



OFFICE OF THE DISTRICT ATTORNEY

COUNTY OF VENTURA, STATE OF CALIFORNIA

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October 7, 2024

Board of Parole Hearings, En Banc
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Sent via email to BPHEXE.BRDMEETING@cdcr.ca.gov

**Re: Reconsideration Request of Parole Grant for inmate Andrew Luster,
T97187**

Dear Commissioners:

This letter is submitted to respectfully request rescission of the August 8, 2024, decision finding inmate Andrew Stuart Luster suitable for parole. The parole grant was rashly made and improvident because the inmate continues to pose an unreasonable risk to the public, and because the panel's decision contained significant errors of fact under Penal Code Section 3041(b.)

Each of the inmate's three victims were drugged into unconsciousness and sexually assaulted by the inmate. Each victim is strongly opposed to the inmate's release and believes the current record has sufficiently demonstrated the inmate remains an unreasonable risk to public safety and is not suitable for a parole grant.

At the August 8, 2024, parole hearing, the commissioners ignored consistent, blatant misrepresentations the inmate made about his crimes immediately before and during the hearing. The commissioners failed to prepare questions based on these misrepresentations and demonstrated through their questioning they were ill-prepared to investigate the inmate's lack of understanding and insight into the factors that led to his 86 felony convictions. These convictions include poisoning, rape, sodomy, and oral

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Carey Doe was dancing with a male companion, ██████████, in a Santa Barbara college bar when the inmate approached and offered Carey a glass of water. She was 21 years old. The inmate was 15 years older than Carey. She drank water from the glass and shared the remaining water with ██████████. Carey thereafter had little to no recollection of events. She became grossly impaired. She had no recollection of leaving the bar with the inmate. She had intermittent memories of ending up at the inmate's residence but had no recollection of the drive there. She had spotty recollections of the inmate repeatedly raping her at his residence. Unlike the recorded attacks, the only visual evidence concerning Carey's encounter with the inmate was a photograph of her taken inside the inmate's residence. Even though she appeared conscious in the photograph, she had no recollection of being photographed.

After ██████████ drank the same water the inmate offered to Carey, he immediately became heavily incapacitated. Like Carey, his memory was significantly degraded. He could not fully recall the drive to the inmate's residence but had fleeting imagery of having intercourse with Carey in the back seat of the inmate's vehicle. He and Carey did not have a sexual relationship. Once at the inmate's residence, he completely blacked out.

Carey later reported to law enforcement her belief the inmate had drugged and sexually assaulted her at his residence. She participated in a recorded pretext call during which the inmate laughingly admitted giving her GHB and described the sex acts they had engaged in. Based on the inmate's statements during the pretext call, police obtained a search warrant for the inmate's residence.

In a locked closet in the inmate's bedroom, detectives found dozens of videotapes and still photographs depicting the inmate engaging in sex acts with women. In many of the videos and photographs, the women appeared to be completely unconscious.

After a lengthy investigation, detectives were only able to identify two of the women who were depicted. Dozens of other women depicted in the cache of evidence remain unidentified and were thus never contacted by law enforcement. ██████████ and Tonja were eventually

identified from their recorded assaults, and along with Carey, became the charged victims in the inmate's 87-count prosecution.

The investigation revealed the inmate drugged, raped, and sexually abused Tonja on the first night she met him, while she was visiting California from Arizona. Because she was unconscious after being drugged, she was unaware of her assault. In an astonishing display of sociopathic depravity, the inmate thereafter persuaded his victim to move to California and live with him. During the time Tonja lived with the inmate, she slept mere feet away from the locked closet where the inmate had hidden the recording of him raping, degrading, and penetrating her with foreign objects on the very first night they met.

Unlike Tonja and Carey, ██████ knew the inmate and spent time at his residence prior to her assault. She first met the inmate on a beach near his home when she was 16 years old. The inmate was 17 years older than ██████. The inmate befriended ██████ and her group of teen friends, who occasionally slept at his residence, but such occasions were always in a group setting. Despite the significant age gap, the inmate tried to entice ██████ into a sexual relationship, but she declined because he was too old. The inmate repeatedly offered ██████ and her friends GHB, which ██████ always refused.

