: “Well, you are a gang member. You’re just an inactive one. . . . That’s your status right now – you’re an inactive gang member.” . . . “You’re not a dropout. You haven’t dropped out. You haven’t debriefed.” “I don’t care if you’re 80 years old. You know you could still be active. You could still – people could still have something out for you and, you know, you could also be victim. You could be on the other end of that.” Prisoner: “I spent 29½ years in [Pelican Bay SHU] that added to my time. So I had, like, a double sentence, being in the SHU, not letting me out even though I was inactive and I pleaded and told the IGI.” Commissioner: “Well, and there was then the process to get out was to debrief and for some reason you chose not to.” Prisoner: “But the court said you don’t have to do that.” Commissioner: “Later. Later the court said that. . . . But the process at the time . . . that was open to you was to debrief and then you could have walked the mainline.” “And subsequent to that, yes, there were lawsuits and, you know, the rest of all that is history. But I’m saying at the time that you had the option to debrief you made the decision, conscious decision. For whatever reason.” Prisoner: “I’m going to tell you the reason. . . . My reason was my kids. By me debriefing and telling on the organization on whatever they wanted to know about them would put not only me in deeper danger but my kids, my family, and I wasn’t about to do that.” Commissioner: “What I’m concerned about is I don’t understand how you can be inactive. I mean because don’t you know a bunch of stuff?” “I mean about what happened and who – where some bodies are and that kind of stuff?” Prisoner: I don’t know none of that. Commissioner questions if he’s a target because of inactive status, or because of what he knows? Prisoner: Because of my age they consider me an OG who didn’t tell on anyone and more than likely leave me alone. Because I didn’t go out the same way

everybody went out.” Commissioner: “What do you mean by that?” Prisoner: “They went out telling on everybody, stuff like that, and I never did that.”

Discussing recommendations of prior parole panel – Prisoner: “I did everything they told me to do. They told me to bring down my score. I did that, to 47. They told me to get an education. I did that. They told me to get out of gangs. I did that.” Commissioner: “Did you get out of gangs? I mean what proof do we have of that?” Prisoner: “I’ve been found inactive. I don’t know how much more proof I need to show that I’m not a gang member.” Commissioner: “Well, you’re inactive. You’re not a dropout. There’s a difference.” Prisoner: “But I don’t participate in gang activities. I’m not a person that’s into that.” Commissioner: “Well, I don’t want to mince words with you here, but – when you say I’m not a gang member, the fact of the matter is you are but you just happen to be inactive.” Prisoner: “Well that’s what the Board told me to do, to be inactive.” Commissioner: “I thought you said the Board told you to get out.” Prisoner: “I am out.” Commissioner: “The way to get out is to debrief or drop out.” “So why not just debrief because if you debrief, you can go over to the THU and OCS will designate you as a dropout.” Prisoner: “I told you why I didn’t.” Commissioner: “And then you could walk the mainline or go to SNY.” Prisoner: “Well, I have to sacrifice myself to protect my family and that’s the bottom line to that. I’m not going to debrief and put my family in jeopardy.” Commissioner: “You said you didn’t have any information.” Prisoner: “Well it doesn’t matter if I have anything or not. Just them knowing that I debriefed, they’ll come after my --” Commissioner: “How would they know?” Prisoner: “Come on, man. They know. They find out. And I’m not going to tell you exactly how but they will find out and the thing is my family is all right now . . . I’m better off just to leave things the way they are. I’m not a member no more. . . I don’t have nothing to do with those guys.” The IGIs never bother him anymore because he’s inactive. “Everything I’m doing now concerns me. Gangs don’t concern me. That’s not my business.”

