

Massachusetts Parole Board: Decisions on Juvenile Lifers

Grace Choi

May 14, 2020

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I. INTRODUCTION

Juvenile lifers hold a unique position within the U.S. criminal justice system. Sentenced to life-without-parole for offenses committed when they were under the age of 18, these individuals (known as juvenile lifers or JLWOP) until 2012 were expected to spend the rest of their lives in prison. However, since 2005, a series of Supreme Court decisions delineated adolescents as constitutionally different from adults, accepting a growing body of research in neuroscience, developmental psychology, and social sciences. In *Roper v. Simmons* (2005), the Court found that applying the death penalty to juvenile offenders violated eighth amendment protections from “cruel and unusual punishments.”¹ In *Graham v. Florida* (2010), the Court prohibited the next harshest punishment for juveniles—life-without-parole sentences—for non-homicide convictions.² In the landmark case *Miller v. Alabama* (2012), the Court ruled against mandatory life-without-parole sentences for juvenile offenders, stating that adolescent actions are “less likely to be ‘evidence of irretrievable depravity.’”³ From *Montgomery v. Louisiana* (2016), states were then required to apply the *Miller* decision retroactively, either through resentencing procedures or parole board hearings to implement the substantive constitutional rule established in *Miller*.⁴

In Massachusetts, the Supreme Judicial Court’s (“SJC”) decision in *Diatchenko v. District Attorney for Suffolk District* (2013) determined how the state would retroactively apply the *Miller* decision for 63 cases of juveniles who had been sentenced to mandatory life-without-parole.⁵ Prior to the *Diatchenko* decision, juveniles over the age of 14 who were charged with murder in the first degree were automatically tried as adults.⁶ If convicted they were then sentenced to mandatory life-without-parole.⁷ However, through the *Diatchenko* decision, these juvenile offenders became eligible for parole after serving 15 years and were afforded access to counsel and expert witnesses as well as funds for counsel if they were indigent.⁸ Consequently, the Massachusetts Parole Board (“Board”) has begun hearing JLWOP cases, determining whether the individual has demonstrated sufficient rehabilitation to be paroled back into society.

This Paper analyzes the Board’s justifications for granting and denying parole to juvenile offenders that had been sentenced to life-without-parole in Massachusetts. It also evaluates whether the current process of parole hearings is affording individuals with a substantively meaningful opportunity for release as mandated by the SJC. Part II begins with a discussion of the legal framework established by the major Supreme Court cases. Part III focuses on the SJC’s decision in Massachusetts, the Parole Board structure and legal standard utilized, and then on Massachusetts’ juvenile lifers. In Part IV, the Paper examines 30 cases of JLWOP parole hearings, identifying common patterns found in the hearings and decisions. This includes a discussion of the language of Parole Board decisions, the factors constituting evidence of rehabilitation, and the roles of expert witnesses and victims. Part V

¹ *Roper v. Simmons*, 543 U.S. 551 (2005).

² *Graham v. Florida*, 560 U.S. 48 (2010).

³ *Miller v. Alabama*, 567 U.S. 460 (2012).

⁴ *Montgomery v. Louisiana* 136 S. Ct. 718 (2016).

⁵ Sarah Birnbaum, Mass. Supreme Judicial Court Rules Life Without Parole for Juveniles Unconstitutional, WGBH (December 27, 2013), https://www.wgbh.org/news/post/mass-supreme-judicial-court-rules-life-without-parole-juveniles-unconstitutional?_amp=true&00000161-8b7c-d1cf-a373-fb7ccad60000-page=9.

⁶ Zeninor Enwemeka, What Massachusetts Law Says About Juveniles Charged with Murder, WBUR (June 15, 2015), <https://www.wbur.org/news/2015/06/15/massachusetts-law-juvenile-murder>.

⁷ Mass. Gen Laws Ann ch 265, § 2.

⁸ *Diatchenko v. District Attorney for Suffolk District II*, 471 Mass. 12 (2015).

concludes with a discussion of the challenges that juvenile lifers face when seeking parole as well as recommendations for the Parole Board moving forward.

II. ADOLESCENTS AS CONSTITUTIONALLY DIFFERENT FROM ADULTS

In a sequence of decisions, the Supreme Court opined on the constitutional differences between adolescents and adults. In the *Roper* decision, Justice Kennedy wrote about three broad distinctions between juveniles and adults which demonstrated why young offenders could not reliably be categorized as the worst offenders.⁹ First, juveniles are more susceptible to immature and irresponsible conduct. Second, juveniles are more vulnerable and have less control over their immediate surroundings. Lastly, juveniles have not fully formed their character and have the potential for reform.¹⁰ The Court recognized that each of these qualities contributed to a juvenile's diminished culpability, preventing the state's most extreme penalty of capital punishment from being applied.¹¹

These conclusions were undergirded by the American Psychological Association's ("APA") amicus brief which presented evidence from behavioral studies that demonstrated differences in juvenile behavior when compared to that of adults.¹² For example, studies found that on average, adolescents engage in far riskier behaviors because within a group environment, they "often value impulsivity, fun-seeking, and peer approval more than adults do."¹³ Further, in a study of over 1,000 adolescents and adults, researchers found that on average, adolescents were less considerate of different viewpoints and less able to evaluate situations before acting.¹⁴

In addition to evidence from behavioral psychology, the amicus brief noted findings from neuropsychological research which utilized magnetic resonance imaging (MRI) to track the development of the human brain. Scientists found that the frontal lobe, particularly the prefrontal cortex, plays a major role in the executive functions which include strategic thinking, risk management, and foresight.¹⁵ And the prefrontal cortex is one of the last parts to develop, reaching full maturation from ages 17 to 21. Because the adolescent brain has not yet developed to its full capabilities, the APA argued that juvenile behavior cannot be subject to the same type of judgment as adult behavior.¹⁶ It is important to note that the APA was also critical about the use of *Hare Psychopathy Checklist: Youth Version (2013)* (PCL-YV), because while the tool could be utilized for short-term predictions of violent behavior, it is not a reliably robust tool to predict future violence beyond late adolescence.¹⁷

The differences outlined by the APA's amicus brief, recognized by the Court in the *Roper* decision, also played a role in the subsequent *Graham* decision in 2010. Justice Kennedy, citing neuropsychological evidence introduced in *Roper*, provided the majority opinion. He wrote that juveniles who did not kill or intend to kill had two levels of diminished

⁹ *Roper*, 543 U.S. 551 at 15.

¹⁰ *Id.* at 16.

¹¹ *Id.* at 17.

¹² American Psychological Association, Brief for the American Psychological Association, and the Missouri Psychological Association as Amici Curiae Supporting Respondent (July 19, 2004), <https://www.apa.org/about/offices/ogc/amicus/roper.pdf>.

¹³ *Id.* at 7.

¹⁴ *Id.*

¹⁵ *Id.* at 10.

¹⁶ *Id.* at 12.

¹⁷ *Id.* at 23.

culpability, their lack of maturity and the nature of the crime.¹⁸ He also noted that life-without-parole sentences shared similarities to the death penalty by requiring juveniles to irrevocably forfeit their lives.¹⁹ The *Graham* decision continued to utilize a proportionality test of the offender's culpability to the severity of the punishment, ultimately finding that life-without-parole for non-homicide offenses violated eighth amendment protections.²⁰

In *Miller v. Alabama (2012)*, the Court further banned the use of mandatory life-without-parole sentences for all juvenile offenders.²¹ Justice Kagan's majority opinion relied on two major precedents established. First, in *Roper*, the Court banned disproportionately severe penalties compared to the culpability of a class of offenders.²² Furthermore, citing *Graham*, the Court prohibited mandatory impositions of the death penalty and mandated that the state take into consideration the offender's characteristics and details of the offense.²³ The opinion stated that the confluence of both precedents, particularly because of the similar outcomes between life in prison and the death penalty noted in *Roper*, justified the Court's ruling against mandatory life-without-parole sentences for juveniles.²⁴

Adolescence matters in determining punishment. And the Court also found it to be a significant component of an offender's character. Justice Kagan wrote:

To recap: Mandatory life without parole for a juvenile precludes consideration of his chronological age and its hallmark features—among them, immaturity, impetuosity, and failure to appreciate risks and consequences. It prevents taking into account the family and home environment that surrounds him—and from which he cannot usually extricate himself—no matter how brutal or dysfunctional. It neglects the circumstances of the homicide offense, including the extent of his participation in the conduct and the way familial and peer pressures may have affected him. Indeed, it ignores that he might have been charged and convicted of a lesser offense if not for incompetencies associated with youth—for example, his inability to deal with police officers or prosecutors (including on a plea agreement) or his incapacity to assist his own attorneys.²⁵

In addition to establishing adolescents as distinct from adults when determining the constitutional punishments, the decision required that states provide individuals who had been sentenced to life-without-parole a meaningful opportunity for release based on evidence of rehabilitation and maturity.²⁶ However, states were inconsistently applying the mandate which became apparent in the *Montgomery* case.²⁷ Louisiana Supreme Court's denial of Henry Montgomery's application of a supervisory writ and motion for state collateral relief following the *Miller* decision led the Supreme Court to revisit the question of retroactive effect. In the *Montgomery* ruling, the Court held that when it has deemed a former law to be

¹⁸ *Graham*, 560 U.S. 48 at 18.

¹⁹ *Id.* at 19.

²⁰ *Id.*

²¹ *Miller*, 567 U.S. 460 at 2.

²² *Id.* at 6-7.

²³ *Id.* at 7.

²⁴ *Id.*

²⁵ *Id.* at 15.

²⁶ *Id.* at 17.

²⁷ *Montgomery*, 136 S. Ct. 718 at 2.

unconstitutional, and has made a new substantive constitutional rule, it must have retroactive effect.²⁸

III.

MASSACHUSETTS' RESPONSE TO JUVENILE LIFE-WITHOUT-PAROLE CASES

Before *Montgomery*, the state of Massachusetts had already begun the process of handling JLWOP cases stemming from *Diatchenko v. District Attorney for Suffolk County I (2013)* and *Diatchenko v. District Attorney for Suffolk County II (2015)*. In the first decision, The SJC held that the *Miller* decision applied retroactively and expanded on it by prohibiting all life-without-parole sentences imposed on juveniles whether it was a mandatory or discretionary sentence.²⁹ Consequently, these individuals were to be afforded a “meaningful opportunity to obtain release based on demonstrated maturity and rehabilitation” through parole eligibility after serving a minimum of 15 years in prison.³⁰ In the second decision, the SJC elaborated on the procedural rights that would constitute a “meaningful opportunity.” For inmates, the SJC mandated that they be provided access to counsel, funds to retain counsel, funds for expert witnesses, and if denied parole, judicial review of the decision.³¹

In regards to the Parole Board, the members were required to consider the mitigating effects of youth as well as scientific and technical factors. These included: “lack of maturity and an underdeveloped sense of responsibility, leading to recklessness; impulsivity, and heedless risk-taking; vulnerability to negative influences and outside pressures, including from their family and peers; limited control over their own environment; lack of the ability to extricate themselves from horrific, crime-producing settings; and unique capacity to change as they grow older.”³² The decision further required that the composition of the Parole Board be diverse so that out of the seven total members there was at least one member with experience in forensic psychology at all times.³³ The *Diatchenko* decisions outlined the procedural rights of juvenile lifers, but they continue to raise the issue of whether a meaningful opportunity for parole is being substantively provided.

