

SJ 3 Public Comment and Board Responses

Law and Justice Meeting
February 14, 2014

Exhibit 2

Richard Schaff
AO 40111
700 Conley Lake Rd.
Deer Lodge, MT 59722

Dear Senator Murphy,

My name is Richard Schaff, and I had a parole hearing on January 31, 2014. I do not think that I was treated fairly, and that is why I am writing to you.

I saw the board in 2008 and was flopped for eight years. This was reduced to six years after the Montana Supreme Court ruled that eight years was too remote for due process to be served. Six years is still too remote if you ask me.

At this appearance I thought I might get some play. I am group complete; I have years of clear conduct; I work; and I live outside the fences at the Work and Reentry Center. I have a 50 year sentence (with day for day), and I am within six years of discharge. I don't know what more I can do than I have already done.

I do not know if you attended my hearing or not. I heard that you were there, but either way I would like to explain what happened. I think I was set up from the start. The board had no intention of listening to me, no desire to see if I am rehabilitated; no interest in my parole plan. Without taking into consideration these and other factors, due process cannot be served.

The most outrageous thing that happened was that a prosecutor from Billings, one who had nothing to do with my case and who I have never met, appeared on Vison Net. He alleged that I raped my victim. This is a complete fabrication. A DNA test and hospital examination of the victim say otherwise. If the parole board had done their homework, if they cared, they would have known this accusation was without merit. And yet this was used against me at my hearing.

Note: When I was arrested, I was charged with several felonies which were later dismissed. Rape was one of these charges; so was Kidnapping. Both of these charges were unsubstantiated and therefore unproveable. As you may or may not know, overcharging a defendant is a common practice among prosecutors in order to force a defendant to accept a plea agreement. The Rape charge and the Kidnapping charge were both dismissed "without prejudice." This means it will never be at issue again. The prosecutor knew this, and the parole board should have known.

In the process of running me down, this prosecutor stated that I was the worst sort of human being, and I should not leave prison alive. This "evaluation" might be taken seriously if this man had bothered to interview me before the hearing. Since he did not, his assessment is invalid. He assumes that I am the exact same person who committed a horrible crime almost 20 years ago. He assumes that the many groups I have taken, at taxpayer expense, have done no good. Since he, and the board, believe tht I am that same person, they cannot gauge my deep remorse for what I did nor my determination to never let anything like that happen again.

My Case Manager was at my hearing. He told me that I did the right thing by not speaking out. At the time, in the extremely uncomfortable position I was in, this approach might make sense. Debating the views of a prosecutor and the parole board would be at best an exercise in futility, at worst it could get me locked up.

But there were things that needed to be said. For instance, a lot was made of letters I wrote to Judge Baugh over 15 years ago. If I had a chance to explain, I would have told them that I was overmedicated for the first 10 years

of my incarceration and was not in my right mind. I would have explained that I am out at the Work and Reentry Center now, working at the M.C.E. Dairy, and doing better than I ever have. How I feel like I am ready to transition back into society. And how keeping me here until discharge will do more harm than good. My Case Manager agrees that making me discharge my sentence and turning me loose with absolutely no supervision serves on one. With six years left, a five year flop ensures that I will discharge from prison. This should be obvious to the parole board.

I never got a chance to explain any of this, and I deeply regret it. At the time, no one seemed interested. It was as if their minds were already made up. Again, this is hardly due process.

Things don't just have to change, they have to change drastically. Few see the problem as it exists: the lack of due process, the lack of a fair hearing. The whole mindset needs to change. It is a daunting task, and after what I just went through, it is hard to be optimistic.

The bottom line is, they need to make an effort to know us if they are going to fairly judge us and thereby determine our future. I don't think this is asking too much.

Thanks for all you do for us, and thanks for listening.

Respectfully,

Richard Schaff 2/4/14

February 2, 2014

Dear Representative Peterson and others interested in the mental health system improvement cause,

I am the woman who came and talked to you during noon hour of an Interim Law and Justice meeting on June 22, 2011. You had heard me testify about a son whom had been sentenced to Montana State Hospital's forensic unit for a non-violent texting violation. The judge had utilized statute 46-14-312 to assure that he would receive treatment and then proceed to the right level of supervision, but this did not happen.