(2016 Hearing Transcript) [Prisoner is now in RCGP (Restricted Custody General Population) for safety reasons]: Commissioner: What are you doing now to address your criminal thinking, your gang involvement? Prisoner: I’m no longer a gang member, found inactive. Commissioner: “But you’re in the SHU. You don’t even relate to anybody.” Prisoner: “I’m not in the SHU.” Commissioner: “But you’re still in Restricted Custody, are you not? . . . You could have fast-tracked this a long time ago. . . There was a way for you to do that. Why didn’t you just – I mean, it’s not a requirement for parole, but I’m curious, why wouldn’t you do that?” Prisoner: Well because . . . I think you need to debrief to get out there – to do that.” Commissioner: “Yes. Why didn’t you debrief?” Prisoner: “Because I didn’t want to do it. And I didn’t have to do that. The courts say you don’t have to do that.” Commissioner: “You don’t have to do that. But that’s not the point. I’m just asking why you wouldn’t?” Prisoner: “I just never wanted to.” Commissioner: “That’s more criminal thinking, that’s why.” Prisoner: “By me debriefing, I put my family in more danger. I put myself in more danger. Not just leaving the gang, leaving. I’m out of it. And I go my own way. I don’t debrief. They leave me alone. They leave my family alone. I can get out and they won’t bother me. They won’t bother my family. . . Now being out of gangs, I have not done anything. Haven’t had a 115 since 2002. Haven’t taken orders from anyone. I just live – I’m just trying to get out. I’ve done everything that I could to better myself so I can make better decisions.” Commissioner: “All right. I was curious to know why it is that you hadn’t debriefed because . . . there’s lots, I mean there’s lots and lots of offenders we see all the time, left and right, all the time, week after week – who have gone through the debriefing process. And there’s no risk to them or their families. They get out, they go out on parole and they’re doing fine. But that’s a choice – that you have to make. You didn’t make that choice. You made a choice to stay where you were. And so the consequence is that you stayed longer and longer in prison.”

*Prisoner O:* (Comprehensive Risk Assessment) – Psych Refers back to 2009 evaluation where psych “encouraged that [prisoner] could decrease his risk by dissociating himself from prison gangs.” This evaluator stated prisoner “has universally declined to discuss with evaluators his status as a gang member or his relationship to the AB, as he did during the current interview.” Although prisoner has made “notable progress in the last year or so since being released from the SHU,” “his risk has not been ameliorated since 2009 since he continues to withhold valuable information such as his current/past ties to the AB and refuses to discuss how those relationships have impacted his risk for engaging in violence.”

*Prisoner P:* Commissioner: “Did you ever debrief?” Prisoner: “No, I did not.” Commissioner: Is there a reason you didn’t debrief? Prisoner: “Just – taking responsibility for my actions, personally.” Commissioner: “Well, debriefing you do. Not debriefing, I’m not so sure. I’m just being honest with you... I have granted guys that were on the Mesa – and they’ve debriefed, they changed their life, they proved it, and I know they can’t go back. . . . Because when you debrief, you can’t go back.” Prisoner: “Right, and I have no intention of going back to them or anything.” Commissioner: “All right, you say that, but I’m just signaling to you . . . there’s strength in actions that don’t have the strength in words . . . . And so when guys do debrief, I’m pretty comfortable that there isn’t any way he’s going back, you know. That doesn’t mean I’m not still concerned about gang-minded thinking that relates to other things in life.” . . . “You tell me you’re tired, but I don’t see debriefing. I don’t see finality to it. . . . But see, we’re back into words and I look for . . . things that support and strengthen and --” Prisoner: “Right. And the only way I could do that is to get out there and show you and I know I could do that.” Commissioner: “Well, there’s other ways. . . You could do it in here. . . It’s called debriefing or whatever...” Prisoner: Well, see when you say that, you’re trying to make me go from a general population setting, which is what I’m trying to stay at, and put me in a --” Commissioner: “Why is it so important to stay at GP?” Prisoner: “Because a [SNY] - It’s not a general population and that shows that I can’t function in a ..” Commissioner: “That is absolutely --” Prisoner: “That’s how I interpret it, though.” Commissioner: “That’s you. Your own mind is not helping you here. I’ve got to tell you, it isn’t helping at all. My little BS meter just went whoop, whoop, whoop.” Prisoner: “But the reason why I’m bringing it up is because I’m trying to show you that I could function in a general population setting --” Commissioner: “Why?” Prisoner: “-- without being influenced by any other influences. I don’t know if that makes sense, but --” Commissioner: “Well, we’re just showing you the flip side of that coin. It’s a coin. . . . That side of it says to us, you know what, he doesn’t want to, some might say, man up about it. . . . Prisoner: “So it’s an ultimatum?” Commissioner: “No, it’s not an ultimatum. I’m just telling you that --” Prisoner: You’re saying that – I have to debrief to get --” Commissioner: “Wait, wait, let me finish. No, I’m telling you, you don’t have to do that. I’m not mandating an ultimatum. I’m just telling you that when you don’t do that, what happens on this side of the table – what people’s minds are thinking. . . . and you have to make the decision. A lot of guys do very well on the SNY and, you know, . . . Because that stops you being exposed to that... See when you’re on the general population, because the flip side of this thing is you’re still exposed to it. And on the SNY you’re less likely. It’s still there but it’s different. We’re totally aware that there are Two Five gangs and stuff. We’re not stupid. Okay, so I’m just trying to share with you what this side of the table wrestles with when you take the stance you’ve taken. But you know, and only time – and positive demonstration by you over time will bear that out for us. Guys that want to fast track it, they SNY, they debrief, they SNY. They fast track it, because it’s kind of like that door is shut... Now you on the other hand are going to have to prove – over time – that, you know, I’m not and I’m going to show you over time that I’m not. And, unfortunately, of course you’ve only been out of the SHU here what a couple of years so –so I’m trying to be your friend here, okay. And I’m trying to share with you that there are ways to fast track that which an older guy would seem to me would want to do. . . To answer your question, no you don’t have to debrief. But debriefing is a fast track method.”