A. MASSACHUSETTS' PAROLE BOARD STRUCTURE AND LEGAL STANDARD

The Massachusetts Parole Board consists of seven members who are nominated by the governor and selected by the Governor’s Council.³⁴ The governor also designates the chairperson of the Parole Board and each member serves a five-year term unless they are reappointed to serve another term.³⁵ Based on parole decision documents for the period January 2015 to February 2020, there have been 11 total members who have served on the Parole Board. These include: Paul M. Treseler, Dr. Charlene Bonner, Tonomey Coleman, Sheila Dupre, Ina Howard-Hogan, Tina Hurley, Lucy Soto-Abbe, Colette Santa, Lee Gartenberg, Josh Wall, and Gloriann Moroney.

While the composition of the Parole Board varied based on the rotation of members given a particular year, it is worth noting that with the exception of Dr. Charlene Bonner

²⁸ *Id.* at 8.

²⁹ *Diatchenko v. District Attorney for Suffolk District I*, 466 Mass. 655 (2013).

³⁰ *Diatchenko*, 466 Mass. 655.

³¹ *Diatchenko*, 471 Mass. 12.

³² *Diatchenko*, 471 Mass. 12 at 31.

³³ *Diatchenko*, 471 Mass. 12 at 19.

³⁴ Mass. Gen Laws Ann ch 27, § 4.

³⁵ *Id.*

and Tonomey Coleman³⁶, a former defense attorney, all other members had prosecutorial, law enforcement, or victim services backgrounds. Specifically, Paul M. Treseler³⁷, Ina Howard-Hogan³⁸, Josh Wall³⁹, and Gloriann Moroney⁴⁰ served as former prosecutors before joining the Parole Board. Sheila Dupre⁴¹, Colette Santa⁴², and Lee Gartenberg⁴³ previously worked in Departments of Correction and Sheriff's Offices. Before her nomination, Tina Hurley worked for the Parole Board in different capacities as a parole hearing examiner, parole officer, and transitional services director.⁴⁴ Lucy Soto-Abbe spent 17 years as a victim advocate in the Hampden District Attorney's ("DA's") Office prior to serving on the Parole Board.⁴⁵ Dr. Charlene Bonner, who specializes in forensic psychology and addictive behaviors, represents the only member without a criminal justice background.⁴⁶

The make-up of the Parole Board raises concerns about whether a prosecutor dominated committee is diverse enough to carry out a fair parole process. The impacts of this disproportionate composition may be further compounded by the addition of victim advocates without an equal counterpart representing inmates seeking parole. In the JLWOP cases, the members are required to consider factors associated with adolescent behaviors that are grounded in neuropsychology and social science data. However, Dr. Charlene Bonner is the only member who has professional experience in those fields. Because a positive parole vote requires two-thirds of the members' approval, a single vote reflecting a different perspective in a hearing carries little weight.⁴⁷

Procedurally, every member of the Parole Board is required to follow the legal standard in determining parole: "Parole Board Members shall only grant a parole permit if they are of the opinion that there is a reasonable probability that, if such offender is released, the offender will live and remain at liberty without violating the law and that release is not

³⁶ Jean Trounstein, Meet the Newest Member of the Massachusetts Parole Board: Tonomey Coleman, Boston Magazine (March 3, 2013), <https://www.bostonmagazine.com/news/2013/03/06/meet-the-new-massachusetts-parole-board-member-tonomey-coleman/>.

³⁷ Governor's Press Office, Governor Baker Nominates Paul Treseler to Massachusetts Parole Board (August 12, 2015), <https://www.mass.gov/news/governor-baker-nominates-paul-treseler-to-massachusetts-parole-board>.

³⁸ Michael Levenson and Noah Bierman, Patrick's Parole Board Nominees Ok'd, The Boston Globe (March 31, 2011),

http://archive.boston.com/news/local/massachusetts/articles/2011/03/31/patricks_parole_board_nominees_okd/.

³⁹ Jonathan Saltzman, Parole Board Nominee Under Fire, The Boston Globe (February 9, 2011),

http://archive.boston.com/news/local/massachusetts/articles/2011/02/09/parole_board_nominee_under_fire/.

⁴⁰ Governor's Press Office, Governor Bakes Nominates Gloriann Moroney From Canton to the Parole Board (January 1, 2019), <https://www.mass.gov/news/governor-baker-nominates-gloriann-moroney-from-canton-to-the-parole-board/>

⁴¹ Dan Ring, East Longmeadow Resident Sheila Dupre is Poised for Confirmation to the Massachusetts Parole Board, MassLive (September 28, 2011),

https://www.masslive.com/news/2011/09/east_longmeadow_woman_is_poise.html.

⁴² Andy Metzger, SJC Hopeful Confirmed; Milford's Santa Joins Parole Board, Milford Daily News (December 13, 2017), <https://www.milforddailynews.com/news/20171213/sjc-hopeful-confirmed-milfords-santa-joins-parole-board>.

⁴³ Gintautas Dumcius, Framingham Man Nominated to Parole Board, MetroWest Daily News (December 3, 2014), <https://www.metrowestdailynews.com/article/20141203/NEWS/141208557>.

⁴⁴ Lane Lambert, Cohasset Woman Joining Parole Board, Patriot Ledger (March 29, 2014),

<https://www.patriotledger.com/article/20140329/News/140325715>.

⁴⁵ Dan Ring, Parole Board Nominee Lucy Soto-Abbe Faces Criticism During Governor's Council Hearing, MassLive (March 16, 2011), https://www.masslive.com/news/2011/03/parole_board_nominee_lucy_soto.html.

⁴⁶ Mary Markos, Charlie Baker Nominates Psychologist to Continue Serving on Parole Board, Boston Herald (June 24, 2019), <https://www.bostonherald.com/2019/06/24/baker-nominates-psychologist-to-continue-serving-on-parole-board/>.

⁴⁷ Mass. Gen Laws Ann ch 137, § 133a.

incompatible with the welfare of society.”⁴⁸ While this is the standard by which the Parole Board is mandated to follow, members take into consideration a wide range of information that include, but are not limited to: length of incarceration, other convictions or criminal conduct, sense of remorse and understanding of harm caused, conduct while incarcerated, participation in institutional programs, reaction and response to previous parole denial, and plan for re-entry.⁴⁹ The subsequent sections provide a case study of 30 juvenile lifers that explores the extent to which certain types of information are scrutinized more than others, and ultimately affect parole decisions.

B. SUMMARY STATISTICS OF JUVENILE LIFERS IN MASSACHUSETTS

Currently, the Parole Board has published on its website annual statistical reports for the 2015-2018 period. The 2015 report states that for first-degree murder cases involving juvenile offenders, the Parole Board heard 18 total initial cases, paroling 4 individuals and denying 14.⁵⁰ This yielded a parole rate of 22 percent.⁵¹ The Parole Board in 2016 held a total of 5 hearings, with 3 initial and 2 review hearings.⁵² Only 1 of the individuals from the review hearings was granted parole, representing a 20 percent parole rate.⁵³ In the 2017 addendum published, the Parole Board heard a total of 4 hearings, all of which were review hearings.⁵⁴ 3 of the 4 individuals were paroled, generating a 25 percent parole rate.⁵⁵ Parole decision statistics has not yet been published in the 2018 report addendum. However, based on the numbers from the three-year period, there was a significant decline in hearings from 18 in 2015 to only 4 in 2017, while parole rates remained consistently in the low 20’s.

IV. STUDY OF 30 JUVENILE LIFE-WITHOUT- PAROLE HEARINGS

All life sentence decisions beginning in 2015 are publicly available on the Parole Board’s website.⁵⁶ 44 total JLWOP hearing decisions (based on both initial and review hearings) were identified and reviewed for the period January 2015 to February 2020. The corresponding video recordings of the hearings were requested and obtained through a public records request to the Parole Board. Those 44 hearing decisions represent 30 individual cases of juvenile lifers seeking parole either for the first and/or subsequent time. A statistical summary of these 30 individuals provides important demographic information about the population. For example, the average age of the offenders at the time of the offense was 16.5 years-old. The average age at their last parole hearing was 45 years-old, having spent an

⁴⁸ Mass. Gen Laws Ann 127, § 130.

⁴⁹ Commonwealth of Massachusetts, Information About Life Sentence Parole Hearings (Accessed April 29, 2020), <https://www.mass.gov/service-details/information-about-life-sentence-parole-hearings>.

⁵⁰ Massachusetts Parole Board, 2015 Annual Statistics Report (December 2019), <https://www.mass.gov/doc/2018-annual-statistical-report/download>.

⁵¹ *Id.* at 17.

⁵² Massachusetts Parole Board, 2016 Annual Statistics Report (April 2017), <https://www.mass.gov/doc/2016-annual-statistical-report/download>.

⁵³ *Id.* at 16.

⁵⁴ Massachusetts Parole Board, 2017 Annual Statistics Report (January 2019), <https://www.mass.gov/doc/2017-annual-statistical-report-addendum/download>.

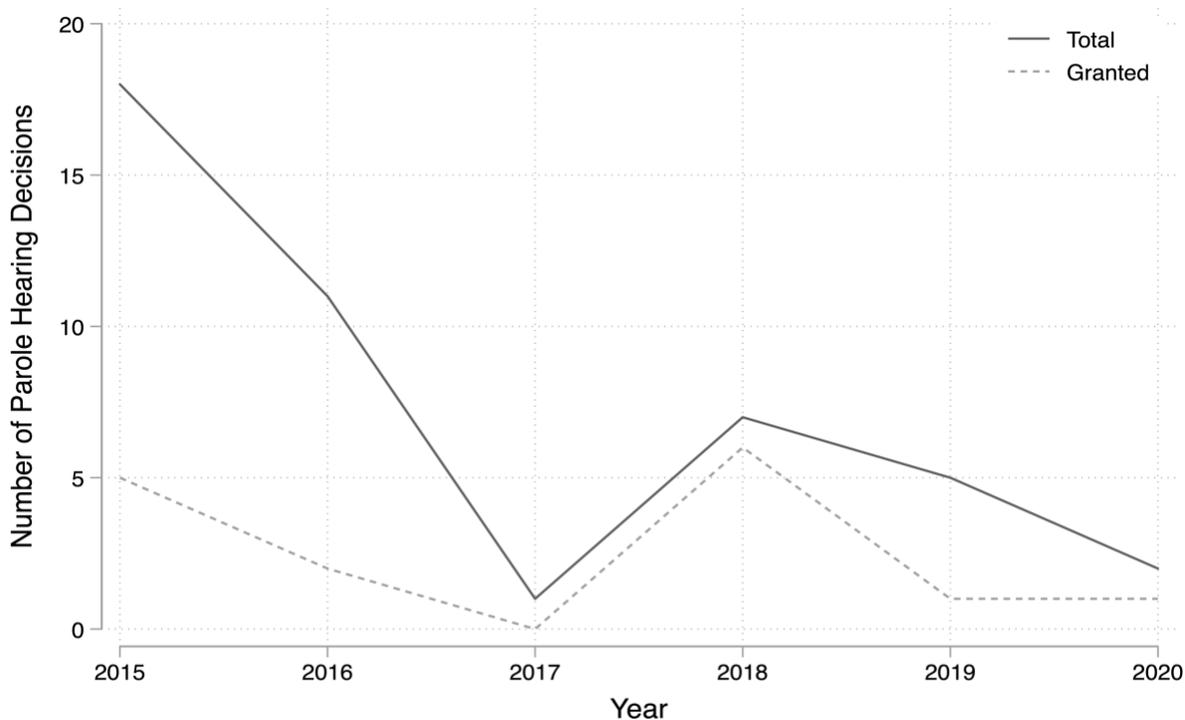
⁵⁵ *Id.* at 37.

