

HABERN, O'NEIL & PAWGAN, L.L.P.

A limited liability law firm consisting of professional corporations

Huntsville office:
P.O. Box 8930
Huntsville, Texas 77340
(936) 435-1380
(936) 435-1089 Fax
www.paroletexas.com

Conroe Office:
300 W. Davis Suite, 540
Conroe, Texas 77301-2573
(936) 756-8241
(936) 756-8414 Fax
www.paroletexas.com

SO YOU ARE THINKING ABOUT HIRING A PAROLE LAWYER

Hiring a parole lawyer should be based on the same careful selection process as when a potential client is hiring any other licensed professional. Experience and legal knowledge count. We believe that too often inmates and their families hire a parole lawyer based totally upon the fee without understanding that a parole proceeding can become as complicated as any other legal matter. What we intend to do with this publication is to tell you about our firm and about our experiences over the last thirty plus years of doing parole work in Texas and several other states.

Our New Huntsville Office

The first thing we wish to announce is that after over twenty five years of having our Huntsville area office located in Riverside, Texas, we have moved into town. Our Huntsville, Texas office is now located at the Bank of America Building, One Financial Plaza, Suite 450. We receive our mail at the above stated post office box. We also have offices in Houston and Conroe, Texas. Of the three lawyers in our firm, all have been employed by the Texas Parole Board or the public defender service at the Texas prison. Therefore, we think we understand how both the prison and the Texas parole board work. Here is some basic information about our Huntsville and Conroe staff:

1) Bill Habern is the founder of this law firm. He has been dealing with inmate related legal problems for over thirty years. He is likely the most experienced parole lawyer in Texas. He has a book on Texas Parole law that has been distributed at many of the legal seminars where he has been a featured speaker for many years. Before his resignation effective in 2004, Habern spent over twenty years as chairman or co-chairman of the Texas Criminal Defense Lawyers corrections committee, and for many years taught parole revocation training sessions at the request of the Texas Parole Board to parole hearing officers. Today Habern spends most of his time in Houston, however, he also maintains an office at the Huntsville office where the majority of our office staff is also housed. Contrary to the rumors floating around, Habern has not retired, nor does he intend to retire in the immediate future. While today he maintains a limited case load, he continues to focus on

difficult cases, including S.B. 45 cases and cases where a life sentence is involved. A great many lawyers who now specialize in parole in Texas learned how to do parole work while associated with Habern. Habern was a member of a defense team that successfully defended an inmate charged with killing a prison warden and farm major. He also was a member of a defense team that won a U.S. Supreme Court case dealing with federal sentencing and parole issues. He has published over 20 articles dealing with Texas parole and prison issues. Habern has also testified as an expert witness in the Ruiz prison civil rights case, and has testified as a plaintiff's expert in several civil cases involving the Texas Parole Board as a defendant. Habern has been a regular witness before various committees of the Texas legislature where the issues involve corrections, parole, or post conviction legislation. Habern is a regular seminar speaker on parole and prison topics for both the Texas Criminal Defense Lawyers, and the Texas Bar Association.

2) David O'Neil, is now our managing partner. Dave is a retired marine, holds a Juris Doctor's degree, and a masters degree in law. David has extensive trial experience, and after he retired from the U. S. Marine Corps, he served for five years as director of the TDCJ public defender trial services. David not only is a fine trial lawyer, but he served as the 1st Acting Director of the section that defends civil commitment cases of sex offenders. David has also established a reputation in the area of parole revocation and parole presentation cases. David has published several articles on topics that include: parole, civil commitment of sex offenders, and the defense of inmate criminal cases. He also wrote the first trial litigation manual on defending inmates indicted for crimes while in TDCJ. He is currently Chairman of the Corrections Law Committee for the Texas Criminal Defense Lawyers Association.