██████ recalled visiting the inmate's residence one afternoon and somehow falling asleep. When she awoke, she was fully dressed. She thereafter left his residence and eventually lost contact with the inmate. Like Tonja, she was unaware of her assault. ██████ was 17 years old when the inmate assaulted her.

GHB was originally developed as a surgical anesthetic and can easily induce coma and death. It reduces respiration, and in sufficient doses, induces a near coma. As such, it is an inherently dangerous drug that can easily cause death. GHB is banned in the United States.

By drugging them with GHB, the inmate risked the lives of his victims so he could rape and abuse them. During the recorded assaults, the inmate raped, sodomized, and orally copulated the victims. He forced foreign objects into their vaginas, such as a sword, a candle, and a marijuana cigarette. The inmate gloated, narrated his actions, and

verbally degraded each victim. In the recorded attacks, both Tonja and ██████ lay in a coma-like state as the inmate positioned their bodies like dolls while he sexually abused them and intentionally caused them pain.

Tonja and ██████ both remembered being conscious and alert one moment and waking up hours later under unknown circumstances. As if a light switch had been turned off, they simply lost consciousness. Until located and shown the recordings of their abuse, neither Tonja nor ██████ was aware each had been stripped, raped, orally copulated, and penetrated with foreign objects.

Dr. Jo Ellen Dyer is a pharmacist and toxicologist for the California Poison Control System. She is a world-renowned expert on GHB and sexual assault. Dr. Dyer reviewed the recordings in which the inmate raped and physically abused ██████ and Tonja. At the inmate's trial, Dr. Dyer testified that during their assaults, ██████ and Tonja's breathing was so shallow that had she been present and providing medical care, she would have intubated each for fear of respiratory failure, coma, or death. Each audibly snored and drooled during their assaults. Neither moved or reacted when the inmate assaulted or otherwise inflicted pain, although Tonja briefly stirred when the inmate forced his penis inside her anus. As her eyes lethargically opened, the inmate jumped out of the bed and turned off the lights.

Dr. Dyer further testified that when a dose of GHB is insufficient to cause a loss of consciousness, it can prevent the brain from recording new memories. Inhibition is greatly reduced, and fragmented memories are recorded in non-chronological order. This results in a scrambled "slideshow" of partial memories lacking the chronological context of in what order these fragmented memories occurred. Dr. Dyer's testimony squarely provided context for Carey and ██████ experiences after the inmate drugged them.

Demonstrating his overwhelming guilt, the inmate fled to Mexico in the middle of his trial. His trial continued and he was convicted, in absentia, of 86 felony offenses. The offenses included willful poisoning (GHB), rape of an unconscious person, rape of a person unable to resist because of an anesthetic, oral copulation of an unconscious person, and other forcible sex crimes including sodomy and penetration with a foreign

object. All of the conviction offenses alleged the victims were either unconscious or unable to resist because of an anesthetic at the time of the offenses.

Months later, the inmate was forcibly captured and returned to U.S. soil. During his unlawful flight, the inmate's taunting alias was "David Carrera," meaning David "on the run."

At his residence in Mexico, the inmate left behind a hit list that included victims, investigating detectives, both trial prosecutors, and the trial judge.

The trial judge believed the inmate was so dangerous that he sentenced the inmate, in absentia, to a determinate term of 124 years. The judge intentionally imposed a sentence that ensured the public would forever be protected from the inmate. Years later, after he had been captured and incarcerated, a different judge, who was not present for the trial, resentenced the inmate to 50 years. Because Proposition 57 did not clearly define what constituted a "violent crime," and because the inmate's offenses were not explicitly listed as "violent" under Penal Code Section 667.5, the inmate became eligible for parole.

B. Insufficient Examination of the Inmate's Persistent Dishonesty about the Facts of the Conviction Offenses

It is evident upon review of the above facts that the two commissioners who conducted the hearing, Miranda Neal and Troy Taira, disregarded these facts at the hearing. They did not address, or adequately consider, the inmate's present description of his crimes, which were in stark contrast to the official record. The commissioners allowed the inmate to describe, unchallenged, his crimes and his victims in a manner completely inconsistent with the circumstances of the commitment offenses. The commissioners failed to have the inmate acknowledge or explain these significant inconsistencies. Instead, they allowed him, unchallenged, to accept "responsibility" for a fabricated version of events.