⁵⁶ Commonwealth of Massachusetts, Life Sentence Decisions (Accessed April 29, 2020), <https://www.mass.gov/lists/life-sentence-decisions>.

average of 28 years in prison. Table 1 reports these statistics separately for individuals who were granted parole, and those who were not.

Patterns also emerge from the Parole Board’s hearing decisions. The number of hearings decisions declined each year from 2015 to 2017 with 18, 11, and 1 JLWOP decisions published, respectively. There was a small uptick in 2018 with 7 published decisions and then a subsequent decline to 5 decisions in 2019 and 2 decision by the end of February 2020. The pattern of parole approvals follows a similar trajectory with 5, 2, and 0 individuals granted for the period 2015 to 2017. In 2018, 6 juvenile lifers were paroled, but the numbers then declined to 1 parole approval each in 2019 and 2020. Out of the 30 cases, 15 were granted and 15 were denied parole. Out of the 15 that were paroled, 2 were paroled to ICE detainees. While 6 inmates were granted parole at their initial hearing, 9 were paroled after at least 1 review hearing. For those who were denied, the average setback period before the next review hearing was 3.25 years. The Parole Board is permitted to give a maximum of a five-year setback,⁵⁷ and the 3.25-year average signals that the members are unlikely to give a review hearing soon after the initial denial. Figure 1 reports these summary statistics.

Figure 1: Total number of parole hearing decisions and positive parole decisions by year.



⁵⁷ Mass. Gen Laws Ann ch 137, § 133a.

Table 1: Summary statistics about JWLOP demographics and parole hearing decisions.

	All Cases			Successful Cases			Unsuccessful Cases		
	Obs.	Mean	Std. Dev.	Obs.	Mean	Std. Dev.	Obs.	Mean	Std. Dev.
Age at Offense	30	16.53	0.68	15	16.53	0.74	15	16.53	0.64
Age at Last Hearing	30	45.2	7.48	15	44.67	8.2	15	45.73	6.93
Years Incarcerated	30	28.4	7.66	15	27.93	8.27	15	28.87	7.27
Days Between Hearing and Decision	30	190.47	112.9	15	198.73	126.92	15	182.2	100.74
Observations	30			15			15		

A. ANALYSIS OF PATTERNS IDENTIFIED IN PAROLE HEARING DECISIONS

The Parole Board’s decisions and the corresponding video recordings of each hearing illustrate how the members justify their decisions and the kinds of characteristics they look for when determining whether an inmate meets the legal standard to be paroled. Based on the 30 cases, the elements of rehabilitation identified as the most salient were candor and remorse when describing their role and intent in committing the offense, participation in prison programming, history of disciplinary reports in prison, and re-entry plans to transition back into society. While these elements were at times reflected in the language of the official decision, they became apparent in the kinds of questions that were repeatedly asked and pursued in the hearings. Expert witnesses in forensic psychology provided contextual information about the offenders’ childhood development and home environment. Victims’ families most often wrote letters or testified in opposition to parole. Though both the expert witnesses and victims’ family’s statements were considered in the ultimate decision, they were not found to be as substantial as the different parts of rehabilitative evidence.

i. LANGUAGE OF PAROLE HEARING DECISIONS

Written parole decisions contain four main sections. They are the (1) decision of the board, (2) statement of the case, (3) summary of the parole hearing, and (4) justifications for the decision. Out of the 44 hearing decisions, 18 were identified to have little to no explanation for why the individual had been granted or denied parole. For example, on January 28, 2016, Ken Yatti Jordan’s initial hearing decision was a denial with a four-year setback.⁵⁸ The justifications provided were: “The Board is of the opinion that Mr. Jordan has not demonstrated a level of rehabilitative progress that would make his release compatible with the welfare of society. The Board believes a longer period of positive institutional adjustment and programming would be beneficial to Mr. Jordan’s rehabilitation.”⁵⁹ The statement is then followed by a reiteration of the legal standard utilized and the offender’s youth-related attributes that were considered.⁶⁰ The absence of support for the decision presents difficulties for the offenders because it is unclear why the Parole Board sees them

⁵⁸ Massachusetts Parole Board, Decision in the Matter of Ken Yatti Jordan (January 28, 2016), <https://www.mass.gov/doc/ken-yatti-jordan-life-sentence-decision-0/download>.

⁵⁹ Id.

⁶⁰ Id.

as unsuitable for parole. If an inmate is not aware of the kinds of behavior the Parole Board wants him to demonstrate, he is unlikely to be in a favorable position for the next review hearing. While it is recognized that the offenders are represented by attorneys who guide them through the parole process, each case is unique with a different set of facts and histories. And the lack of individualized justification for the parole decision can be highly discouraging to individuals, particularly if they were given a longer setback period.

In the case of Alfred Brown, his denial of parole with a five-year setback was supported by the exact same boilerplate language with the addition of one statement: “Mr. Brown shot and killed his mother, father, and sister in the family home. The Board is concerned regarding the level of violence exhibited during the commission of the governing offense.”⁶¹ Alfred Brown’s decision raises the issue of whether the Parole Board would ever see Brown as meeting the legal standard if they were centrally concerned about the violence of the initial crime. Aspects of the offense itself cannot be altered, no matter the length of incarceration. But addressing the level of violence of the crime without also providing reasons as to why Brown failed to demonstrate rehabilitation raises concerns that the Parole Board is not adequately providing individuals a meaningful opportunity for release.

ii. EVIDENCE OF REHABILITATION

Out of the various considerations that the Parole Board takes into account, candor and remorse when describing their role in committing the offense, participation in prison programming, history of disciplinary reports in prison, and reentry plans to transition back into society emerged as the most significant. Each of these factors are included in the Parole Board’s web page describing how decisions are made to grant or deny parole. However, these elements in particular, were identified based on the frequency with which they were raised by the board members and the extent to which they were pointed out to the inmates as areas for improvement in the hearings as well as in the written decisions.

1. CANDOR AND REMORSE IN DESCRIBING ORIGINAL OFFENSE

For the purposes of this Paper, candor is defined as an expression of honesty and sincerity in describing one’s role and intentions in committing the governing offense. Remorse is characterized as the distressing feeling derived from accepting responsibility that one has harmed another through one’s actions.⁶² As shown in the following cases, the Board does not necessarily view candor and remorse as two distinct entities. Rather, the Board appeared to identify remorse as genuine when one was able to demonstrate candor about one’s participation in the crime. Remorse itself, however, remains notoriously difficult to assess and is often more indicative of the evaluator’s subjective perception of how remorse manifests itself. For example, in a study conducted with 23 sitting judges in the Connecticut State Superior Court Criminal Docket, researchers found that while some judges found hanging one’s head or putting one’s head down as signaling respect, other judges found the same actions as lacking remorse.⁶³ The same researchers concluded that though the judges all indicated strong views about remorse, there were differences in how it was viewed and

⁶¹ Massachusetts Parole Board, Decision in the Matter of Alfred Brown (March 27, 2019), <https://www.mass.gov/doc/alfred-brown-life-sentence-decision/download>.

⁶² Stephen J. Morse, *Commentary: Reflections on Remorse*, 42 J Am Acad Psychiatry Law 49 (2014).

⁶³ Rocksheng Zhong, et al. *So You’re Sorry? The Role of Remorse in Criminal Law* 42 J Am Acad Psychiatry Law 39 (2014).

assessed.⁶⁴ In addition to the disparity that exists based on perceptions of remorse, there is a lack robust evidence linking remorse with decreased recidivism.⁶⁵ Nonetheless, remorse and candor in describing the crime remained important elements in determining the level of rehabilitation an inmate exhibited.

Christopher Pucillo was 17 years-old when he participated in the beating and killing of another 17-year-old Ralph James Tracey.⁶⁶ Pucillo and two older companions had made plans to “jump” the victim earlier that night. After drinking with Tracey for two hours in a secluded wooded area, Pucillo and his companions attacked the victim until he fell unconscious. One of his companions then penetrated the victim’s rectum with a stick and then pushed his head under in the nearby pond until they could not find a pulse.⁶⁷ Pucillo was found guilty of first-degree murder as a joint venture under theories of premeditation and extreme atrocity and cruelty.⁶⁸ At the time of Pucillo’s initial parole hearing on November 20, 2014, he had served 21 years in prison and was denied parole with review in two years.⁶⁹ In his subsequent review hearing he was again denied with a one-year setback period.⁷⁰ He was then approved for parole after completion of 18 months in lower security on October 1, 2018.⁷¹

In the first decision, the Parole Board commended Pucillo’s positive adjustment in prison. Despite facing a life-without-parole sentence, Pucillo had few disciplinary reports, participated in educational and vocational skill training programs, and was in the process of earning his bachelor’s degree from Boston University.⁷² He was also well supported by family members who attended the hearing. However, the Parole Board wrote that a significant concern was the inconsistency between the facts provided in the trial transcripts and other witnesses, and those provided by Pucillo.⁷³ The decision stated: “While acknowledging Pucillo’s progress and his commitment to rehabilitation, further consideration is warranted by the board regarding Pucillo’s apparent lack of candor in his role, intent, and motivation in the crime.”⁷⁴

During the second hearing, the members asked Pucillo extensively about the events leading up to the murder, the murder itself, and after the crime.⁷⁵ One of the board members acknowledged that in the last hearing they kept getting stuck on the self-serving statements between him and his co-defendants.⁷⁶ The member had remained unclear about the motivation behind the murder, and asked him again about why he participated in the crime.⁷⁷ Pucillo responded that his motivation came from his loyalty to his co-defendants who he looked up to at the time.⁷⁸ The Board also asked him about his victim empathy and his

⁶⁴ Id.

⁶⁵ Susan A. Bandes, *Remorse and Criminal Justice* 8 Emotion Rev. 14 (2015).

⁶⁶ Massachusetts Parole Board, Decision in the Matter of Christopher Pucillo (February 26, 2015), <https://www.mass.gov/doc/christopher-pucillo-life-sentence-decision-4/download>.

⁶⁷ Id.

⁶⁸ Id. at 2.

⁶⁹ Id. at 4.

⁷⁰ Massachusetts Parole Board, Decision in the Matter of Christopher Pucillo (May 17, 2017), <https://www.mass.gov/doc/christopher-pucillo-life-sentence-decision-2/download>.

⁷¹ Massachusetts Parole Board, Decision in the Matter of Christopher Pucillo (October 1, 2018), <https://www.mass.gov/doc/christopher-pucillo-life-sentence-decision-5/download>.

⁷² Massachusetts Parole Board, Decision in the Matter of Christopher Pucillo, (February 26, 2015).

⁷³ Id.

⁷⁴ Id.

⁷⁵ Massachusetts Parole Board, *Pucillo, Christopher W-58874 DVD: Providia*, (November 15, 2016).

⁷⁶ Id.

⁷⁷ Id.