3) Scott Pawgan is the firm's newest partner. Mr. Pawgan is Board Certified in Criminal Law by the Texas Board of Legal Specialization. He is a graduate of the University of Tulsa Law School in Tulsa, Oklahoma and the University of North Texas in Denton, Texas. Prior to coming to the firm, Mr. Pawgan was a trial attorney at State Counsel for Offenders. While at State Counsel Mr. Pawgan had a significant docket and secured numerous acquittals for inmates indicted for committing crimes within the Texas Department of Criminal Justice. For instance, Mr. Pawgan tried the first inmate on inmate sexual assault case from

Texas Department of Criminal Justice tried to a jury, and was able to secure an acquittal in State of Texas v. James Crowder.

Since leaving State Counsel for Offenders, Mr. Pawgan has continued to successfully represent criminal defendants in Courts around the State. Mr. Pawgan has tried numerous First Degree and Habitual Felonies and received numerous acquittals in jury trials. These acquittals are in cases ranging from the most serious offenses such as Murder, State of Texas v. Bezaley Jackson to theft cases such as State of Texas v. Scott Howard. In addition, Mr. Pawgan has written numerous appeals securing reversal of convictions for his clients. An example of a successful appeal Mr. Pawgan litigated on behalf of his client is a published opinion in Castleberry v. State, 100 S.W.3d 400.

Mr. Pawgan is also proud to litigate in state and federal courts for individuals who are having their health and rights threatened by the Prison System, the Parole Board and any other State agency that threatens the rights and health of fine citizens in Texas. An example of the litigation Mr. Pawgan has engaged in is the plight of Roddy Pippin. Mr. Pippin was very ill and incarcerated on 4 two year stacked state jail sentences. After over two years of litigation, Mr. Pawgan was able to secure the release of Mr. Pippin on shock probation so that Mr. Pippin could receive the life saving medical care he needed.

Mr. Pawgan is a member of the Texas Criminal Defense Lawyers Association, National Association of Criminal Defense Lawyers, Montgomery County Criminal Lawyers Association, Harris County Criminal Lawyers Association, and the National Legal Aid and Defender Association.

Dealing With Unexpected Detours During Parole Representation

The journey from being public defenders at the prison, trying writs and defending revocation hearings in the early 1970/s to developing a corrections law firm which employs five lawyers has been quite an experience. Over the years our practice has incorporated all types of prison or parole work from winning civil rights actions, to putting together the defense team that successfully defended an inmate wrongfully charged with killing a warden and prison major. In the early days of the firm Bill Habern took on all kinds of criminal problems, but specialized in prison and parole issues. By 1999 Habern did almost exclusively parole law, and did not have time to take on other areas except in rare circumstances. Once David O'Neil joined the firm, Habern was again able to start expanding the services our firm offered. We now consider that we have the most experienced team of prison, parole, and post conviction lawyers in Texas.

By reviewing the following case studies, you will see why you need lawyers with broad corrections law

experience when undertaking a parole case. Over the years there have been a number of situations arise where the firm was hired to represent an inmate in a parole effort, only to find upon evaluating the case, there was reversible error in the client's record, or the time credit was so messed up that, if corrected, the client would walk out the door without parole. **We strongly suggest that when an inmate is considering employment of a parole lawyer, that one be chosen who not only knows parole law, but also is capable of spotting such things as time credit errors, how to deal with an unexpected discipline action, and what to do when an error in a trial record is discovered.** When such an error is spotted, the lawyer needs to know how to approach and litigate those issues for the client. Most of the cases here discussed involve situations where we were initially hired to undertake a parole effort, but in the course of our evaluation we discovered other issues that, in many cases, were of greater benefit than a parole would have been. The client then retained us on these other matters as well. In many of these cases the client usually had no idea his case was flawed. Hiring lawyers whose practice includes all areas of corrections can be a substantial benefit.