The commissioners allowed the inmate to describe his sex offenses as though they were technical offenses committed amongst consenting adults. They allowed him to describe his rape and assault of Tonja as having occurred during a drug-fueled, day-long marathon of mutual sexual activity. They allowed the inmate to make this claim unchallenged, despite the official record, which established he drugged and raped Tonja hours after first meeting her. During his prior hearing, on December 21, 2022, the inmate admitted that he drugged and raped Tonja the first time he met her and offered her a drink in his residence. The commissioners were nevertheless apathetic regarding the inmate's demonstrably false claims surrounding his drugging, raping, and recording of Tonja.

The commissioners likewise allowed the inmate to make an identical claim about ██████, despite the official record directly contradicting his claim. In the presence of both victims, the commissioners allowed the inmate to describe, unchallenged, fantasy versions of his offenses against Tonja and ██████. In response to this failure, these victims feel discouraged, unheard, and discarded by a parole process which, in their view, eagerly embraced a convicted rapist's fantastical version of events at the expense of their ongoing trauma as survivors of his horrific sexual abuse².

The commissioners' questioning was superficial and ineffective in assessing the inmate's present suitability for parole. The commissioners were disinterested in confronting the inmate's lies to them, to the prior panel which had denied parole less than two years earlier, and to the ██████ ██████

The nexus between the inmate's persistent dishonesty about his offenses and his threat to public safety cannot be overstated. Because test scores do not adequately assess the inmate's dishonesty about the facts of his offenses, they underestimate his actual risk level. The inmate lied to ██████ during her ██████ on October 16, 2022, and lied to the three commissioners during his prior parole hearing on December 21, 2022. These lies were the basis for the Board's denial of parole after they found the inmate minimized and blamed others, denied aspects of his offenses, had not gained a full understanding of his behaviors, and made dishonest statements regarding his crimes.

² The inmate refused to discuss his drugging and rape convictions involving Carey Doe.

Ironically, less than two years later, Commissioners Taira and Neal granted parole on nearly identical facts. The inmate continued to minimize his offenses, denied critical aspects of them, and made dishonest statements regarding his crimes.

For instance, the official record established the inmate drugged and raped three separate women and recorded two of those assaults. There is no dispute the trigger for the inmate's sexual arousal was an unconscious, helpless woman, and he purposely drugged his victims with the specific intent to render them unconscious before assaulting them. In the inmate's recordings, his own words described the sexual gratification he received from assaulting unconscious women, such as [REDACTED]:

*Some people dream about Christmas, Thanksgiving, getting together with family and friends. Being this joyous, incredible season. **I dream about this ... a strawberry blond, a beautiful girl, passed out on my bed and basically there for me to do with whatever I choose.** I'm gonna be nice, unwrapping my present. It's a better present you could ever have, at Christmas, on your birthday, anytime. **Because the two things that are really the most awesome gift, I think, are a perfect, incredible surf and a beautiful blond passed out on your bed, ready for anything.** Because I am, are you?*

Despite his words establishing he intended to specifically rape and abuse *unconscious* women, the Commissioners failed to explore the inmate's current claim that he lacked such an intent.

(PAGE 38) **PRESIDING COMMISSIONER TAIRA:** Did you, uh -- did you dose your victims for the purpose of rendering them unconscious? This came up at your last hearing.

ANDREW LUSTER: Here's the thing. My intention was this, to have a woman over, an attractive woman, to do drugs and drink and have sex with her. If she passed out, I was still going to carry on with my intentions because of my selfishness and lack of empathy for her wellbeing. There was no thoughts of rendering her unconscious beforehand, but there was thoughts of I want to have sex with this

person, and I want to fulfill my unmet needs and feel that immediate gratification. However, due to my character defect, if they fell unconscious, I was going to carry through with my, uh, plan to have sex with them.