⁷⁸ Id.

reactions to the victim's autopsy report. Pucillo stated that it had made him sick and took him a couple times to get through the report.⁷⁹ During this hearing, Expert Witness Dr. Hilary Ziven, provided a testimony about her psychological assessment of Pucillo.⁸⁰ She stated that following the death of Pucillo's uncle, his primary caretaker at the time, Pucillo experienced depression and had pent-up anger about his loss.⁸¹ She believed that Pucillo who needed an older role model, was entranced by his co-defendants and demonstrated immaturity of his age by seeking peer approval and failing to consider the consequences of his actions. Dr. Ziven concluded that she found it unlikely for Pucillo to have committed the offense on his own.⁸²

In the third hearing, members continued to ask about the anger behind the crime and what motivated his actions. He denied the intent to kill the victim before the attack.⁸³ But he explained that he had been afraid of his co-defendants and went along with them thinking they were only going to beat the victim up.⁸⁴ They then asked him about his participation in Restorative Justice retreats. Pucillo responded that he had been moved by a victim's story about being kidnapped and thought about how much anguish his victim must have experienced. He also added that he dreaded knowing that each parole hearing was re-traumatizing for the victim's family and friends.⁸⁵ The series of Pucillo's hearings illustrates the Parole Board's emphasis on identifying the precise motivations and intent behind the offender's actions. Even though Pucillo was assessed as low risk by the expert witness, participated in various programs, and had a low number of disciplinary reports during his 21 years in prison, it was not until the third hearing that they were satisfied with his account of the crime and the demonstrated remorse.⁸⁶

In his initial and subsequent hearing, Joshua Halbert faced similar challenges of being perceived as failing to demonstrate candor about his role and motivations behind the crime. In 1989, Halbert along with two co-defendants were all sentenced to life-without-parole for the murder of David McLane.⁸⁷ One of the co-defendants had asked Halbert if he was "ready to roll a fag" that night, and the three participated in the violent killing of the victim.⁸⁸ At the time of the initial hearing, Halbert was 45 years-old, having served 26 years in prison. Board members asked him repeatedly about the night of the murder and whether the crime was motivated by the victim's sexual orientation.⁸⁹ The decision itself stated that the Board questioned Halbert at length about his participation in the murder.⁹⁰ The Board cited differences between his co-defendants' accounts stating that Halbert played a principal role in planning the crime and his own confession back in 1988.⁹¹ Halbert denied being involved in stabbing the victim but admitted to hitting the victim in the head with a liquor

⁷⁹ Id.

⁸⁰ Id.

⁸¹ Id.

⁸² Id.

⁸³ Massachusetts Parole Board, *Pucillo, Christopher W-58874 DVD: Milestone* (November 7, 2017).

⁸⁴ Id.

⁸⁵ Massachusetts Parole Board, Decision in the Matter of Christopher Pucillo (October 1, 2018),

⁸⁶ Id.

⁸⁷ Massachusetts Parole Board, Decision in the Matter of Joshua Halbert (March 12, 2015), <https://www.mass.gov/doc/joshua-halbert-life-sentence-decision-0/download>.

⁸⁸ Id.

⁸⁹ Massachusetts Parole Board, *Jones, John W-40028 DVD: Providia* (December 17, 2015).

⁹⁰ Massachusetts Parole Board, Decision in the Matter of Joshua Halbert (March 12, 2015).

⁹¹ Id.

bottle and punching him in the face, stomach, and groin area.⁹² He also denied his intention to hurt the victim because of his sexuality.⁹³

Halbert was ultimately denied parole with a four-year setback. The decision stated that after questioning Halbert at length about his role, motivation, and precipitating factors, the members did not accept his account as accurate. It stated:

Specifically, Halbert minimizes his role in the vicious bearing of Mr. McLane, as well as in the motivation for wanting to harm and murder him. Halbert's lack of candor demonstrates that he has not been rehabilitated. The Board notes that Halbert has improved his conduct over the last 10 years and that he has increased his participation in programming; however, his overall level of rehabilitation is insufficient for release into the community.⁹⁴

Here, the Board directly identified its dissatisfaction with Halbert's account of his role in the crime as the primary cause for denying parole. While acknowledging other measures such as prison programming, the focus remained on whether the members found Halbert's statements about the murder as truthful. Four years later, the members continued to question Halbert about the night of the murder and his actions that contributed to the death of the victim.⁹⁵ In his review hearing, Halbert responded that he had acted out of rage from his own sexual assault experience by a man not too long before the murder. He admitted to having brought the knives from the kitchen but continued to deny stabbing the victim.⁹⁶ The Board in its decision, again denied Halbert parole with a three-year setback. The justification was short, stating that Halbert had only recently been forthright about his culpability in the murder and should continue to dedicate himself to rehabilitation that addressed causative factors.⁹⁷

The Parole Board's fixation on the offenders' intent and motivation behind the governing crime was also evident in the case of John Jones. On October 19, 1983, Jones was found guilty of first-degree murder of Donald Pickham in the Essex County Superior Court.⁹⁸ Jones, who was 17-years-old at the time, and another juvenile co-defendant planned to rob Pinkham for a check he had recently received. Pinkham's body was found in an area called "Dead Man's Path" in Gloucester, badly burned with a crushed head.⁹⁹ Jones spent 33 years in prison and was 50-years-old when he appeared at the initial hearing.¹⁰⁰ The Parole Board questioned him about the day of the crime and about his claims of failing to remember the incident. He began explaining the events of the day beginning at 9AM when he started drinking Budweiser and smoking marijuana which continued through the day.¹⁰¹ He said that he was pretty buzzed when he purchased Valium and met a group of guys to buy more beer. He added that the group went to the railroad tracks, where they smoked more

⁹² Id.

⁹³ Id.

⁹⁴ Id.

⁹⁵ Massachusetts Parole Board, Decision in the Matter of Joshua Halbert (October 1, 2019), <https://www.mass.gov/doc/joshua-halbert-life-sentence-decision-1/download>.

⁹⁶ Id.

⁹⁷ Id.

⁹⁸ Massachusetts Parole Board, Decision in the Matter of John Jones (May 16, 2016), <https://www.mass.gov/doc/john-jones-life-sentence-decision-0/download>.

⁹⁹ Id. at 2.

¹⁰⁰ Id.

¹⁰¹ Massachusetts Parole Board, *Jones, John W-40028 DVD: Providia* (December 17, 2015).

marijuana and drank.¹⁰² A policeman flashed his light on the group to keep moving down the tracks and Jones stated that he ingested the Valium around this period. Jones explained that his memory ended right as they were walking towards the junkyard.¹⁰³

When questioned about when the decision to rob Pinkham was made, Jones answered that his co-defendant had brought up the idea and he agreed to it. He said that this agreement happened a couple hours after he had taken the Valium. However, Jones said that he had no memory of the actual assault and found out about it the next morning when he went down to the basketball court and his co-defendant told him what had happened.¹⁰⁴ When a Parole Board member asked him why he thought he cannot remember, Jones replied that he just did not remember. When further probed about how the memories had not come back even through counseling, Jones explained he had read so much about the case, he had difficulty identifying his real memory from what he had learned about from the trial.¹⁰⁵ Another member then asked Jones if he doesn't know how and why the offense happened, how could Jones be sure that it wouldn't happen again. Jones responded that he believed that at the night of the crime, he was holding in pent-up anger and frustration that all came to a head.¹⁰⁶

Jones presents an interesting dilemma for the Parole Board. Because he claimed that he does not remember the incident itself, the members could not evaluate his candor the same way they assessed offenders who know the events of the crime. And despite the memory loss, Jones expressed full responsibility for the death of Pinkham, who he later found out was a distant cousin.¹⁰⁷ He provided an emotional opening statement where he apologized for the crime and harm he had inflicted on the victim's family, the community, and his own family.¹⁰⁸ He also reflected on the emotional abandonment of his father, poverty, and substance abuse in his community that allowed him to commit the crime.¹⁰⁹ While Jones was incarcerated, he received 104 disciplinary reports until his last report in 1994. Since 1994, Jones had not received a single report.¹¹⁰

In his oral testimony, Expert Witness Dr. Robert Kinscherff described Jones' childhood development and substance abuse habits that provided context for the crime and Jones' involvement in it.¹¹¹ Dr. Kinscherff explained that the reports submitted to him reflected a childhood of active abandonment, chaotic family life fraught with domestic violence and substance abuse. Additionally, he described the housing projects in Gloucester where Jones lived with having a great deal of criminal activity and delinquency among the youth.¹¹² Jones began substance abuse at age 9 and was a chronic substance abuser by age 12. He was in special education by eighth grade for learning disabilities and eventually expelled in tenth grade for fighting. Jones supported himself by selling drugs and by 16, had been charged for possession of marijuana, possession of a class D controlled substance, and breaking and entering.¹¹³ Kinscherff noted that at this point Jones was involved in two different worlds. While he was actively dealing drugs, Jones was also employed at the

¹⁰² Id.

¹⁰³ Id.

¹⁰⁴ Id.

¹⁰⁵ Id.

¹⁰⁶ Id.

¹⁰⁷ Id.

¹⁰⁸ Id.

¹⁰⁹ Id.

¹¹⁰ Massachusetts Parole Board, Decision in the Matter of John Jones (May 16, 2016).

¹¹¹ Massachusetts Parole Board, *Jones, John W-40028 DVD: Providia* (December 17, 2015).

¹¹² Id.

¹¹³ Id.

housing department of Gloucester and restaurants as well as took care of medically compromised patients at the local hospital.¹¹⁴

Most importantly, Dr. Kinscherff provided testimony about the combination of alcohol and Valium's well-documented effect of creating retrograde amnesia.¹¹⁵ Because of this known effect, he noted that it was a common practice used in medical procedures which results in a range from absolutely no memory to spotty recollection.¹¹⁶ Furthermore, he explained that individuals who have amnesia cannot recall memories through counseling or reflection because the memory simply does not exist. On the contrary, trying to reclaim them could instead lead to creating false memories.¹¹⁷ Dr. Kinscherff's statements directly addressed the Parole Board's concerns about Jones' lack of candor by substantiating his claim of not recalling the actual offense. However, Jones was denied parole and given a three-year setback with no added information apart from the boilerplate language of insufficient rehabilitation.

Three years later, Jones' review hearing followed a similar course questioning about the offense. Jones was asked to describe what he had done to the victim, why he thought he could not remember the events, and whether he knew what the victim's injuries were.¹¹⁸ By this hearing, Jones had participated in additional prison programming to address his substance abuse and violence, and had not received any disciplinary reports.¹¹⁹ Dr. Kinscherff again provided his statements which were very similar to his previous testimony, bringing attention to the well-known effects of alcohol and Valium and noting Jones' low risk based on his recent evaluation.¹²⁰ Following this review hearing, Jones was granted parole to a long-term residential program after the completion of 12 months in lower security.¹²¹ It is notable that in Jones' case, two members voted to deny with a two-year setback but were overruled by the two-thirds majority.¹²² Jones' case represents an example of the Parole Board's focus on evaluating the offender's candor in his role, motivation, and intent in the governing offense. While other factors such as childhood background and institutional behavior were considered, the hearing illuminates how significant honesty about the crime was for the members as they made parole decisions.

2. PRISON PROGRAM PARTICIPATION

In Massachusetts, the number of prison programs available vary based on the particular correctional facility. Souza Baranowski Correctional Center and MCI-Cedar Junction are two maximum security facilities housing only males.¹²³ According to Massachusetts Department of Correction Program Description Booklet as of February 2019, Souza Baranowski has 15 departmental services and programs, 4 four vocational education

¹¹⁴ Id.

¹¹⁵ Id.

¹¹⁶ Id.

¹¹⁷ Id.

¹¹⁸ Massachusetts Parole Board, *Jones, John W-40028 DVD: Milestone* (December 12, 2018).

¹¹⁹ Id.

¹²⁰ Id.

¹²¹ Massachusetts Parole Board, Decision in the Matter of John Jones (April 29, 2019), <https://www.mass.gov/doc/john-jones-life-sentence-decision-1/download>.

¹²² Is.