First interests in employing a parole lawyer

The first thing a prospective client might want to know is the parole lawyer's experience in dealing with parole matters, but also, be sure to know what kind of history the firm has in overall post conviction issues because one never can tell when a problem will arise during a parole case that is collateral and very important to the parole issue. If the lawyer limits his/her practice to parole, there may be a hesitancy to take on the additional issues that present themselves. Our firm is capable of undertaking collateral issues when they appear. While all inmates want relief from prison confinement, hiring a lawyer whose practice is limited to just parole may result in not looking at the other overall possibilities the case brings. For example, when a parole lawyer is hired, will that lawyer review to determine if time credit figured correctly, is there an error in the judgment or sentence, is there an issue about writs the parole lawyer could not answer? Those things count.

Initial procedures when hiring a lawyer

Our office does not accept every case we are called on to consider. Many family phone calls we receive result in our having to explain, after talking with the family, that the inmate has no chance at the next parole. We do not like to turn cases down, but we believe that taking a case where we have no chance to win is not the thing to do. A decision to decline employment in a parole matter can be based on any number of reasons. For example, representing someone coming up for the first time on a long sentence where the conviction is based on a serious crime of violence would be a waste of time and money. Seldom do 3(g) offenders even have a chance at a first parole. Someone who has a long criminal and discipline history, or someone who has just not served enough time to be a serious candidate for parole should be told those facts. Beware of lawyers who take every parole case that walks into the office. What do you think a parole board member thinks of the lawyer who regularly comes in to present a case that the board member and the lawyer know can not be granted parole?

There are those cases where lawyers are hired in an attempt to minimize the length of set off, however, such cases should be taken only after full disclosure to the client as to the purpose of what the effort will be. Presenting parole cases which have no chance of winning on a regular basis is the best way I know for a lawyer to destroy his/her reputation and credibility before the parole board. While everyone is going to lose a case every once in awhile, beware of those lawyers who take every parole case that comes in the door.

Another pet peeve is lawyers who take too many cases at once. Our lawyers have sat in the reception area of several regional parole board offices when another lawyer will come in and be scheduled to present six or seven cases in one afternoon. Usually these lawyers may be well intended, but how can anyone be fully prepared to present six or seven parole cases in one afternoon?

Another issue that concerns our office involves those parole lawyers who do not regularly take the family of the client to the parole board for the hearing. We think the family should be allowed to participate in the presentation of the parole case at the time the presentation is made. We also have serious concerns about lawyers who do not supply the family and client with copies of the parole presentation. The client has a right, and the lawyer has a duty to be kept updated about documents filed, and any change in the status of his/her case. Some lawyers try to avoid supplying parole client's copies of documents filed in their behalf by having the client sign an agreement of employment that says the lawyer does not have to supply copies of filed documents. We do not believe this kind of agreement is legal, and it certainly is not ethical. Our clients get copies of all documents filed.

Our Practice of Evaluating Parole Cases

We believe that most clients do not want to pay substantial legal fees for representation only to learn, once the lawyer evaluates the case, that there is very little chance that relief will be granted. For that reason we divide our representation into two parts, allowing the client to decide whether they want to proceed with representation in the face of an adverse evaluation. While an initial evaluation of a parole case may not appeal to everyone, we have found it to be the best way to really understand and evaluate the chances for assisting a client in getting paroled without initially costing the client an arm and a leg.

First, we conduct an initial interview with the client. Then we prepare a summary evaluation which states what we believe to be the facts, issues, strengths and weaknesses of that particular case. This gives the client and family an evaluation of how we view the case, and what the costs will be, prior to the full fee being paid.

We apply the initial interview fee to be included and applied to the overall legal fees charged to represent someone before the board. In other words, we credit the cost

of the evaluation to the cost of presenting the case before the parole board. Thus, upon receiving the evaluation, if the family decides to employ our firm, the cost of the initial interview will be deducted from the overall cost of presenting the case before the parole board. If the sentence is a short sentence, or the case involves discretionary mandatory supervision, it is possible that there will not be an initial evaluation. On the other hand, there are cases where we believe initial evaluations are absolutely necessary. The evaluation serves several purposes where the case involves serious charges, or has other substantial problems. For example, the evaluation interview can give the client and the lawyer a chance to get to know each other. It gives the lawyer the chance to understand the client's view point of what happened, and affords an understanding for both parties of what problems are present in the case. Of more importance, the initial evaluation can cause the potential client and family to be aware before spending a large sum on attorney fees, if our office is of the belief that our services at this time will not likely lead to a successful effort. We think the case will not be favorably voted, even with our help, we will so say in our evaluation report. On the other hand, there are cases where we are hired for the purpose of attempting to limit the length of time between parole considerations. A short set off is what some clients are looking for.