Although the inmate drugged three women into unconsciousness with GHB he had readily available for that exact purpose, his claim that he did not intend to render his victims unconscious so he could rape them was unchallenged by the Commissioners. This brazen lie is directly contradicted by the inmate's convictions for rape, sodomy, penetration with a foreign object, and oral copulation, all against unconscious victims, whom he purposely drugged into unconsciousness. His self-serving lie to the Commissioners should have signaled the inmate is unworthy of a parole grant.

The official record of the inmate's crimes established he tricked Tonja into consuming GHB after he told her it was a legal and natural substance. *Probation Report, page 6*. This occurred on the first night the inmate met her. Prior to Tonja ingesting the GHB, she did not have consensual sex with the inmate, nor did she take drugs with him. She lost consciousness after being unwittingly drugged, after which the inmate recorded her vicious sexual assault and penetration with a myriad of foreign objects as she snored loudly.

██████████ was acquainted with the inmate but never had intercourse with him because of their age difference, and she refused his many offers to consume GHB. *Probation Report, page 10*. The inmate nevertheless drugged her without her knowledge, and after she lost consciousness, the inmate recorded her vicious sexual assault as she snored.

Although the very essence of the inmate's offenses involved drugging his victims into unconsciousness, the commissioners were unconcerned by the inmate's claim he never intended to render any victim unconscious.

Despite these facts, the Commissioners failed to confront and explore the inmate's written statements and hearing testimony which falsely mitigated his crimes against Tonja and ██████████ by claiming each had passed out after long hours of doing drugs and having sex with him,

after which he continued having sex with them. The facts of the inmate's convictions establish Tonja and ██████ did not pass out from long hours of doing drugs with the inmate. They instead lost consciousness because the inmate drugged them. The facts further establish Tonja and ██████ did not have consensual sex with the inmate prior to being raped. The inmate jumping out of bed and turning off the lights when Tonja lethargically opened her eyes alone refutes his claim that he was merely continuing mutual sexual activity. These false claims simultaneously lessened his culpability while making Tonja and ██████ appear culpable in their own rapes. Instead of crafting questions that explored these lies, the Commissioners simply accepted the inmate's descriptions of his crimes.

(PAGE 161, 10-DAY PACKET, "INSIGHT STATEMENT") **Andrew Luster:** *During the commission of my crimes, I errantly believed that because we had been engaged in consensual sex on and off for hours on those days [while they were fully awake and participating] that it was alright for me to continue to have sex with them even though they were now unconscious and unaware.*

(Page 42) **PRESIDING COMMISSIONER TAIRA:** Is there anything about the, the victims, uh, themselves that would have -- or that would trigger you to target them specifically?

ANDREW LUSTER: The only thing that I could say to that point is the fact that they were there with me. They were attractive and they were willing to party with me, to be close to me, and to do GHB with me is why I ended up acting out and, um, uh, abusing and raping them in that manner. Uh, there's nothing about them other than the fact that it was a matter of, uh, the situation. They're there, we're partying, they're -- they're, um, enthusiastic about us being together and having fun and -- **and doing drugs and drinking alcohol and being intimate. That's what led to me targeting them.**

Compounding their error, the Commissioners also prevented exploration of these deceptions.

(Page 78) **DEPUTY DISTRICT ATTORNEY WOLD:** Thank you. I would like to ask the inmate if he is claiming today that, ██████ willingly

ingested GHB before he raped her.

PRESIDING COMMISSIONER TAIRA: Okay. If you understand the question, Mr. Luster, go ahead and respond.

ANDREW LUSTER: We discussed it and she, in fact, partook with me of the ingestion of GHB. Correct.

(Page 79) **DEPUTY DISTRICT ATTORNEY WOLD:** I would like (to ask) -- the inmate how he reconciles that claim against the fact that no such evidence was introduced at his trial, that [REDACTED] did not testify at trial that she willingly took GHB prior to the inmate raping her and -- nor is his claim mentioned in the probation report which forms the official facts of this trial.

PRESIDING COMMISSIONER TAIRA: I think you can incorporate that into, uh, your argument, counsel.

DEPUTY DISTRICT ATTORNEY WOLD: Okay. Thank you.

PRESIDING COMMISSIONER TAIRA: Next question.