¹²³ Commonwealth of Massachusetts, Massachusetts Department of Corrections Locations (Accessed May 1, 2020), https://www.mass.gov/orgs/massachusetts-department-of-correction/locations?_page=2.

programs, and 13 institutional programs.¹²⁴ At MCI-Cedar Junction, there are 11 departmental services and programs, 3 vocational education programs, and 6 institutional programs.¹²⁵ In comparison, MCI-Concord, a medium security facility has 11 departmental services and programs, 4 vocational education programs, and 33 institutional programs.¹²⁶ Similarly, MCI-Norfolk, the largest medium security facility, has 11 departmental services and programs, 5 vocational education programs, and 35 institutional programs.¹²⁷ Additionally, MCI-Norfolk has various manufacturing operations in different shops (Clothing Shop, Mattress Shop, Janitorial Shop, Metal Operation, Upholstery Shop, Binder Shop, and Furniture Assembly Shop) where inmates can work in.¹²⁸ Based on the booklet, it is evident that a smaller number of total programming, particular institutional programming, is available in maximum security prisons compared to medium security prisons.

Regardless of where the inmate is placed, however, the Parole Board viewed participation in prison programming as a tangible indicator of rehabilitation. For example, in 1976, Siegfried Golston was found guilty of first-degree murder for the beating of Ronald Salem with a baseball bat outside a store in Dorchester.¹²⁹ In his initial parole hearing, Golston described the racial tensions that were brewing because of the busing crisis in the 1970's.¹³⁰ He and his family were living in Columbia Point projects, a racially segregated housing project, and Golston transferred to South Boston High School in 1974 as a result of a court order to desegregate schools.¹³¹ Reverend William Loesch, who knew Golston's family at the time, also attested to the level of racial hostility in South Boston where African-American children were being chased out and attacked.¹³² On the day of the murder, Golston was working at a store that Ronald Salem, a Caucasian man, entered and purchased cigarettes and a soda. As Salem walked towards his car, Golston then hit him with a baseball bat and fled the scene.¹³³

Golston was 17-years-old at the time of the crime and had been incarcerated for 40 years when he first appeared before the Parole Board. He was residing in Old Colony Correctional Center, a medium and minimum facility where he worked at the Print Shop. He was also heavily involved in the Lifer's Group and as the board member of Toastmaster, an institutional program to foster public-speaking skills.¹³⁴ He participated in religious services and chapel as well as the Project Youth Program, where inmates talk to high school students about their own experiences and how they became incarcerated.¹³⁵ He also served as the referee for the adult basketball league for inmates 35 and older.¹³⁶ Nevertheless, Golston was questioned by the members about why he had not participated in programs specifically

¹²⁴ Massachusetts Department of Correction, Program Description Booklet (February 2019), <https://www.mass.gov/files/documents/2019/11/26/DSB-19-40-DOC-Program-Description-Booklet-Feb-2019.pdf>.

¹²⁵ Id. at 28.

¹²⁶ Id. at 29-30.

¹²⁷ Id. at 33-34.

¹²⁸ Id.

¹²⁹ Massachusetts Parole Board, In the Decision of Siegfried Golston (May 1, 2015) <https://www.mass.gov/doc/seigfried-golston-life-sentence-decision-0/download>.

¹³⁰ Id.

¹³¹ Id.

¹³² Massachusetts Parole Board, *Golston, Siegfried, W-35525 DVD: Providia* (January 29, 2015).

¹³³ Id.

¹³⁴ Massachusetts Department of Correction, Program Description Booklet (February 2019).

¹³⁵ Id. at 24.

¹³⁶ Massachusetts Parole Board, Decision in the Matter of Siegfried Golston (May 1, 2015).

focused on anger management and violence issues.¹³⁷ He responded that he had taken mindfulness classes and that other programs he engaged also addressed those issues.¹³⁸

In the decision, the Parole Board acknowledged that Golston demonstrated many of the hallmark characteristics of an adolescent such as immaturity and impetuosity at the time of the murder.¹³⁹ He also failed to appreciate the consequences of his actions. The Parole Board added that despite difficult institutional adjustment in his first 20 years, he had engaged in programs that “promote meaningful self-development and occupational skill building.”¹⁴⁰ Furthermore, the Board identified a clear pattern of increasing program participation along with a decrease in disciplinary incidents. But they concluded that the members were still concerned with Golston’s lack of anger and violence reduction programming and strongly encouraged him to continue his program participation with those areas in mind.¹⁴¹ Golston was denied parole with a review after two years. It is worth noting that during Golston’s review hearing on January 26, 2017, he exhibited cognitive impairment and memory loss.¹⁴² When questioned by the members, Golston did not appear to understand the questions and was unable to respond in a coherent way. The hearing was adjourned early with the plan to reschedule a new hearing in the following months.¹⁴³ As of April 21, 2020, the Parole Board Records indicate that the review hearing in 2017 was postponed and a follow-up hearing has not yet been held.¹⁴⁴

Jeffrey Roberio’s case also demonstrates the Board’s emphasis on prison programming to prove that the offender has rehabilitated. When Roberio was 17 years-old, he and his co-defendant broke into a trailer owned by 79-year-old Lewis Jennings with the intent to steal the victim’s cash.¹⁴⁵ Jennings was found the next day with injuries to his head and spine from blunt force and strangulation. Out of the 29 years of incarceration, Roberio had spent the last 26 years at Old Colony Correctional Center. He had been employed in the Print Shop for the past 16 years, and was working as the shop’s chief mechanic. In 2005, he received his GED and completed a series of programs including “...Toastmasters (Speaking without Fear, March 2015 and Speechcraft Program Facilitator, June 2015) and Alternatives to Violence (Basic Course, April 2008 and Second Level Course, November 2008).”¹⁴⁶ He also attended Alcoholic Anonymous (“AA”) and Narcotics Anonymous (“NA”) meetings and was a part of the facility’s music program.¹⁴⁷ The Parole Board, however, found Roberio’s programming insufficient and denied him parole with the maximum five-year setback. The decision stated:

Despite having spent his entire adult life in prison without adequate programming, Roberio (age 46) asks the Board to trust that he is rehabilitated and that he no longer presents a risk of harm to society because he has changed of his own volition. While his overall conduct in prison does not raise heightened concern for violence and substance abuse, the fact that he has been

¹³⁷ Massachusetts Parole Board, *Golston, Seigfried, W-35525 DVD: Providia* (January 29, 2015).

¹³⁸ *Id.*

¹³⁹ Massachusetts Parole Board, Decision in the Matter of Siegfried Golston (May 1, 2015).

¹⁴⁰ *Id.*

¹⁴¹ *Id.*

¹⁴² Massachusetts Parole Board, *Golston, Seigfried, W-35525 DVD: Providia* (January 26, 2017).

¹⁴³ *Id.*

¹⁴⁴ Massachusetts Parole Board, Email to Grace Choi: Public Record Request Response (April 21, 2020).

¹⁴⁵ Massachusetts Parole Board, Decision in the Matter of Jeffrey Roberio (November 4, 2015), <https://www.mass.gov/doc/jeffrey-roberio-life-sentence-decision-1/download>.

¹⁴⁶ *Id.*

¹⁴⁷ *Id.*

complacent in addressing these issues leaves serious concern of whether his release is compatible with the best interest of society.¹⁴⁸

It is important to note that despite positive Roberio's behavior in prison, the Board was unwilling to take that as the only indicator of non-violent conduct. Particularly for these juvenile lifers who were convicted of violent crimes, the members wanted to see the inmates aggressively participate in programming specific to anti-violence, anger management, and in most cases, substance abuse treatment. However, the weight placed on programming raises concerns that were salient in other parole board hearing cases. For example, for individuals given life-without-parole sentences, they were placed on a long waitlist for programs and given the least priority due to their sentence structure. While some individuals were able to participate in programs before the *Diatchenko* decision, it was not until they became parole-eligible that they were given more access to the programs.¹⁴⁹ In addition, some inmates admitted to being resigned to spend the rest of their lives in prison, which contributed to their lack of program involvement.¹⁵⁰

Joseph Drayton, 59 years-old at the time of his first parole appearance, had spent 42 years in prison.¹⁵¹ When asked about his substance abuse programming, Dayton explained that it had been segmented. When he first entered MCI-Cedar Junction, formerly named MCI-Walpole, he explained that major programs were phased out due to budget issues.¹⁵² And so, for his substance abuse treatment he was only able to consistently attend AA and NA classes each week for one hour and a half.¹⁵³ Apart from AA and NA, Drayton completed computer educational classes, anger management, and Alternative to Violence classes in conflict resolution. He was on the waitlists for Restorative Justice and Emotional Awareness courses.¹⁵⁴ Deciding to deny him parole with a three-year setback, the Board stated that it “believes that a longer period of institutional adjustment and programming, including the Restorative Justice program, would be beneficial to Mr. Drayton’s rehabilitation.”¹⁵⁵

When Drayton appeared before the Parole Board three years later, he had completed Correctional Recovery Academy, Restorative Justice, Emotional Awareness in addition to several other programs.¹⁵⁶ Following this review hearing, the Board then granted Drayton parole. At the time of the first hearing, Drayton had not had any disciplinary reports since 1999, which was significant amount of time within the prison setting. The forensic evaluation conducted by Dr. Frank DiCataldo also concluded that Drayton did not have any clinically significant barriers or antisocial traits.¹⁵⁷ The only significant difference between Drayton in the first and review hearing was his participation in several programs. Drayton’s as well as other cases of juvenile lifers illustrates how important the Parole Board finds programming to be when looking for evidence of sufficient rehabilitation.

¹⁴⁸ Id.

¹⁴⁹ Massachusetts Parole Board, Decision in the Matter of Alfred Brown (March 27, 2019), <https://www.mass.gov/doc/alfred-brown-life-sentence-decision/download>.

¹⁵⁰ Massachusetts Parole Board, Decision in the Matter of John Jones (May 16, 2016).

¹⁵¹ Massachusetts Parole Board, Decision in the Matter of Joseph Drayton (October 4, 2016), <https://www.mass.gov/doc/joseph-drayton-life-sentence/download>.

¹⁵² Massachusetts Parole Board, *Drayton, Joseph W-35183 DVD: Providia* (April 28, 2016).

¹⁵³ Id.

¹⁵⁴ Massachusetts Parole Board, Decision in the Matter of Joseph Drayton (October 4, 2016).

¹⁵⁵ Id.

¹⁵⁶ Massachusetts Parole Board, Decision in the Matter of Joseph Drayton (February 19, 2020), <https://www.mass.gov/doc/joseph-drayton-life-sentence-decision-0/download>.

¹⁵⁷ Massachusetts Parole Board, *Drayton, Joseph W-35183 DVD: Providia* (April 28, 2016).

3. DISCIPLINARY REPORTS

Institutional adjustment and record of disciplinary infractions are other measures that the Board used to evaluate an inmate's rehabilitation. While the Board expressed understanding for those who struggled with adjusting to prison life in the beginning of the incarceration period, the members viewed the continuation of disciplinary reports as evidence that the individual had failed to mature out of their adolescent tendencies or that the violent qualities exhibited during the earlier years were simply part of the individual's character.