When I requested help from you, I had a 17 page request from the judge to the appellate court system in hand, as when he had investigated the poor treatment of this kid in the institution he became aware that a court error had occurred causing the incarceration in the first place and he honorably tried to correct it. I appealed to you for help, because the kid had meanwhile gone before the parole board in May and been sentenced to a pre-release center, but none of the centers would accept a person with a mental problem and he couldn't go to his pre-arranged treatment bed without disobeying the parole board despite that the doctor and family had desired this; consequently he was existing in the MSH forensic unit in limbo.

You assisted me in talking to Mr. McGee, Chairman of the Parole Board, who had officiated at his hearing, and Mr. McGee promised to intervene and I think that he tried to do so as Helena promised to do their own private interview of my son, but they never got to it. Nothing happened and the guy waited in a locked unit and they charged the state \$590 per day until October arrived. Then the appellate court lawyer and her firm joined the judge and prosecutor in their absolute disgust of the bureaucracy and inefficiency and they received a court order to release him by Oct. 4. My son lost fifteen months of his life locked on that mental ward even though many (hospital adm., DPHHS lawyer, Gov., entire upper echelon of DPHHS staff, Board of Visitors, Judge, Prosecutors, Legislators, doctor) knew that he was wrongfully imprisoned, because of their inertia to deal with their own system. The state spent upwards of \$276,000 unnecessarily for institution care on this one case. \$17,000 per month times 5 months was directly due to the parole board making a referral that was not able to be done.

I know that your responsibilities to the Montana people are done, but as a citizen would you please suggest the best solution for the parole board factor of the treatment of mentally ill persons in Montana? I do not think that a volunteer committee has any business overriding a family, doctor, and patient in their discharge plans. I don't understand why the patients need to go through the stress of appearing before an intimidating crew of two that say comments like, "You haven't served enough time before they even review their case". When we know that they do not have any more insight into how a person will do in the community than the treatment team that has been getting them ready for months. It is a well-established fact that family support and the expertise and existence of a transition case manager determine that success and those variables don't get evaluated in this meeting. Congressman Webb of the DPHHS Interim Committee broached the idea of having the MSH parole meeting video-taped, but improving their practices doesn't whitewash the question of their necessity in the first place.

I don't have clout, only common sense. I don't represent anyone but the patients who do not have the wherewithal to represent themselves. I know that other states are lowering their jail suicide rates just by giving the inmates "hope" that the mental health system will be fair to them, but that is not the case in our state. It was quite well established during the last session that there was a problem. I don't want more testimonies without some action. Mentally ill persons continue to be punished five times more than the general public for the same crime. When they do something stupid, while manic, they are often very apologetic and able to maintain control of their problem with medication, but our system insists that they be held captive for 25% of their sentence regardless of this fact. The courts set longer sentences because of the mental ill factor (Ex. 3 years for an electronic non-violent break of a restraining order?) and because they do not realize that the institutions are refusing to properly use the transfer statutes to help the people recover. This is a recipe for unfair treatment of the patients and full jails. I need to mention the struggle of re-establishing people after long term institutionalizations and criminal histories compared to shorter hospital stays and keeping them out of the court system. SB 11 last year started to fix this, but was gutted.

My kid made a mistake while ill; the court made a mistake, the institution made a mistake, the parole board made a mistake. The legislature has been challenged with trying to improve the situation. Do we need a law change or oversight?

Sincerely and Thank You,

Janice Reichelt, Phillips County Citizen

In America, we have set up our whole society within a system of checks and balances. Democrats & Republicans, Senators and Representatives, Voting, Impeachment, Appeals, Veto, Pardon, Commute...everywhere you look there are ways to make sure justice is fair. But for some unknown reason the MBOPP has an unlimited ability to make ANY rule they like as they see fit, and have no accountability for matters set before them. In fact, the whole purpose of the Interim Law & Justice Committee is now to deal with just these matters. So, thank you for reviewing this information and hopefully instituting some checks and balances on the volunteer board to see that the actual MISSION and VISION statements are actually carried out. They may be busy with their lives and other jobs, but the prisoners in the system have their lives on hold waiting on this board every day. Thank you.