Prisoner: “I think I was just trying to make the point that what I want to show you guys is that I can program positive being in general population. That’s all.” Commissioner: “Right, and like I was just sharing with you . . . it’s going to take longer.” In Decision section, “Just want to make clear – debriefing is not required. When guys do debrief, it’s a quicker road, it’s like having the fast track. It’s cleaner. But if you don’t, then it just means you’ve got to pull off, you’ve got to pay extra dues. You’ve got to demonstrate your time. It’s a choice you have to make.” . . . “But it’s just one of those things that just gets guys there faster . . . That just means they got to work harder, longer, and better, okay, to illustrate, you know, that they’re not going to be involved in that and they understand . . . what it all is”.

### **SHU Term/Lack of Programming**

*Prisoner C:* Commissioners: “You spent 26 years in SHU and have been limited in programming.”

*Prisoner F:* (Comprehensive Risk Assessment) – Notes limited opportunity to program given SHU placement since 1998. (Mentioned he had an informal job as porter there).

(Parole Hearing) - Commissioner notes very little programming, “although I know you have a – don’t have a lot of opportunities here, but you could have done more work. You’ve been here for a long time. You could have read books. You could have done book reports.”

*Prisoner G:* Commissioner: “You have a criminal and gang mentality. There’s no other way around that. Part of it is institutional fault. When you place an individual in SHU for 5, 10, 15 years, it changes a man. It changes how that man thinks. And to a certain degree, you have to reprogram yourself. I understand that.”

*Prisoner I:* Commissioner dismisses his long discipline-free time, saying “You’ve had leadership roles, so it’s not surprising you have no RVRs for a while. . . .”

*Prisoner J:* Hearing transcript shows prisoner completed lots of programming in SHU, Criminon and several other programs, plus vocational programs before he went to SHU. He was finishing Step 5 of the Step Down Program, then would go to Level II institution, due to classification score of 19, and had 20 years clean time. Commissioner: “Okay, I see it. You got that part figured out, how not to get a 115. . . . But you’ve been in SHU for 20 years.” Prisoner: That doesn’t matter - you can still get write-ups in SHU.” Commissioner: “You figured that out too, how not to get write-ups.” Prisoner: “Yeah it’s a choice. You stay out of trouble.” Commissioner: “So that’s your story.” Twenty years of sobriety was dismissed in the Risk Assessment. “Although 20 years sobriety is typically commendable, his restricted SHU housing and movement prohibited access, suggesting abstinence was driven by external controls.”

*Prisoner K:* [Classified by CDCR as “inactive”] (Comprehensive Risk Assessment) – Diagnosis of antisocial personality disorder based on “history of misconduct and “a lack of evidence of a sustained period of positive behaviors when not in a controlled setting.” Under elder parole considerations, notes inmate’s “advanced age may make it more difficult for him to obtain employment upon release.” “Recent release to mainline may mark a positive change in the inmate’s programming and general outlook.”

(Parole Hearing) - Commissioner: Obviously, you don’t have a lot of work history being in the SHU as long as you were. . . . Didn’t see any vocational training, probably because of your custody level and where you’ve been. .

. . . “You don’t have a long history of positive rehabilitation at this time. I recognize the fact that you were in the SHU for a long period of time”.