Patrick Nerette represents one of these cases. Nerette was 17-years-old when he and his juvenile co-defendant attempted to rob a liquor store and the co-defendant shot and killed Jeanne Stranberg, the store clerk.¹⁵⁸ Nerette then spent 25 years in prison and was housed in the Western Correctional Institution, an ultra-maximum security facility in Maryland, before seeking parole to ICE for deportation to Haiti.¹⁵⁹ Nerette's record showed 40 disciplinary reports and 3 returns to higher custody during his incarceration that the Board found extremely troubling. In 2006, he stabbed another inmate multiple times with a sharpened piece of plexiglass he had obtained through his employment at the Plate Shop while at MCI-Cedar Junction.¹⁶⁰ In 2009, he was placed in disciplinary detention for 19 months after which he was transferred to Souza Baranowski. He was then found in possession of a weapon and transferred out of state because of enemy issues.¹⁶¹ In addition to these infractions, the Board member Ina Howard-Hogan recounted reports including a ticket for homebrew when Nerette was 32, an aggravated assault on inmate at 33, refusing an order at 34, and threatening prison staff at 36.¹⁶² She pointed out that Nerette's record showed violent behavior past the age individuals statistically mature out of adolescent behavior. His past behavior along with minimal anti-violence programming were cited as reasons for his parole denial and the maximum five-year setback.¹⁶³

The case of Malik Abdul Aziz is also evidence of the Board's reluctance to grant parole to individuals with long disciplinary records. Aziz had been incarcerated for nearly 30 years when he attended his first parole hearing, and by this time had accrued 142 disciplinary reports.¹⁶⁴ In his hearing, Aziz explained that when he first entered prison, he joined a gang and received multiple disciplinary reports in the efforts to move up the ranks and prove himself to others in the gang.¹⁶⁵ He said that although joining the gang was the worst decision he could have made, at the time he did not feel like anything mattered because he was serving a life-without-parole sentence.¹⁶⁶ Nonetheless, in 2012, Aziz formally renounced his gang affiliation and was transferred to Montana Department of Corrections for his safety from gang retaliation.¹⁶⁷ While he was in Massachusetts, Aziz had been unable to participate in many programs because of his transfers to higher custody and time in segregation. However,

¹⁵⁸ Massachusetts Parole Board, Decision in the Matter of Patrick Nerette (November 4, 2015), <https://www.mass.gov/doc/patrick-nerette-life-sentence-decision-0/download>.

¹⁵⁹ Id.

¹⁶⁰ Id.

¹⁶¹ Id.

¹⁶² Massachusetts Parole Board, *Nerette, Patrick W-49164 DVD: Milestone* (June 30, 2015).

¹⁶³ Massachusetts Parole Board, Decision in the Matter of Patrick Nerette (November 4, 2015).

¹⁶⁴ Massachusetts Parole Board, Decision in the Matter of Malik Abdul Aziz (May 12, 2015),

<https://www.mass.gov/doc/malik-abdul-aziz-life-sentence-decision-0/download>.

¹⁶⁵ Massachusetts Parole Board, *Aziz Abdul, Malik W-44026 DVD: Providia* (January 29, 2015).

¹⁶⁶ Id.

¹⁶⁷ Id.

in Montana, he had finished two of the five parts of Restructuring Program and Cognitive Principles.¹⁶⁸ More importantly, he also had remained disciplinary report free since 2012.

Aziz, unlike other juvenile lifers, did not ask for parole but instead a two-year setback so that he could have more time complete additional programming. The Board, however, did not find the two-year setback sufficient and instead imposed a five-year setback.¹⁶⁹ In the decision, the Board acknowledged that Aziz came from a highly dysfunctional family and experienced an abusive childhood including parental neglect. And even though the past two years in Montana had shown positive conduct, the Board could not overlook years of poor behavior in prison.¹⁷⁰ The decision referenced disciplinary reports for possessing weapons, assaulting others, inciting violence, and threatening female staff. The Board also noted that Aziz still needed to work on issues of violence, victim impact, and candor, particularly because it found his characterization of himself as a participant in the governing crime as false when he was the primary ring leader.¹⁷¹ As seen in the earlier cases like Christopher Pucillo and John Jones, having a clean disciplinary record did not override other aggravating factors such as being seen as insufficiently forthcoming about the crime. However, having a long history of infractions, violent ones in particular, would be a likely cause for the Parole Board to deny parole and impose a longer setback period.

4. PAROLE PLAN

Compared to candor about intent and role of the offense, participation in programming, and disciplinary records, re-entry plans played a less significant role in determining parole as evidenced in the written decisions. However, Board members frequently raised questions regarding parole plans and systems of support during the hearings. And when the hearing room was full of supporters and family members, the Parole Board had the chance to see people in the inmate's life who would help him transition more smoothly back into society.

Frederick Clay was a case that had the maximum allotted number of supporters testifying on his behalf.¹⁷² They included Carol Agate, a friend and former California prosecutor, who informed the Board that she had set aside 10,000 dollars to assist Clay in housing was willing to help in any other way.¹⁷³ His great-aunt also testified about Clay's traumatic childhood along with three other friends who all stated that they would support Clay in any way possible.¹⁷⁴ Clay asked for a gradual step-down process to lower security within the Department of Correction and a subsequent parole to a long-term treatment program. In the hearing, he also indicated employment offers for an Assistant Sexton position at the First Parish of in Cambridge and an entry-level job at Boston Baking Inc.¹⁷⁵ In Clay's case, four members—Bonner, Coleman, Dupre, and Gartenberg—voted to parole him to a long term residential treatment program, emphasizing that the re-entry plan would be critical to his successful assimilation back into society.¹⁷⁶ Ultimately, Clay was paroled after

¹⁶⁸ Massachusetts Parole Board, Decision in the Matter of Malik Abdul Aziz (May 12, 2015).

¹⁶⁹ Id.

¹⁷⁰ Id.

¹⁷¹ Id.

¹⁷² Massachusetts Parole Board, Decision in the Matter of Frederick Clay (August 26, 2015), <https://www.mass.gov/doc/frederick-clay-life-sentence-decision-1/download>.

¹⁷³ Massachusetts Parole Board, *Clay, Frederick W-38444 DVD: Providia* (May 21, 2015).

¹⁷⁴ Id.

¹⁷⁵ Id.

¹⁷⁶ Massachusetts Parole Board, Decision in the Matter of Frederick Clay (August 26, 2015).

he appealed his initial denial, arguing that the Board's retroactive application of an amendment that required a two-third vote for parole was unconstitutional.¹⁷⁷

As discussed earlier, Seigfried Golston had been denied parole in large part because of his lack of participation in programs targeting anger management and violence reduction. The Parole Board also pointed out that Golston's parole plan was still in its early stages and that he would need to develop a more viable plan.¹⁷⁸ The members stated that he needed to set realistic expectations about his reintegration back into the society because of his 40-year separation from it.¹⁷⁹ There was a concern within the Board that for individuals who had spent the majority of their lives incarcerated, they had become institutionalized to the extent that life outside of prison would be impossible. Therefore, the Board members asked questions about what inmates viewed as the biggest challenges after being paroled, whether they had spoken to lifers who were paroled but returned to prison, and who they designated as support that they can go to when they needed help. In addition to having supporters present at the hearing and testifying, a more comprehensive re-entry plan that included housing, employment offers, mental health and substance abuse treatment, along with active family members were important aspects that the Board looked to predict successful transitions.

iii. ROLE OF EXPERT WITNESSES

Under the *Diatchenko* decision, all juvenile lifers seeking parole were provided an expert witness who conducted a forensic psychology evaluation of the inmates for the Board. These expert witnesses gave insight into the mind of the offenders, particularly at the time of the offense as well as many years later as adults. They also shared with the members relevant information about the effects of hallucinogens on memory, fetal substance abuse syndrome on cognitive abilities, and more broadly childhood trauma on adolescents' emotional development. Strikingly, expert witnesses also pushed back on the Board's persistent questioning about the original offense and openly discussed the limitations of risk assessment tools administered.

On June 14, 1982, Christopher Bousquet and Lisa Lachance who were both 16-years-old at the time, went to a wooded area to smoke hashish.¹⁸⁰ At some point, a disagreement between the two broke out and Bousquet proceeded to punch and stab Lachance approximately 29 times. Earlier in the day, Bousquet had smoked LSD and admitted to having been a substance abuser since age 15, often using hashish and mescaline, a known hallucinogen.¹⁸¹ During the course of the hearing, the Board members pressed Bousquet on why he chose to stab the victim and what he remembered about the event.¹⁸² Bousquet responded that while he recalled the motions, he could not remember the incident itself. Following the questioning, Dr. Robert Kinscherff provided testimony, commenting on the effects of known hallucinogens LSD and mescaline as well as on his recent evaluation of Bousquet.¹⁸³ He stated:

¹⁷⁷ *Frederick Clay v. Massachusetts Parole Board*, 436 Mass. 133 (2016).

¹⁷⁸ Massachusetts Parole Board, Decision in the Matter of Siegfried Golston (May 1, 2015).

¹⁷⁹ Id.

¹⁸⁰ Massachusetts Parole Board, Decision in the Matter of Christopher Bousquet (October 16, 2018), <https://www.mass.gov/doc/christopher-bousquet-life-sentence-decision-1/download>.

¹⁸¹ Id.

¹⁸² Massachusetts Parole Board, *Bousquet, Christopher W-44500 DVD: Milestone* (December 14, 2017).

¹⁸³ Id.

In all candor, I have to comment from a behavioral science point of view, particularly if the ingestion of a hallucinogen played a role in the dynamics of the crime. It may be that a satisfying account of the situational precipitance to the attack may never emerge given his age at the time of the murder and the subsequent passage of time. The volatility and emotional arousal characterizing the lethal attack, a brutal attack, a very violent one on Ms. Lachance. And a possible or even likely contributions to hallucinogens to distort his perceptions and compromise thinking at the time of the attack. From a risk assessment and management perspective, it is significantly more reliable considering recidivism risk and likelihood of successful community reentry to focus upon his history of functioning over the subsequent decades and current risk needs profile. In particular, as commented here by members of the board, any indications of substance use currently or in the future. He does not present with indications of diagnosable mental disorder and reportedly maintained sobriety since 1991. He does not present with indications of significantly elevated or trait-like anger or resentment. He does experience frustration or resentment at times as many of us do, but his history over many years indicates that he does not respond to them reactively or impulsively or with threatened or actual aggression. He may experience more subjective emotional distress than was acknowledged during interviewing, but on validated assessment tools in interview and review of his history this distress is not at levels that are impairing his daily functioning or pose risk of violence.¹⁸⁴

In this testimony, Dr. Kinscherff raised points about the likely role of hallucinogens not only in crime itself but also in the ways that Bousquet articulated the incident. A satisfactory explanation of the precipitating factors may never exist, particularly when drugs such as LSD and mescaline were involved. He then spoke at greater lengths about Bousquet's risk assessment and management, focusing on the many years following the crime during which he demonstrated a history of successful anger management and abstinence from drugs. Dr. Kinscherff noted that there were no indications of a diagnosable mental illness and that Bousquet did not present a risk of violence. Even further, Dr. Kinscherff provided a psychological perspective on Bousquet's demeanor during the hearing. He said:

And I'll close with just this, because it is unusual to see in a testing protocol, but there is evidence on testing, that Mr. Bousquet experiences some slowing of social or other information at times when he is stressed or must suddenly respond or react to novel or unexpected situations or interactions. This reflects a coping strategy intended to diminish his reactivity to emotional states or confusing impressions or facts. This strategy may also reflect at least in part a developed non-reactivity to the immediacy of emotions and thoughts that is an anticipated outcome of meditation practices, especially long-term meditation practice. At these times where he is compelled to speak promptly, he may briefly lose social contact, seem awkward, or unresponsive or detached or make statements that are not well thought through. This does not indicate a pervasive neuro-psychological disability or lack of intelligence. Nor does it elevate violence risk. Though it may lead others to see him as more awkward

¹⁸⁴ Id.

or emotionally off in stressful situations for him than he would appear in less stressful circumstances, or if observed over a longer period of time. I would be pleased to respond to any questions from the board.¹⁸⁵