Typically we require eight months to a year before an individual comes up for parole to begin working on an evaluation. This gives us enough time to prepare an evaluation and consult with the family prior to them hiring us for parole representation. Depending upon the case, we may be able to use the evaluation process even where there is less than eight months before the parole review date. When there is not enough time before the parole review date to conduct an evaluation, we may still accept the case for parole representation; however, we will have to proceed directly to preparing the parole brief for presentation to the Parole Board.

Our firm prefers parole cases where there is a challenge. For example, lawyers in our firm are not hesitant to take on a Senate Bill 45 case, or to represent someone trying to get paroled while serving a life sentence. Another example of a case which presents a challenge includes those cases which arise from a plea bargain, so no evidence was introduced to the court. As a result, evidence favorable to the defendant, or evidence of mitigation that was available but not presented to the court during the plea process has a tendency to slip through the cracks. In such situations, it is unlikely that such mitigation or favorable evidence is going to get placed in the parole board file. These cases represent an area where we have had a reasonable degree of success. Undertaking such a case requires going back to the drawing board and putting the case together again from the first. Locating that old evidence that was not introduced, and getting it back to present to the board. Only in researching the case we must attempt to locate and present the evidence or mitigation that the D.A. may have known about, but failed to mention in his report to the parole board. Sometimes we find the trial lawyer dropped the ball, or was unable to locate a witness. Maybe the D.A. or judge failed to fully understand the facts from the defendant's point of view, and an excessive sentence was imposed. Finding these situations and being able to assist in getting the problems corrected is most rewarding. It is also very time consuming and demanding. Let me discuss a few of the

examples of what we have found as the result of doing initial investigations for a parole review.

Parole Investigations Can Lead to Unexpected Results

Over the years of doing thousands of parole investigations and evaluations has led to surprising twists in representation of our clients. For example, there have been a few times that our investigations have resulted in the discovery of errors made at trial or during a plea that have resulted in successfully advising our clients to abandon parole and in it's place to file a writ. This result occurred on the very first parole case one of our partners undertook. Our office was preparing a parole evaluation. In reviewing the judgments and sentences in the case, there was a letter from a member of the prison's public defender service which reported to the client that the file had been reviewed and no error was discovered with the sentences. Our office immediately saw that opinion was not correct. There was serious and reversible error in the sentences imposed on this client because the sentence imposed on our client exceeded the maximum punishment allowed by the law. In fact, it exceeded the legal punishment by five years. David P. O'Neil was then retained to file a writ of habeas corpus based on that error, and not only did we reverse the punishment, but David negotiated a plea which at the resentencing hearing, reduced the punishment to time served. The client was released without any parole supervision.

Another parole case that turned into a writ arose when an attorney with our firm continued to search for a witness after our client had been denied parole after receiving ten of the required twelve favorable votes on a senate bill 45 sexual assault case. The client had always denied his guilt, and had gone to trial. The client had passed polygraph tests reflecting his innocence and Sean just would not give up. A three year old girl had been the alleged victim and condemning witness at the time of the trial, but fifteen years later, even with a top notch private investigator, we could not find her to ask her about the case. However, during the investigation, our investigator had clearly left a track leading back to our office in the event those we talked to heard from the victim who by this time was about eighteen years old.