As discussed above, the inmate testified he did not provide GHB to his victims to render them unconscious. When the People asked why he then said on video that he dreams about a passed-out girl on his bed, there for him to do with whatever he chooses, the inmate disavowed his video commentary expressing his fetish to rape unconscious women. He claimed he instead only chose those words to make, "the most offensive, outlandish, lewd comments" he could think of. Page 80. In other words, he claimed he did not really mean what he said on his rape video of [REDACTED]. He thus again denied intending to render his victims unconscious.

Here too, the Commissioners again prevented any exploration of this lie.

(Page 80) **DEPUTY DISTRICT ATTORNEY WOLD:** Thank you . . . just in terms of further clarification, that the inmate specifically said he dreams about a passed-out girl in his bed for him to do with whatever he chooses, yet today he testified he did not give anyone

GHB to make them unconscious. I'd like him to clarify those two statements.

PRESIDING COMMISSIONER TAIRA: Uh, he just did, counsel. You can incorporate that into your, uh – your arguments.

The conflict between the inmate's present descriptions of his crimes and the official record was not explored in the parole hearing. The Commissioners were actively disinterested in exploring the contradictions between the inmate's testimony and the true facts of his conviction offenses.

By falsely claiming he did not intend to make his victims unconscious, the inmate denies the most predatory and dangerous aspect of his crimes; his risking the lives of young women by rendering them unconscious for his sexual abuse. Instead, he now claims he merely wanted to have sex with them and simply did so after they inadvertently lost consciousness, as if his drugging three separate women into unconsciousness was a mere coincidence. To this day, the inmate has still refused to acknowledge "he had ever given anyone GHB or any drug without their consent." [REDACTED]

By denying his intent to *make his victims unconscious*, the inmate also denies the most fundamental aspect of his crimes, specifically, how he committed the rapes: not by force, coercion, or threats, but by drugging his victims. The recorded assaults showed the inmate revealed in the fact his victims were unconscious. Their unconsciousness was the trigger for his sexual arousal. His sexual gratification stemmed exclusively from their coma-like state: "*I dream about this ... a strawberry blond, a beautiful girl, passed out on my bed and basically there for me to do with whatever I choose.*" His continued deception about the most fundamental aspect of his crimes demonstrates his unsuitability for early release.

Yet the Commissioners refused to examine the above misrepresentations. Instead, in granting parole, Presiding Commissioner Taira simply glossed over the inmate's lies.

(Page 135, Lines 7-10) **PRESIDING COMMISSIONER TAIRA:** Uh, now what we do know, there are factual discrepancies in his testimony as pointed out by the District Attorney Representative.

The inmate's lies were not mere "factual discrepancies." The inmate strategically chose to portray the most significant aspects of his crimes in a false light to conceal the predatory nature of his offenses and lessen his present threat level in a bid to gain early release. And, unfortunately, it worked.

The inmate told [REDACTED]

[REDACTED] During the inmate's prior hearing, both Tonja and Shauna refuted this fabrication, which was never raised during the inmate's trial.

(December 21, 2022, page 159, lines 1-4.) **TONJA DOE:** Andrew Luster claimed that his victims knew about the rape tapes and that we were okay with it. That is a <inaudible> lie, he obviously has no remorse for what he did to us. He needs to stay right where he is.

(December 21, 2022, pages 162-163, lines 17-18, line 1)
[REDACTED] **DOE:** I never had any knowledge of any video. The first time I watched, um, Andrew raping me, I was actually on the [witness] stand . . . I had to watch at that time in front of everyone and a judge and in front of him watching because he requested to watch [himself] rape me in a court.

The inmate nevertheless repeated this fabrication during his August 8, 2024 hearing.

(page 44) **ANDREW LUSTER:** Yeah. Um, I-I wouldn't be able to answer that accurately. I just do recall mentioning something about videotaping it. But as far as the specific details, you know, what -- um, they didn't take notice of my mentioning it. I was doing it for my own ego, I believe, and I don't recall the details of it.