During the hearing, Board members may have found Bousquet's expressions as non-remorseful, slow, or detached. But here, Dr. Kinscherff pointed out that those kinds of assumptions did not accurately characterize Bousquet and he shed light on an alternative way of viewing the inmate's behavior during the hearing based on testing protocols. However, despite Dr. Kinscherff's testimony, the Parole Board determined that Bousquet did not meet the legal standard and he was denied parole in his review hearing with three-year setback.¹⁸⁶ The Board justified its decision by arguing that the members found Bousquet to be minimizing his culpability, despite his involvement in prison programming and lack of any disciplinary reports for the last 17 years.¹⁸⁷

Expert witnesses additionally testified about the kinds of risk assessment tools they administered to determine the individual's risk of recidivism. Dr. Kinscherff had evaluated John Jones and spoke about the well-documented effects of Valium and alcohol as discussed in the earlier sections. He also described the two tools he had utilized—Level of Service Case Inventory ("LS/CMI") and Neuropsychiatric Inventory ("NPI").¹⁸⁸ Dr. Kinscherff stated that Jones scored out on the LS/CMI tool as medium risk for recidivism for any charge, not on homicide alone. He was placed in the top 15th percentile among incarcerated males.¹⁸⁹ He highlighted the fact that most of his risk factors were weighed heavily by the past due to his criminal history but that Jones measured extremely low on current anti-social or criminal attitudes and behaviors.¹⁹⁰ He added that this risk assessment tool did not consider the age when there is evidence to show that risk of recidivism drops after age 45 to 50. When administering the NPI tool, Dr. Kinscherff told the Board that he found no indications of Jones minimizing his crime, no signs of disordered thinking or anti-social behavior, and no clinical symptoms of mood disorders such as depression.¹⁹¹ While there were mild elevations in stress and anxiety, he pointed out that the tool was designed to screen for potential self-harm which built in an automatic caution for situational stressors.¹⁹² By describing the implicit biases infused into the tools, Dr. Kinscherff gave the Board information to more critically understand the test scores. In Jones's case, Dr. Kinscherff expressed his view about the distinctions of adolescents, recalling many of the factors the *Miller* and *Diatchenko* decisions require the Parole Board to consider. He concluded:

I think I would be remiss to—if I didn't point out that very often adolescents who commit horrific, violent crimes do so at the time from the lens of being an adolescent. They do things that from an adult perspective really make no sense. They look impetuous. They look reckless. They look ill-considered. And it is very hard to make sense of them from the lens of adulthood other than to acknowledge that that's what they were at that time and that place. This particular admittedly horrific attack to me, has the

¹⁸⁵ Id.

¹⁸⁶ Massachusetts Parole Board, Decision in the Matter of Christopher Bousquet (October 16, 2018).

¹⁸⁷ Id.

¹⁸⁸ Massachusetts Parole Board, *Jones, John W-40028 DVD: Providia* (December 17, 2015).

¹⁸⁹ Id.

¹⁹⁰ Id.

¹⁹¹ Id.

¹⁹² Id.

characteristics of many of the kinds of the very violence crimes committed by the adolescents especially when they are with one or more peers. Acutely intoxicated and to some degree have either embraced a delinquent subculture or simply given up on themselves entirely. I am prepared to respond to any questions.¹⁹³

Dr. Michael Sherry was retained by Joshua Halbert's attorney to conduct a forensic psychology evaluation in preparation for his review hearing. As noted earlier, in 2015, Halbert had been denied parole and given a review hearing four years after the date of the initial hearing.¹⁹⁴ During the review hearing, Dr. Sherry described Halbert's childhood which began as a baby addicted to heroin and marred by parental neglect.¹⁹⁵ He then defined trauma as an extreme event that a person cannot forget nor digest psychologically, and is regularly reliving it.¹⁹⁶ He explained that Halbert from a very young age suffered from and witnessed a series of traumatic events. A few months before the murder, Halbert was sexually assaulted by a man and he described himself as lost, scared, and ashamed.¹⁹⁷ Dr. Sherry stated that he found it credible that Halbert wanted to turn the tables against people who had assaulted him and participated in the murder.¹⁹⁸ He also pointed out that the Board's questions asked Halbert to produce a level of recall which was impossible. He explained while the Board may see Halbert's recounts as contradictory or as purposeful lying, it was important to keep in mind that many of his memories were unavailable to him due to the fact that the event took place nearly 30 years ago when he was experiencing high adrenaline.¹⁹⁹

In regards to the LS/CMI tool administered, Dr. Sherry commented that it was important for the Board members to keep in mind that psychological measures need to be understood based on the number of false positives the tools produce.²⁰⁰ Without knowing how many turn out to be false, it is difficult to gauge the accuracy of an instrument. He noted that one of the factors considered in the LS/CMI was family and marital ties. While the assumption is that having family members in an individual's life when they are leaving the prison is positive, Dr. Sherry explained that family can also be a major form of difficulty and not necessarily decrease risk.²⁰¹ Additionally, he stated that a medium risk score needed to be taken with a grain of salt along with his rating of high risk due to companions. Dr. Sherry clarified that an individual who has spent 30 years in prison is likely to have only his inmates as his companions and thus scoring high on that particular measure.²⁰² When asked by Board member Bonner if he had any concerns about Halbert in relation to psychopathy, he responded that he found those symptoms to be absent and saw Halbert's work caring for animals for veterans as a demonstration of care.²⁰³ Dr. Sherry concluded with the following statement:

¹⁹³ Id.

¹⁹⁴ Massachusetts Parole Board, Decision in the Matter of Joshua Halbert (March 12, 2015), <https://www.mass.gov/doc/joshua-halbert-life-sentence-decision-0/download>.

¹⁹⁵ Massachusetts Parole Board, *Halbert, Joshua W-47550 DVD: Providia* (November 6, 2018).

¹⁹⁶ Id.

¹⁹⁷ Id.

¹⁹⁸ Id.

¹⁹⁹ Id.

²⁰⁰ Id.

²⁰¹ Id.

²⁰² Id.

²⁰³ Id.

I think Mr. Halbert in the last 10 years, has done as much as is humanly possible to extract goodness from a prison environment. And he is a different person and that speaks to the opportunities that he has been afforded. Going forward, he's definitely going to need to engage in what I would consider to be more than once every two weeks counseling. It's definitely going to be intensive psychotherapy because there is obviously more for him to learn about himself. He has put a lot of pieces together. He has obviously done a tremendous amount of good work but he is going out into a world that is very, very new and from my experience far more hostile than it used to be.²⁰⁴

Following this review hearing, Halbert was again denied parole and given a three-year setback.²⁰⁵ Expert witnesses in each of these cases, provided contextual information about the circumstances of the crimes in addition to the key findings from their recent evaluations. More importantly, they attempted to dispel the assumptions that an inmate's failure to recall the facts of the crime in detail indicated a lack of candor or remorse, or that that risk assessment tools should be taken at face value. However, while the expert witnesses enriched the discussion of evidence of rehabilitation, the parole decisions did not indicate a direct correlation between the psychologist's testimony of support and a positive parole vote.

iv. ROLE OF VICTIMS

In Massachusetts, the Victim Bill of Rights is codified in state law, outlining the rights victims and witnesses of crime are entitled to.²⁰⁶ These include that the victim's families must be informed by the Parole Board of any changes to the offender's parole eligibility and status.²⁰⁷ Additionally, victim's families may submit a victim impact statement to the Board that would be included in the official records of the case.²⁰⁸ They can choose to read their statements in person at the hearings or a victim's advocate or member of the DA's Office may read them in their place.²⁰⁹

In cases where victim's families submitted a statement, with the exception of two cases, all families opposed parole. Many of them spoke about the irreparable damage the crime inflicted on their families and the lifelong loss they experience. Interestingly, however, in the cases of Ernest Fernandes and Frederick Clay, the victims' families did not oppose parole. At Fernandes' parole hearing, Assistant District Attorney McDonough testified that the victim witness advocate who had spoken to the victim's sister expressed that the family forgives Fernandes.²¹⁰ The victim's sister also explained that while she did not want to be present at the hearing, she wanted to know what Fernandes had done in prison to rehabilitate himself. Most importantly, she wanted to communicate to the DA's Office that she believes in second chances.²¹¹ Though the DA's office opposed the parole on grounds that Fernandes needed a longer period of rehabilitation, the Parole Board granted parole after the initial hearing.²¹² During Clay's initial hearing, the victim's brother testified that while he

²⁰⁴ Id.

²⁰⁵ Massachusetts Parole Board, Decision in the Matter of Joshua Halbert (October 1, 2019).

²⁰⁶ Mass. Gen Laws Ann ch 258b, § 3.

²⁰⁷ Id.

²⁰⁸ Id.

²⁰⁹ Id.

²¹⁰ Massachusetts Parole Board, Decision in the Matter of Ernest Fernandes (August 26, 2015), <https://www.mass.gov/doc/ernest-fernandes-life-sentence-decision-0/download>.

²¹¹ Id.

²¹² Id.

was troubled by the parole process, he believed he had no right to impact Clay's life.²¹³ And so, while he would not forgive Clay, he told the Board that he did not object to parole. The Assistant District Attorney in this case also opposed parole, citing Clay's criminal record at the time when he murdered the victim and the disciplinary records during the early years of his incarceration.²¹⁴

While these cases represent an extraordinary level of compassion, the positive role of victim's families who do not object to parole on the decision itself is not straight-forward. Even though these two cases represented instances of parole, Fernandes and Clay also had many of the other elements that Board members looked for, such as positive disciplinary records, participation in programming, and strong supporters with a comprehensive parole plan. Similarly, some inmates that had victim's families who strongly opposed the parole were granted a positive parole vote. The more important role that the victim's families have in this process appeared to be the opportunity to speak about the effect that the crime had on them as well as the chance to address the inmate and Parole Board members in person or in writing.

V. DISCUSSION

30 cases of juvenile lifers seeking parole were collected and reviewed in this Paper. They reveal patterns about the factors that the Parole Board consider when granting or denying individuals parole. Candor and remorse demonstrated in describing the role, intent, and motivation in the murder was a significant factor. Additionally, the Board members questioned inmates on the level of prison program participation specifically targeting violence reduction, anger management, and substance abuse treatment. Disciplinary records were also an important element that members used to measure whether an inmate had demonstrated the capacity to manage his anger and comply with prison rules. The Board stressed that parole plans were vital for successful integration into society, and looked for strong support networks, a gradual step-down process, secure housing, and employment prospects. In addition to these four main indicators of rehabilitation, the Board considered testimony from expert witnesses and victim's families to make its final decision.

Though these metrics appear on their surface as rational and fair, further analysis shows how the standard of rehabilitation presents unsurmountable challenges for inmates seeking parole. For example, the heavy weight placed on perceived candor and remorse about role and intent in the crime required that the individuals recount step by step the events leading up to the murder, the murder itself, and its aftermath. For many inmates who were under the influences of alcohol and drugs, this proved to be an impossible task. This was seen in the cases of John Jones²¹⁵ and Christopher Bousquet²¹⁶ who had ingested a combination of alcohol and hallucinogen, and could not recall the entire murder. Also, expressing that they take full responsibility for the crime was insufficient for the Board. Despite being provided with expert witness testimony about the well-documented effects of alcohol and Valium, LSD, and mescaline, Jones and Bousquet were perceived as less than forthcoming about the crime. Though Jones was paroled after his second hearing, Bousquet remains incarcerated.

²¹³ Massachusetts Parole Board, Decision in the Matter of Frederick Clay (August 26, 2015).

²¹⁴ Id

²¹⁵ Massachusetts Parole Board, *Jones, John W-40028 DVD: Providia* (December 17, 2015).