This case bothered Sean the attorney so much that he was interested in doing more work on his own looking for the victim. Thanks to the initial work of the investigator and the follow up work by Sean, a few months after the parole vote, Sean was able to locate the young lady. Upon being located she agreed to meet with Sean. The outcome was amazing. The "victim" admitted our client never assaulted her. A family member who did not like our client had forced the young lady (then a child) to testify she was raped. The victim claimed she told the assistant D.A. that the actual assault was done by a man who had a tattoo on his back side. Our client had no tattoo. Sean then traveled to the location of the conviction and was allowed to review the D.A. file. There he discovered in the file a memo written by the assistant D.A. which indicated the victim did disclose

the perpetrator had a tattoo. This fact was not disclosed to the defense team at trial. Once we discovered this error, Sean got together with the family who put up the money to file a writ of habeas corpus. At the writ hearing the victim (now age 18) came in to court and testified our client did not rape her. The victim also testified about telling the D.A. about the other man with the tattoo. David O'Neil cross examined the past assistant D.A. (who today is a defense lawyer) regarding notes in the state's file that had not been disclosed to the defense and which showed that the victim had told the state of the tattoo. The trial court entered a finding that the client was actually innocent. In December 2005, the client's conviction was reversed and he is now a free man.

There have been a number of cases over the years where during the evaluation stage of an inmate's parole chances we have found writ issues which have reversed the case. While this does not happen often, it does happen. Obviously, a parole evaluation is not as detailed as a full writ evaluation, but a parole lawyer who does not do some litigation may not know how to approach such problems when they do arise. Parole lawyers who depend upon doing big volume parole business may not have the time to carefully review the case, and thus would fail to spot these problems. Our office does consider the case load each lawyer with the firm maintains.

What about the case where the plea bargain did not result in any favorable evidence or mitigation being placed in the record?

One of our pet peeves when evaluating parole cases lies with what I call the un-investigated plea bargain. So often a defense lawyer and an assistant D.A. will reach an early plea bargain. Particularly in large cities, where a docket of a court may be excessive, it is common that the judge will just accept the plea bargain, impose the agreed sentence, and call for the next case with no one seriously looking into the facts of the case. Later, when that inmate comes up for parole often there is no record as to why the D.A. agreed to a short sentence, nor is there evidence of mitigation which may have affected the decision to give a favorable plea bargain sentence. Maybe all that was forwarded to the parole board was a police report that was full of errors. These kinds of cases can present serious problems for the inmate and the parole board. We have found that in situations as above described, issues favorable to the defendant that would be considered important for the parole board are seldom developed or preserved. The D.A. that does know the mitigating facts usually refuses to put that information in his report to the parole board, and the defense lawyer seldom takes the time to prepare a memo to forward to the parole board informing them of the favorable factors. When this happens, you need a lawyer firm who knows how to get an investigation done. The lawyer dealing with the parole also needs to know the law that surrounds all the additional legal issues and rules of evidence that make plea bargains work, and how to present that information to the parole board.

For example, a few years ago I recall looking into a parole matter on a manslaughter case. During the course of visiting with the lawyer who worked out the plea we discovered that both the lawyer and the D.A. misstated to the client when parole eligibility would vest. The parole eligibility date had been a major

issue in the client agreeing to the plea agreement, and the state along with the defense lawyer was incorrect in their representations to the client. In fact, the D.A. was honest enough to admit that he too had misunderstood the parole eligibility issue, and the state agreed that parole eligibility was a major consideration in the plea bargain agreement. The trial lawyer was honest enough to provide an affidavit that he and the D.A. were incorrect in their understanding of parole eligibility. We filed a writ and the client's conviction was reversed as an involuntary plea. He got another bite at the apple.

I fear that many lawyers who engage in parole work get so involved in doing mass volumes of parole presentations they overlook real legal issues that if called to their attention and then properly investigated might turn the conviction around. Certainly there are lawyers who do parole work that have a very good foundation in criminal law and who seriously review the case records. Others just prepare a board presentation that tells of the facts from the viewpoint of the client, reviews the prison record and suggests the board should vote for release. Too many lawyers who do parole work are not well founded in the various areas of corrections law such as time credit, discipline issues, detainers, and prisoner rights law. All these things play into parole representation. In the 1970's and 1980's our office did our share of federal civil rights work against the prison. We were involved in the Ruiz case, the Eroy Brown "prison murder case" and the civil rights case that followed, as well as the "ultimate hunt" cases where T.D.C.J. was, at the time, using inmates who did not volunteer for the jobs, as "dog bait" for the prison "chase dogs". While we do little civil rights work today due to the legislative changes that have removed profit from that arena, our office continues to litigate issues related to time credit issues, parole revocations, discipline issues, and inmate safety concerns.