*Prisoner N:* (2014 Hearing) - [Prisoner was designated “inactive” by CDCR but still in SHU] Got his high school diploma and a vocational certificate before SHU; in SHU, got a paralegal degree, a general business diploma from Coastline, completed courses from Ohio University in psych, phil, polysci, small business operation management, took Criminon courses, Bible courses and self-help courses: way to happiness, overcoming drug addiction, handling suppression, personal integrity, conditions of life, communications tools; was completing the Step Down Program. Commissioner: “Okay, so you’ve advanced educationally and you’ve picked up a vocation too.” But later, Commissioner says “Now, the thing of it is, going through your paperwork and through your Board Report specifically, it is consistent that you’ve been in SHU. . . . I mean, you know, the programming we can all agree is limited in the SHU.” Other Commissioner says: “Well, you’ve gotten older and you haven’t done much in prison.” Prisoner: What about my education, etc? Commissioner: “You can’t do anything when you’re in – when you’re in SHU you can’t program. You can’t demonstrate that you can get along with other people, that you can mix among other races, that you --” Prisoner: “That’s not my fault.” Commissioner: “--that you can communicate, that you can solve problems without using violence, that you can – that you’ve changed, basically. There’s no way to demonstrate that. Yes, you have upgraded educationally... It’s part of it. But I’m talking about programming, demonstrating – you’ve demonstrated evidence you can get along with other people and you can --” Prisoner: “I can’t show that where I’m at.” Commissioner: I understand that, “but there was a process back where you could debrief and go walk on the mainline if you felt comfortable or go SNY and lots of inmates have done that and they have paroled.”... “There’s positive programming that you can take advantage of and you could have still done your education. . . . And absent that we now have this new process where you’re now in this inactive status, and you’re going to be here for, you know, like a 24-month period.” Dismissing the lack of any drug-related 115s or evidence of drug or alcohol use in SHU, Commissioner says “Well, you’ve only been in the SHU.”

(2016 Hearing) - [Prisoner now out of SHU but in RCGP for safety reasons]: Prisoner: I’m no longer a gang member, found inactive. Commissioner: “But you’re in the SHU. You don’t even relate to anybody.” Prisoner: “I’m not in the SHU.” Commissioner: “Well, okay, you’re out of the SHU now. You’re in the Step Down Program. . . . But you’re still in Restricted Custody, are you not?” . . . . “So now we have this Step Down, which is good. But we want to see that you can interact, that you can live amicably with people of all different groups, all different types, without conflict.” Prisoner: “I’m going to group yard now with guys from all groups and we interact good. We play dominoes together. We do everything together. We go to the yard together.” Commissioner: “The concern that we have is if you can’t even live among a general population of inmates in a controlled environment, then how is it that you’re going to live out on the streets in an uncontrolled environment?” Prisoner’s attorney objects to the question: “We have people who parole out of SNY every day.” Commissioner: “Yeah. Exactly.” Attorney: “And so your question is not relevant to [prisoner]. He would be considered, at this point, as though he was in SNY. . . . You are saying that if he can’t go into GP that he can’t be successful on the street. And that is clearly not true. He can be in SNY and be successful on the street.” Commissioner: “Exactly.” Attorney: “Then he can be in this program and be successful on the street. So the fact that he goes to GP or not is not relevant.” Commissioner: “Okay. Well, we have a difference of opinion. What I’m trying to get at is, why is it that he believes that he can be successful on the street if he doesn’t feel he’d be successful in GP.” Prisoner: “I am in GP. I’m in general population because it’s a mainline.” Commissioner: “Well, of restricted custody inmates. It’s different.”

*Prisoner O:* (Comprehensive Risk Assessment) - Being in groups like Criminon has been beneficial, “but his programming in such groups goes back only a couple of years, at most. Prior to that he was in SHU and was not involved in self-help or other programming.”

*Prisoner P:* Prisoner completed lots of programming, both in SHU and since out of SHU; currently in Criminal Gangs Anonymous. Commissioner: “Not everybody goes to the SHU in Pelican Bay for five years.” Prisoner: “Right, it was actually ten years.” Commissioner: “I have many people who appear in front of me and they don’t. They are just going to their groups and doing – they’re not involved to that extent, and the CDCR does not find it necessary to do that. And so it’s not done lightly.” [Discussion regarding how he can work on insight issues] Prisoner: “That’s stuff I can work on and I’m working on it.” Commissioner: “Okay, all right. Well, you just got out of the SHU. . . . Let’s face it, you just got out of the SHU. . . . Okay, so you have limited, and you’ve been doing some pretty good work here the last year, you know.” Prisoner: “With the limited resources that I’ve had -- I think I’ve done pretty good.” Commissioner: “Well that’s fine, that’s fine. But in the conditions in which you set the traffic lane you’re traveling in – you’ve got a longer road than some people who have the fast track. . . . They get a little pass that you don’t get.”