²¹⁶ Massachusetts Parole Board, *Bousquet, Christopher W-44500 DVD: Milestone* (December 14, 2017).

Even when individuals were not under the influence of alcohol or drugs, the sheer number of years that had passed since the crime made the recall difficult. Dr. Sherry pointed out that during these crimes, juveniles are operating at such a high level of adrenaline, memories of the event itself are often spotty.²¹⁷ And what may seem as contradictory statements were not purposeful lies, but the attempt by these individuals to respond to the level of granularity that the Board members are asking for.²¹⁸ Furthermore, this practice may incentivize inmates to produce false memories or provide inaccurate versions of the events that they believe the Board wants to hear, in order to appear that they are exhibiting candor. In the cases reviewed, the focus on the events of the crime often overrode other markers of rehabilitation that the Board considers such as a clean disciplinary record and program involvement. This outsized concern about the motives and role in the governing offense which occurred when the offender was a juvenile, indicates that those who were denied parole largely for lack of perceived candor are not being provided a meaningful opportunity for release.

Prison program involvement, seemingly a tangible marker of rehabilitation, also contains assumptions about the availability and efficacy of programming. Specifically, when applying this metric across all inmates, it is assumed that each prison facility has a similar number of programs available. However, information published by the Department of Correction shows that there are large variations across facilities, particularly between maximum and medium to low security prisons.²¹⁹ For example, Restorative Justice, an important program for victim empathy for the Board, is not available at maximum security facilities Souza Baranowski and MCI-Cedar Junction.²²⁰ Correctional Recovery Academy, an intensive substance abuse program is only available at four of the medium and minimum security facilities—MCI Concord, MCI-Norfolk, MCI-Shirley, and MCI-Shirley Minimum.²²¹ Furthermore, if the programs were available at their facility, many inmates described long waiting lists and that those with life-without-parole sentence structures were placed on the bottom, hindering their participation. Therefore, many inmates only began to aggressively participate in programs following the *Diatchenko* decision.

More importantly, the evaluation of rehabilitation based on program participation raises the question of how effective these programs are. Many of the programs are described as “vendor facilitated” or “volunteer facilitated”.²²² Other program descriptions do not have any information indicating who is leading the classes. While some are described as “evidence-based”, it is unclear how the program was evaluated and what constitutes evidence.²²³ Further, the DOC report fails to identify a causal relationship between prison program involvement and indicators such as recidivism rates. Without this evidence, it is difficult for the Board to justify its use of program participation to show that an inmate does or does not meet the legal standard for parole.

When reviewing disciplinary records, the Board members acknowledged that adjustment to prison for juveniles was a challenging transition. In cases where individuals had a difficult initial adjustment to prison life but declined in disciplinary reports over time,

²¹⁷ Massachusetts Parole Board, *Halbert, Joshua W-47550 DVD: Providia* (November 6, 2018).

²¹⁸ Id.

²¹⁹ Massachusetts Department of Correction, Program Description Booklet (February 2019).

²²⁰ Id. at 28, 40-41.

²²¹ Id. at 29, 33, 35, and 44.

²²² Id. at 6-9 and 17-27.

²²³ Id.

particularly those that were violent, the members commended them for their improvement.²²⁴ However, the Board found individuals who continued to have disciplinary infractions for assault or substance abuse as failing to demonstrate rehabilitation and were less likely to grant them parole.²²⁵ For inmates who are placed in a maximum security prison like Souza-Baranowski, violence within the facility is frequent and extreme. Inmates face the danger of being violently assaulted and may be compelled to retaliate in order to protect themselves.²²⁶ In order to fairly evaluate an inmate's disciplinary records, Board members will need to consider the prison environment and circumstances that led to the particular infraction.

Parole plans are an important measure to evaluate because a robust re-entry plan contains a series of safety mechanisms that can support the inmate in living a full life outside of prison. Having a secure home to return to, means to financially support oneself, and a group of people who will provide the necessary emotional support are important aspects of a successful transition to society. However, denying parole to an inmate on the basis of his not having sufficient support systems raises the concern that the Board considers not the individual's level of rehabilitation but rather, his resources to determine his freedom. Although a singular focus on parole plans in granting or denying parole was not identified in these 30 cases, it remains an element that will need to be evaluated alongside other factors.

The task of the Parole Board is not a simple one. In the cases of juvenile offenders who were sentenced to life-without-parole, the members are required to consider all of the factors outlined in the *Diatchenko* decision that distinguish juveniles from adults. They need to look at the "lack of maturity and an underdeveloped sense of responsibility, leading to recklessness; impulsivity, and heedless risk-taking; vulnerability to negative influences and outside pressures, including from their family and peers; limited control over their own environment; lack of the ability to extricate themselves from horrific, crime-producing settings; and unique capacity to change as they grow older."²²⁷ Additionally, they must consider evidence of rehabilitation that the individual has demonstrated and grant parole if the Board believes that there is a "reasonable probability that, if such offender is released, the offender will live and remain at liberty without violating the law and that release is not incompatible with the welfare of society."²²⁸

However, based on the examination of 30 JLWOP cases, it is evident that the Parole Board places a significant weight on inmate's articulation of the crime and utilizes metrics of rehabilitation that are not equally accessible to inmates. These patterns are inconsistent with the purpose of the Board to review characteristics of adolescence and provide a meaningful opportunity for release. Therefore, I recommend that the Parole Board make the following changes in how they review and determine parole for JLWOP cases. First, Board members need to place less significance on the recall of the crime and perceived candor in their role and intent to commit the crime. That metric of evaluation centers in the past and ignores the many years following the offense which offer more meaningful evidence of change and rehabilitation. Second, I recommend that the Board utilize expert witness testimonies more robustly in its decision-making process, because they provide insight into the psychological development of the juvenile offender. The expert witnesses provide information about the changes and consistencies in the inmate's way of thinking and behaving that are essential in

²²⁴ Massachusetts Parole Board, Decision in the Matter of James Costello (April 7, 2015), <https://www.mass.gov/doc/james-costello-life-sentence-decision-0/download>.

²²⁵ Massachusetts Parole Board, Decision in the Matter of Malik Abdul Aziz (May 12, 2015).

²²⁶ Laney Ruckstuhl, Inmate Stabbed by Another Inmate at Souza-Baranowski Prison, WBUR (February 5, 2020), <https://www.wbur.org/news/2020/02/05/souza-baranowski-prison-assault-stabbing-inmates>.

²²⁷ *Diatchenko*, 471 Mass. 12 at 31.

²²⁸ Mass. Gen Laws Ann 127, § 130.

evaluating rehabilitation. Third, the Parole Board must include a detailed and inmate-specific justification for the parole decision rather than opt to use boilerplate language. Even if the inmate is provided an attorney to guide him through the parole process, the Board must inform him about what it views to be lacking and how he can prepare for the next review hearing in order to ensure a fair process. Similarly, the Board needs to publish decisions in a timely matter so that inmates can begin planning their next steps. Based on the data from the study, on average individuals must wait approximately 190 days until their parole decision is made. The length of the waiting period creates undue stress and diminishes their ability to make further progress. Lastly, the make-up of the Board members needs to be diversified such that there is not a disproportionate representation of individuals who have prosecutorial and victims advocate backgrounds. Currently, Dr. Bonner represents the only member with a forensic psychology background, the minimum number mandated by law.²²⁹ In order for the parole board to more equally represent the viewpoint of all parties involved, there needs to be more members who have experience in social work, psychology, and criminal defense.

VI. CONCLUSION

Following the *Miller* and *Diatchenko* decision, the Massachusetts Parole Board was mandated to provide juveniles who had been sentenced to life-without-parole a meaningful opportunity to be released. This Paper evaluates whether the mandate is simply procedural or if juvenile lifers are being given a substantive opportunity to return to society. It begins with the Court's decision to treat adolescents as constitutionally different from adults and to invalidate a life-without-parole sentences for all juveniles regardless of the crime they were convicted of. The Paper then explores the current status of juvenile lifers in Massachusetts and the structure of the Parole Board. The case study of parole decisions for 30 juvenile lifers illustrates trends in parole decisions and the demographics of the individuals who sought parole. The study reveals patterns in the Parole Board's decisions in evaluating rehabilitation and how four main elements weighed into its ultimate determination of parole. In the evaluation of these metrics, I argue that the factors that the Board members weigh heavily such as candor in role and motivation for the crime are not adequate measures of rehabilitation. Further, other metrics such as prison programming and disciplinary records need to be more heavily scrutinized to determine whether they accurately reflect an individual's behavior. A series of recommendations that can better provide a substantive opportunity for release is then provided. A key aspect of the Court's decisions was that juveniles, even those who had committed a terrible crime, have the unique capacity to change as they grow older. The existing parole process in Massachusetts fails to fully implement this essence of the Court's decisions, which entrusts the Board to recognize a juvenile's potential of rehabilitation even in the most extreme cases of crime. In order for the Board to provide a meaningful opportunity for release, it will need to more critically evaluate evidence of rehabilitation and be willing to believe in that capacity for change.

²²⁹ Mary Markos, Charlie Baker Nominates Psychologist to Continue Serving on Parole Board, Boston Herald (June 24, 2019).

VII.
APPENDIX

Table 2: List of JWLOP individuals included in the study and last parole decision results.

Number	Name	Age at offense	Years Incarcerated	Age at Last Parole Hearing	Last Parole Decision
1	Alfred Brown	15	40	55	Denied; review in 5 years
2	Christopher Berry	16	28	44	Denied; review in 5 years
3	Christopher Bousquet	16	35	51	Denied; review in 3 years
4	Christopher Pucillo	17	24	41	Granted
5	Donnie Bouphavongsa	16	21	37	Denied; review in 2 years
6	Edward Palmariello	17	36	53	Granted
7	Ernest Fernandes	17	23	40	Granted
8	Frederick Clay	16	35	51	Granted
9	George MacNeil	16	37	53	Denied; review in 3 years
10	Herby Caillot	17	21	38	Granted
11	Howard Hamilton	17	28	45	Denied; review in 3 years
12	James Costello	15	33	48	Granted
13	Jeffrey Roberio	17	29	46	Denied; review in 5 years
14	John Jones	17	36	53	Granted
15	John Nichypor	17	29	47	Granted
16	Jose Teneval Jr.	16	30	46	Granted
17	Joseph Drayton	17	45	62	Granted
18	Joshua Halbert	17	30	48	Denied; review in 3 years
19	Ken Yatti Jordan	17	22	39	Denied; review in 4 years
20	Keyon Sprinkle	17	16	33	Denied; review in 4 years
21	Kim Andrews	17	20	38	Denied; review in 4 years
22	Louis Costa	16	32	48	Granted
23	Malik Abdul Aziz	16	29	47	Denied; review in 5 years
24	Michael McAfee	16	21	39	Granted
25	Noeun Sok	15	16	31	Granted
26	Patrick Nerette	17	25	43	Denied; review in 5 years
27	Prince Moses	17	19	36	Granted
28	Seigfried Golston	17	40	57	Denied; review in 2 years
29	Val Mayfield	17	33	50	Denied; review in 5 years
30	Viengsaymay Chaleumphong	17	19	37	Granted

Table 3: Number of parole hearings each year disaggregated by positive decisions (initial and review) and negative decisions.

Year	All Parole Hearings	Granted (Initial Hearing)	Granted (Review Hearing)	Not Granted
2015	18	5	0	12
2016	11	0	2	9
2017	1	0	0	1
2018	7	0	6	1
2019	5	0	1	4
2020	2	0	1	1