Misuse of Discipline Claims

If the lawyer who is representing a client in a parole matter does not understand the legality surrounding how you lost good time credit or classification standing, then how can the lawyer explain to the parole board those factors if they present themselves during a parole case? One of my favorite stories was a case that David O'Neil and I undertook after getting a call from a Dallas lawyer who was extremely upset over his client losing about twelve years of good time as the result of a riot the prison claimed he had been involved in. As is often the case in riot situations, the prison had charged everyone in sight with being involved in the riot, when, in fact, our client had nothing to do with the riot.

In this particular case the inmate had lost about 12 years of time credit because he was accused of being involved in a riot. If he had the 12 years of lost good time restored, he would have been discharged under mandatory supervision. The first thing we did was to give the client a polygraph. He passed with flying colors. Then, in the course

of our investigation we discovered not only had the client told us the truth about not being involved in the riot (we found witnesses who verified he was with them and not located where the riot went on), but we discovered the guard who wrote up the allegation claiming to have seen our client involved in the riot was not even on duty at the prison when the riot took place. This investigation was very expensive because many inmate witnesses to the events of the riot had been transferred to various areas of the state far away from this West Texas prison unit. When we started our investigation those inmates had not been in communication with each other, nor did they know we were investigating the matter. When we located these inmate witnesses and were able to get affidavits from them, they all told us the same story, that at the time of the riot our client was not even in the area where the riot took place. Once we got our evidence together, we went to the prison's legal staff and pointed out what we had found. Our client got his twelve years restored, and he was immediately released on mandatory supervision. David O'Neil has since been successful in having numerous other TDCJ discipline cases overturned.

Mitigation that does not make it to the parole file

Investigation of a case can be almost as expensive as the fees a lawyer charges. Often clients misunderstand the job of a lawyer, and think that legal fees include the cost of investigation. That is not true. Good investigators are as important as good lawyers who hire them. In certain of our initial investigations we have discovered many issues where important information amounting to serious mitigation surrounding the conviction existed, but not one word of that information had found its way to the D.A.'s file or into the information contained in the file of the parole board. If it's not in the record, how will the parole board know about it? For example, recently we were employed by a client who was sentenced to five years on a major dope charge. The short sentence on such a substantial amount of dope was a clear signal that there had to be some substantial mitigation in this case. In the course of our investigation we discovered that my client had been very active in assisting the D.E.A. in busting up a major drug ring. In fact, he had been so helpful that federal charges were dismissed and the state reduced the plea offer to the five years he was serving. This was his first parole hearing. There was no information in the record about his cooperation. Later at the parole hearing I learned the parole board had no knowledge of his assistance. During our evaluation and investigation of the case I was able to procure a letter from the D.E.A. outlining the substantial assistance my client had given prior to his being sentenced. During my parole presentation of the case the board member who met with me admitted the parole board record had nothing in the file to indicate the assistance my client had contributed. The parole board member admitted to me he was impressed with the new evidence I had located, and as a result my client was granted a first parole, and has been released.

In another case we were contacted by a family in another state. The father had been a very successful politician in that State. The family was seeking a parole for their son who suffered from a substantial mental disability. The client had been denied parole several times. The family and the inmate both claimed that the court had ordered a psychiatric evaluation, but there was no record in the records we were provided of any evidence of there even

being a psychological evaluation. During the course of our investigation I traveled to the Texas city where the case had taken place. I thought we could get the client paroled if we could prove his mental disability and dysfunction at the time of the robberies. When I went to the district clerk's office to review the contents of that file the very first document I found was an order where the court, on its own motion, had requested a mental evaluation of the defendant. Next, I found the file contained a report filed by a board certified psychiatrist which proclaimed the defendant insane at the time of the crime. Oh, my God!! What a bombshell. To make a long story shorter, for reasons to this day I do not understand, neither the insanity issue nor the competence issue was raised at trial. Once these documents were presented to the parole board our client went home on parole. We notified the client and family that a writ on the conviction was a matter to consider once the client was released on parole.