POINT #1:

The Montana Board of Pardons and Parole has established an appropriate mission and vision statement. Of particular note is the goal for reintegration, the fair, effective, safe and efficient fashion for business to be conducted with fair decisions and sensible use of state resources.

Mission Statement : The Board of Pardons and Parole, as an essential part of the criminal justice process, serves all Montana Citizens by administering a parole system that is balanced with public safety, offender accountability and rehabilitation, as well as, protecting the interests of victims and communities, with the goal of successfully reintegrating merited offenders back into society through a reentry process. All employees and members of the Board of Pardons and Parole are committed to securing the effective application of and improvements to the clemency and release system, as well as the laws upon which they are based. The parole process is carried out in an effective, fair, safe, and efficient fashion.
Vision Statement: The MBOPP envisions a pardon and parol system that promotes fair and consistent decisions based on public safety, victim concerns, successful inmate reentry, and sensible use of state resources.

POINT #2:

Montana law provides that the board may adopt any rules it considers proper.

46-23-218: Authority of the board to adopt rules. The board may adopt any rules that it considers proper or necessary with respect to the eligibility of prisoners for parole, the conduct of parole hearings, video hearings, progress reviews, the conduct of revocation proceedings, clemency proceedings, and conditions to be imposed upon parolees.

POINT #3:

The Board has outlined how to handle specific applications before them such as clemency including commuting and pardoning of sentences with serious gaps causing direct conflict the mission and visions statements outlined above.

EXAMPLE: Administrative Rule 20.25.902 (from the website)

(a) The applications shall state the type of executive clemency requested; pardon, commutation, respite, or remission of fines or forfeitures.

(1) In cases in which the death penalty has not been imposed, the board staff will conduct a preliminary review of the application for clemency and submit a report to a hearing panel for its consideration. **WHEN? There is no timeline.**

(a) The hearing panel, based on the staff's review, may accept or reject the application. The panel will base its decision to accept or reject an application on:

(i) all the circumstances surrounding the crime for which the applicant was convicted; and

(ii) the individual circumstances relating to social conditions of the applicant prior to the commission of the crime, at the time the offense was committed, and at the time of the application for clemency.

(b) If a hearing panel decides to accept the application, it will request the department to conduct an investigation within 90 days of its request. The hearing panel may request a psychological evaluation of the applicant as part of the investigation.

(i) Within 90 days of receiving the investigation report, board staff will compile all the information for a hearing panel's consideration and make a recommendation to the panel that the panel either reject the application or order a hearing on the application.

(ii) The panel may require other reports, that in the panel's opinion, are necessary.

(c) After receipt of the investigation report, the board staff's recommendation, and any other reports the panel has required, a hearing panel will consider the application and decide whether to deny the application or hold a hearing concerning the application.

(d) If in the opinion of the hearing panel sufficient cause appears to conduct a hearing on the application, the panel will sign an order indicating the following: (within 90 days they must do this according to (b)(i)

(i) the date on which the hearing will be held; **WHEN? There needs to be a timeline for how long before a hearing must be set up in accordance with mission and vision statement.**

(ii) that all persons having an interest in the matter who desire to be heard should be present on the date set for the hearing;

(iii) that the order must be printed and published in a newspaper of general circulation in the county where the crime was committed once each week for two weeks; and

(iv) that a copy of the order must be sent to the district judge, the county attorney, the sheriff of the county where the crime was committed, and to the applicant.

(e) ~~If the panel denies the application without a hearing, it will give notice to the applicant and will post the denial on the board's web site within 21 calendar days of the board's decision.~~

TO SUMMARIZE:

Application submitted. **NO TIMELINE TO RESPOND**

Investigation requested - 90 days to complete.

Investigation Report reviewed within 90 days.

Hearing to be set. **NO TIMELINE FOR HEARING TO SET.**

If no hearing is to be set. Must notify in 21 days.

POINT #3 Further Explained:

The failure to set a deadline at the time of the initial application and again for the hearing date allows for *unreasonable delays at the whim of the parole board* with no system of checks and balances. If it is within reason to set two 90 day timelines for investigation and review, and a third for 21 days if it is to be denied a hearing, this it is **NOT ONLY** within reason to set the initial application timeline and hearing date timeline, but **IN FACT** a necessity in order to follow the mission and vision statements.