Demonstrating their lack of preparation, the Commissioners were unaware the inmate's claim was contradicted by the official record and had been specifically contradicted by both Tonja and [REDACTED] at the prior hearing. As such, they failed to challenge the inmate's attempt to mitigate his offenses with [REDACTED]
[REDACTED]

Since the inmate would not admit he intended to rape Tonja and [REDACTED] after he drugged them into unconsciousness, he manufactured a scenario where he intended to have "sex" with each victim and merely continued when they lost consciousness.

(page 46) **PRESIDING COMMISSIONER TAIRA:** Uh, [to] have sex with them, regardless of whether they were conscious or unconscious. That was your intention?

ANDREW LUSTER: Okay. My intention was to have sex with them, but my selfishness -- once they fell unconscious, I continued with my behavior regardless of their state of unconsciousness, because I didn't have the empathetic and consequential thinking or respect for them that I should have, that a healthy thinking person would.

Commissioner Taira did not challenge this gross misrepresentation, which rewrote the facts of the inmate's offenses from poisoning his victims with GHB to render them unconscious so he could rape them, to the inmate merely intending to have sex with them and they inadvertently losing consciousness before or during consensual sex.

Consistent with the revision of his conviction offenses, the inmate also made deceptive comments regarding his exclusive targeting of much younger women.

(Page 86) **DEPUTY DISTRICT ATTORNEY WOLD:** Thank you. Uh, last question. At the time the inmate committed his conviction offenses, he was nine years older than Tonja, 15 years older than Carrie, and 17 years older than [REDACTED]. I would like to ask the inmate why he targeted women who were so much younger than himself.

PRESIDING COMMISSIONER TAIRA: Was there, uh, an age factor in your crimes, uh, Mr. Luster?

ANDREW LUSTER: Not a conscious age factor, but those were the -- those were the women that were, uh, available to me and who I connected with on a personal level.

In granting parole, the commissioners failed to adequately consider this response. Carey was a college student whom the inmate targeted and drugged while she danced in a bar. They were strangers. She was not "available" to the inmate, nor did he "connect with her." He likewise first met Tonja in a bar and drugged her after inviting her back to his home. [REDACTED] and the inmate were neighbors, but she was not in a relationship with him and hence also lacked a "personal connection." As with all of the other circumstances of his crimes, the inmate refused to acknowledge age was a motivating factor in targeting his victims.

These deceptions continued when Deputy Commissioner Neal allowed the inmate to falsely frame his crimes as a form of domestic violence.

(page 59) **ANDREW LUSTER:** Well, the, the criminal offenses themselves were a form of domestic violence because one of the forms of domestic violence is -- is sexualizing or using sex as a way to, um, victimize, uh, your partner.

The inmate's three victims were not his "partners." Carrie was a perfect stranger, whom the inmate targeted and drugged as she danced in a college bar with a male friend, [REDACTED]. Although Tonja and the inmate later had a brief dating relationship, she was a perfect stranger to the inmate when he drugged and raped her the first night they met. [REDACTED] never had a dating relationship with the inmate, and was therefore not his "partner." Again, the commissioners lacked familiarity with the inmate's crimes and were unprepared to confront his distortions about the circumstances of his offenses before granting parole.

The commissioners also failed to confront the inconsistency between the inmate's claimed rehabilitation and the lies about his offenses discussed above.

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Because the inmate's offenses were committed by poisoning his victims with GHB rather than by physical force, the inmate's age, and alleged diminished physical condition, have not reduced his risk of re-offense.

The inmate told the board his "driving force is to make living amends to demonstrate through my behavior that I'm a changed person." *Hearing, page 29*. Because his personal journey apparently does not include any veracity concerning his conviction offenses, the inmate lacks rehabilitation and remains a threat to public safety.

C. Conclusion

Governor Newsom's recent enactment of Senate Bill 268 demonstrated his desire to protect the public from sex offenders who present a continued threat to public safety and sexually assaulted unconscious victims. Consistent with this desire, I respectfully request this Board rescind the panel's parole grant, which was based on erroneous facts.

The gravity of the inmate's conviction offenses, when coupled with his many deceptions about those offenses, demonstrates a lengthier period of incarceration is required to protect public safety.

I ask you to reconsider this grant of parole.

Sincerely,



ERIK NASARENKO
District Attorney

EN: tw

By email: parole@gov.ca.gov