Finding errors in the parole file

Another example where investigative efforts resulted in a favorable outcome involved a client I will call "Joe Smith". Mr. Smith had been denied parole seven times at the time we were employed. This number of parole denials under the particular facts of this case made no sense to me. We made a careful review of his past criminal record, as that was the reason given for the past denials. Since the Texas parole law requires that the contents of parole files are to be secret, it is too often that mistakes in the files are not disclosed. However, that was not the case in this situation. When I got to the parole hearing I immediately began by reviewing the criminal record of the client with a very astute board member, I was told, "wait a minute Mr. Habern, this guy has two more pages of past criminal history that you have not even mentioned." Having done my homework I disagreed with the parole board member and we discussed the matter. As it turned out, the board member got interested in the situation, and during the hearing agreed to take the time to privately examine the criminal history in the file. As it turns out another Joe Smith (not the client) had gotten his past criminal records put in my client's parole file. Those additional criminal history records did not even have the same TDCJ prison numbers. The records the board had been looking at for all those years were not those of my client. They belonged to another Joe Smith. No telling how many times that client had been denied parole based on the incorrect criminal record that had by mistake been placed in his file. This time the board granted parole.

I think a client should expect a parole lawyer to give at least a cursory review of the whole case record, and when an unresolved issue is located, it needs to be investigated. The lawyer needs to fully understand the history of the client, the case, and have a basis for arguing to the parole board that a parole is justified based on the record that lawyer can develop. Just saying the client is a "good ole boy who made a mistake" is not going to get the inmate paroled.

The client should know what the lawyer is doing.

Recently our law firm was hired on a parole matter where another law firm had previously represented the client the previous year before the parole board. I obtained a release from my client to get the file of the lawyer who previously represented the client. I was informed by that law office that they would not be sending the file as they did not want another lawyer or the client to see what had been filed. I was outraged at that comment. Such conduct is a violation of the canons of practice in Texas. The lawyer told me that the parole contract that firm had with their clients had a clause which included that not even the client would get a copy of the brief filed with the board on behalf of the client. I explained to the lawyer that under the state bar canons of ethics the file did not belong to the lawyer. It belonged to the client, and that any contract which denied the client access to the file or contents of matters filed with the board was an ethical violation. The lawyer has a duty to disclose such information to the client, and to keep the client posted on the developments within the case. A lawyer must give up the file upon proper execution of a request by the client. I explained that either I would be given the material, or the client would be filing a state bar grievance. When I got the material I was not impressed. Beware of the lawyer who will not supply the client with copies of the work being done on behalf of the client.

A few months after the experience where the lawyer did not want to disclose what had been filed with the parole board, we had another situation where the same lawyer tried to explain to me the reason copies of material filed with the board were not going to be supplied to clients. The reason given was that other inmates would take the forms the lawyer used in parole work and allow others to use those forms. First, I was astounded to discover a lawyer would use a standard form in a parole presentation. In our office each case is different, and one who has properly investigated a case and knows all the details thereof is not fully explaining what needs to be told in a parole hearing by just filling out a form. Nonetheless, again we were able to get a copy of the material. It was not two weeks later that a mother of yet another inmate walked into our office and wanted to know what we would charge to fill out the exact same forms for her son's parole as the lawyer had tried to secret from us. We explained we could see no way filling out those forms would assist her son. We told her where those forms originated and gave her the lawyer's name and phone number. We suggested that completed forms would hardly suggest a basis for parole. Our office does not use forms in parole presentation. Each presentation is a separate project.