### **Confidential Information**

*Prisoner A:* (He debriefed and got a date) Commissioner, a former CDCR investigator, minimizes the significance of confidential memos: “I’ve put a lot of stuff in people’s confidential files over the past 30-something years . . . .So let me just tell you this from a broad perspective. A lot – some – of the information that may go in your confidential section really doesn’t tie you into anything involving major criminal behaviors or inappropriate behaviors or anything. . . .So getting hung up on confidential information in your C-file isn’t the direction you really should be overly concerned about.” If you can’t remember anything specific from 2013, it could just be “your name came up.” Could have been from an old report, or something from years ago.

*Prisoner C:* Commissioners: “We asked you here today why you have not debriefed, which is not a necessity, but [given the volume of confidential reports], it puts the onus on you to demonstrate to us that you’re no longer part of a gang or associating with these individuals.” “You say you were not involved since 1990, but when I look at the 1030 forms [confidential information disclosure forms], it’s “apparent from so many sources that you had clear involvement.” It shows a “mental state of somebody who’s dangerous and violent.” “Quite often an inmate can go for years without having any problems and then you may look at a confidential file and see there is a whole list of issues, but it never resulted in a 115.”

*Prisoner F:* Denied 10 years. Decision expressly based in part on confidential reports.

*Prisoner G:* Commissioner: you deny gang membership, but the confidential file is “tainted” with individuals saying you’re a gang member.

*Prisoner H:* [letter describing the interview with the psychologist] “We went back and forth on the integrity of the confidential informant system they used to validate.” He argued that if she convinces each individual she interviews to debrief, they’re all going to tell on the person ahead or behind them on the interviews, and thus they all will have 1030s and will not be released by the Board, making the process a sham.

*Prisoner J:* Commissioner points to continuing 1030s as evidence of criminal mindset and continuing gang activity. Commissioner says the panel did not consider the confidential file, but expressly relies on confidential memos saying he's still involved with gang.

*Prisoner N:* Commissioner: "We reviewed your confidential file, and there are many many hundreds of pages in there. You probably know about that because you were there. You know what you were up to."

## **Validation**

*Prisoner A:* (He debriefed and got a date) Commissioner asks about his tattoos, including Aztec symbols – "are those gang symbols?" Prisoner: "No, they're cultural." [Panel accepts this explanation.] Commissioner notes the prior panel failed to understand the distinction that he was validated as an associate, not a member.

*Prisoner C:* Prisoner says he's had no gang activity or association since 2009. Commissioners: You were revalidated in 2009, so it's clear your association continues well beyond 1990.

*Prisoner H:* (letter describing the interview with the psychologist) "We went back and forth on the integrity of the confidential informant system they used to validate and house us in worse conditions than the average death row inmate. Hence, 'I am only validated because someone wrote my name on paper.'" [He was revalidated in 2013 based on "roster" found in someone's else's cell.]

*Prisoner J:* Commissioner takes issue with prisoner saying "xxxx" is his Muslim name, when everyone knows it's his "gang name."

*Prisoner K:* Commissioner presses him about his gang affiliation, noting the IGI revalidated him based on numerous gang-related items in cell. Prisoner: It was only photographs, not anything gang-related; the courts addressed this issue. Commissioner: "Yeah the court, I agree with what the court said." . . . but that doesn't mean you were not associating with people who were members of the BGF. Prisoner: "I was associating with the other people in the SHU, the only people where I was."

*Prisoner M:* Commissioner states "your complete and utter lack of credibility" is shown by the claim you're out of the gang but you were revalidated just three years ago.

*Prisoner P:* Commissioner asks prisoner what gang activity he engaged in. Prisoner starts listing the things he got validation points for – corresponding in French to practice learning French; birthday card given to him by others. Commissioner: "I want to warn you of something. I am getting the sense that you're minimizing stuff and I warn you, you don't need to do that."