EXAMPLE FROM PERSONAL EXPERIENCE:

In September 2013 an application to commute was presented to the MBOPP. No response has been given to indicate if this application will be approved for investigation and it is February. That is 5 MONTHS. If the application were now fast tracked from this moment forward it would still be over a year before possible action could be taken to parole the applicant. One year is not meeting the MISSION AND VISION statements set forth for **fair, effective, safe and efficient or a sensible use of state resources**. As you may be aware the cost to house a Montana prisoner is \$36,000 a year.

Point #4:

Why would a case/applicant be ignored or delayed?

1. Because there is no official timeline set up for that stage as outlined in the administrative rule above.
2. The Volunteer Board may not see a need to process an application with expediency as is demonstrated in a recent email communication below. Board business is not their priority.
3. There is no checks & balances system in place for Board accountability.

When I contacted the Board (3 times) , I received the following response after my third letter requesting at least acknowledgement since in this case man's constitutional rights are being violated each day he sits in that prison as this is a commute request based on Supreme Court Ruling Miller V Alabama.:

" <mbopp@mt.gov> wrote:

*Ms. Franklin, I am acknowledging your letters. There has been no action taken on _____'s application. When the Board makes a decision, it will be published in the media. **Our Board is a citizen board with many of them having other jobs as well.** When they have all had an opportunity to go through the material and are ready to make a decision on the application we will proceed. **I have no quantifiable date at this time.** I am sorry, that is the best answer I can give you at this time. Montana Board of Pardons and Parole*

POINT #5:

The Board has an obligation to comply with Montana Law (2007) and Supreme Court Ruling Miller V. Alabama (2012) in a timely fashion as it is a matter dealing with violations of the US Constitution. This is a clear cut matter and should not require years to resolve. In fact, Federal Judges are requiring this of states in a timely fashion. Example just done in Michigan: <http://www.aclumich.org/issues/jlwop/2013-11/1897>

MONTANA CODE ANNOTATED 2013 (Excerpt) 46-18-222. Exceptions to mandatory minimum sentences, restrictions on deferred imposition and suspended execution of sentence, and restrictions on parole eligibility. Mandatory minimum sentences prescribed by the laws of this state, mandatory life sentences prescribed by 46-18-219, the restrictions on deferred imposition and

suspended execution of sentence prescribed by 46-18-201(1)(b), 46-18-205, 46-18-221(3), 46-18-224, and 46-18-502(3), and restrictions on parole eligibility prescribed by 45-5-503(4), 45-5-507(5), 45-5-601(3), 45-5-602(3), 45-5-603(2)(b), and 45-5-625(4) do not apply if:

(1) the offender was less than 18 years of age at the time of the commission of the offense for which the offender is to be sentenced;

EXAMPLE HOW A CASE LIKE THIS SHOULD LOOK TO WORK WITHIN MBOPP MISSION/VISION:

1. **September 2013: MBOPP APPLICATION to commute received. Constitutional Sentencing Violation -MONTANA CODE 46-18-222 and SUPREME COURT in MILLER V. ALABAMA**
2. **(30 Days to review – establish this rule); Approved to investigate.**
3. **Up to 90 days to investigate.**
4. **Up to 90 days to review investigative report , set hearing within 30 days – establish this rule.**
5. **Forward recommendation to Governor to Commute or Parole.**

This is more than reasonable and fair, and is still taking 8 to 9 months to handle if not more. That is much more in line with the Mission and Vision Statements outlined by the Board. The Montana Constitution allots for SPEEDY justice. (Montana Constitution: Article 2, Section 16)

Respectfully submitted for your action by a concerned citizen of these United States,

Michelle Franklin
Mfranklin104@cox.net
(602) 469-5162

Weiss, Rachel

From: Slaughter, Christine (BOPP)
Sent: Wednesday, February 05, 2014 3:51 PM
To: Weiss, Rachel
Subject: Inquiry
Attachments: Connelly, Denis #32076.pdf

Rachel,

Attached is an inquiry and response to an offender. His letter indicates that he had planned to send his concerns to the Law & Justice Committee. I wasn't sure if he had sent the Committee any information surrounding his case yet so I wanted to take the liberty of forwarding my response to you to share with the committee. Feel free to let me know if you have any questions. Thanks Rachel!!