No two parole cases are the same, and using the same form in each case is not what I consider the best practice. Lawyers who use forms in the presentation of parole cases seem to me to just be lazy, or else are engaged in such a volume business that little time is spent understanding the case. We believe each individual case deserves an individual presentation.

Employment of "Parole Consultants"

Today inmates can find parole assistance in many places. I understand there are non-lawyers (called parole consultants) who will prepare a parole presentation for the inmates family for a fee

of \$500.00. A serious lawyer can hardly open a file for that amount. While I have not reviewed a \$500.00 parole package, I can only imagine the quality of the work. Hiring a lawyer affords the client the protection that comes with a supervision of the Texas State Bar. In fact, I have testified as an expert witness in disbarment hearings where the quality of parole work done by another attorney was in question. I have first hand knowledge that the bar will attack a valid complaint filed by a client in a parole matter. Lawyers whose competence fails must answer for that failure. There is no such protection against those who do parole work and are not lawyers.

We also understand that not every inmate in the prison system can afford the kind of legal expenses our firm charges. Based on our survey of attorney fees for parole work, we find attorney fees in parole cases can run from \$1,500.00 to more than \$20,000.00.

Let's examine the risk of hiring a parole consultant to present a parole package for an inmate. The state law suggests that only lawyers licensed in Texas may accept fees for representing inmates in parole matters. Specifically, at Government Code Sec. 508.083 it is stated:

a) A person who represents an inmate for compensation must:

- 1) be an attorney licensed in this state; and
- 2) register with the (parole) division.

The term "Represent" means to directly or indirectly contact in person or by telephone, facsimile transmission, or correspondence a member or employee of the board or an employee of the department on behalf of an inmate. (See Gov,t Code 508.081 (C)3. emphasis added). Violation of Sec 508.083 is a class "A" misdemeanor. There are a number of non-lawyers who will offer to do parole packages for the families of inmates for a fee, however, those families who hire such persons have no state bar or other administrative protection when such "consultants" fail to do a professional job, or misrepresent themselves to those hiring them. In fact, those consultants misunderstand the concept of "third party beneficiary" law, since the inmate is actually the "third party beneficiary" of the work being done. Certainly consultants can not appear before the board for a fee without violating the law. Secondly, a parole consultant may be subject to misdemeanor charges for indirect or constructive contact with a board member, to date I have heard rumor of only one case testing this activity. In that case a criminal action was brought against a woman who was collecting fees for doing parole packages. She took money from inmates and their families and the particular inmate involved in this situation filed criminal charges when he was not granted parole. He charged that the woman who took his money to represent him before the parole board was not a lawyer. The parole consultant won the case because she admitted she never even filed (directly or indirectly) anything with the parole board. In other words, she just took the money and never filed a thing.

While we know of no actual test case having been

brought before a court on the allegations which we believe should be tested, there is a movement now among member of the legislature to clear up the language of the parole statutes to prevent the abuse of inmates and their families. Inmates who can not afford legal assistance in parole should turn to inmate organizations to assist them in there efforts. Further, the policy that the prison currently has in effect which limits former inmate public defenders office from engaging in parole related cases should be amended. Better yet, the whole parole statute should be redone to allow inmates to appear at parole hearings so they can tell their own stories to the parole board.

If you know of a parole consultant (a non-lawyer) that has taken advantage of an inmate in a parole presentation, we strongly urge you to contact the state bar's "Unauthorized practice of law" section, and also notify the Attorney General of Texas and the Texas Parole Board about an experience with a parole consultant. It is the only way to stop this kind of activity. Let us give you an example of what can happen when you hire a non-lawyer. We recently had a family call our office wanting to know what we would charge to take a parole case on a state jail felony. We explained that there was NO PAROLE from a state jail felony.

Then she told us that is what she was afraid of, but she just paid a non-lawyer who said he was a parole consultant \$2,500.00 and he promised the client would be home in two months. We are trying to help get her money back for the family.

Please do not hesitate to contact our office if you have questions about our policies regarding representing inmates on parole, or related prison, post conviction or criminal trial problems.