Christine Slaughter

Montana Board of Pardons and Parole
1002 Hollenbeck Road
Deer Lodge, MT 59722
406-846-1404

Montana Board of Pardons and Parole

1002 Hollenbeck Road
Deer Lodge, MT 59722

February 4, 2014

Mr. Denis Connelly #32076
Montana State Prison – MDIU

Dear Mr. Connelly:

This acknowledges receipt of your correspondence regarding denial by the Nexus program. I first wanted to begin by apologizing for the delay in response. With our limited staff and expanding case load, timely responses can sometimes be a challenge. After you were denied by the Nexus program, the Board amended the disposition to allow you to complete Meth-ITU or Long Term ITU followed by pre-release.

I believe your recollection of our meeting at Start is incorrect. The purpose of the revocation hearing is to make a final determination of any contested relevant facts and consideration of whether the facts so determined warrant revocation of your parole; and if revoked, whether you should be credited with all time served on parole. You voluntarily admitted to violating conditions of parole as outlined in the on-site hearing summary I provided to you. As such, I made a recommendation to the Board regarding further community placement. The Board is under no obligation to follow my recommendation. As such, I would never have guaranteed that they would follow my recommendation. I apologize that you misunderstood.

Mr. Connelly, I do believe that you might need to take a deeper look at the circumstances surrounding your current situation. The Court in the **Fifth** Judgment on Revocation of Suspended Sentence for cause numbers DC-91-53, DC-91-106, and DC-99-123/54 correctly summarized your history when it was stated that you “had multiple opportunities for treatment that he has not taken advantage of, so it appears to the Court that the Defendant should be directed back to the Department of Corrections.”

You were released on parole on February 20, 2013 and violated by use of methamphetamine during the month of July 2013. The On-Site Hearing Summary dated September 8, 2013 states that you “took little responsibility for his return to illegal drug use, placing all the blame on the “system”. The report continues to state that the hearings officer “was very concerned about his rapid turn to drug use, within a few months of release from custody, and the thinking that he was exhibiting, both in his behavior over

the course of the month leading up to his arrest, as well as in this hearing". It appears as though this behavior and thinking pattern continues today.

The Board's ultimate goal is community safety. With your history and prior convictions of Sexual Assault, Sexual Intercourse without Consent, and Sexual Intercourse without Consent against two minor females, the Board is well justified in exhibiting caution with regard to release consideration. I wish you luck in all your future endeavors and hope with additional tools you are able to obtain and maintain your sobriety. On an additional note, I have taken the liberty of forwarding your inquiry and my response to the Law & Justice Interim Committee, pursuant to your written intention.

Sincerely,

BOARD OF PARDONS & PAROLE
Christine Slaughter, Parole Board Analyst

cc: Law & Justice Interim Committee

OFFENDER/STAFF REQUEST (OSR) FORM

from:

TO: Christine Slaughter Board of Pardons
(Name and title of staff person)

DATE: 01-22-14

to: Denise Connelly ID#: 32076 FACILITY: MSP UNIT: MD10

SUBJECT: (Briefly state your question and or concern and the solution you are requesting. Your failure to be specific may result in no action being taken. If necessary you may be interviewed in order to successfully respond to this request)

when we met @ The START Facility you told me that I should waive my appearance @ the Board because they would certainly go with your recommendation. Considering I had only 1 violation for #9 Substance Abuse.

The Parole officers Allison Wilson/Christina Bessoney recommended Nexus - despite my informing them that Nexus does not take S.O. Cases. @ our meeting you were informed by both myself and Jennifer that No nexus would not take me because of my Past History. Dan Obewiser recommended Connections because of this issue and YOU SAID YOU WOULD RECOMMEND Both Nexus and Connections. but then only recommended Nexus. WHY DID YOU PUSH FOR A PROGRAM THAT YOU KNEW WOULD

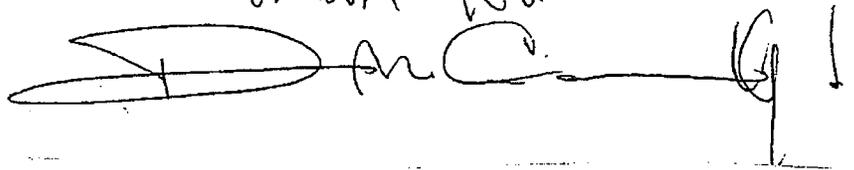
STAFF RESPONSE: (for staff use only) NOT TAKE ME AND FAIL IN YOUR WORD

That you would #1 have me screened for Connections
and #2 have me reappear before the Board if I
was rejected by both of these programs?

I would like a Consice answer to this
question that when I Contact the Law and
Justice Interam Committee with this example
I am Clear in my definition of what
happened in my Cause.

I am Very disapointed to be here on a 1st and only Violation,

Thank You



Weiss, Rachel

From: Johnson, Fern Osler
Sent: Thursday, February 06, 2014 11:12 AM
To: Weiss, Rachel
Subject: Information of rebuttal for Rudy Stock's testimony to LJIC in December.
Attachments: The Real Kenney.docx

Rachel, I know the committee does not want to hear individual cases during oral public testimony. Here is the rebuttal to Rudy Stock's written and oral testimony he gave in December to the committee. I thought I would send it this way in case there are any members interested in hearing the facts rather than hearsay. Thanks Fern

The Real Kenney's Story

Sent to clarify written and oral testimony of Rudy Stock presented to the Law and Justice Interim Committee 12-6-2014

....Kenneth Hall #44854

He was arrested for attempted sexual assault., not Sexual Assault.

He offered a nine year old girl \$100 to go to Woodland park, not a lady to go to his residence as reported by Mr. Stock. The little girl told her mother who contact authorities. He was also picked out of a line up by three other young girls (ages 6-9) as being a man who offered them money to go to the park with him. One of these little girls he gave \$1.00 to and then asked if he could hug her (with his pant fly undone).

He was given a 15 years with 10 years suspended. (Mr. Stock reported 15 yrs)

He discharged from prison in 2003 (not paroled). At that time he was supervised by Helena Probation Dept. His probation (not parole) was violated in 2004 because he was advertising in the newspaper and bulletin boards to babysit or care for young children or developmentally disabled adults, which got him terminated from Sex Offender treatment, he was using alcohol and failing to pay his court ordered fines. Besides his pay, he was getting SSDI. He was not terminated because he could not pay for treatment or ankle bracelet.

The judge sentenced him to 10 years on the revocation. He was in prison from 9-2004 until 4-2012 or about 7 ½ years. He was parole to Billings in 4-2012. He was living at the Mission and was in Larry Gaalyswich's Team Mentoring program. DOC requested and was approved \$940 dollars to pay for his sex offender treatment for three months while he got his SSI going again. He was terminated from the TEAM mentoring program for failure to meet program standards and then moved into the Adullam House, where he almost immediately exhibited problematic behavior. He was terminated from Sex Offender treatment for rule violations, not for failure to pay. ISP did not charge him for the ankle bracelet. There was no charge for him to live at the mission. While in Billings on this parole, he had no employment, but was doing household chores for the TEAM program. The parole officer tried to get him hooked up with voc rehab and COR (a local program for disabled and MH folks).

His parole was revoked due him having a relationship he did not disclose to treatment, he left the Addulam house to go to a female's residence w/o permission and associating with disabled women outside a day treatment home without asking permission from ISP officer to have such associations.

His parole was revoked in December 2012 and he was re-paroled in June of 2013. His brother was going to arrange for a room for him in Billings, but Hall refused and applied to be parole to the mission in Billings. This plan was denied because the mission was not a suitable residence for a sex offender on GPS monitoring, which is required for sex offenders. He wanted to go to a girlfriend's house in Livingston, which was denied. He was given an application for a home the Next Step Home in Missoula but he refused saying he wanted to go to the Poverillo Center in Missoula or a mental health group home in Missoula, Bozeman, or Billings. A plan was sent out to Missoula and approved. He was scheduled to go to Missoula on 10-29-13. On 10-28-13, Hall told DOC staff he did not want a parole but rather wanted to discharge his sentence. A week or two later, Hall changed his mind after talking to Senator Caffero. His plan was sent out to Missoula on 12-12-13 but was denied because there was no room at the Poverillo Center. Last information available on 1-27-14 was that he was going to apply to a PRC.