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Report of Forensic Evaluation – Parole Board Hearing

Case: Edward S. O'Brien
DOB: 01.28.1980
Age: 44 years
Attorney: John H. Cunha, Jr., Esq.
Report Date: June 16, 2024
Commitment No.: W63363
Facility: NCCI - Gardner

Edward “Eddie” O’Brien is a 44 year-old single, employed, White male who is making his first appearance before the Parole Board on June 25, 2024. Mr. O’Brien was 15 years old at the time of the homicide of Janet Downing on 07.23.95 in her Somerville home. Following two juvenile transfer hearings, he was convicted in Superior Court of Murder (First Degree) and committed to the MA Department of Corrections on 10.01.97. The Supreme Judicial Court affirmed his conviction and sentencing in 2000.¹

His sentence was subsequently restructured to Life With Possibility of Parole following the Supreme Judicial Court rulings in *Diatchenko/Brown* (2013) barring mandatory sentences of Life Without Possibility of Parole in juvenile homicide cases. *Diatchenko/Brown* applied in Massachusetts the US Supreme Court ruling in *Miller v. Alabama* (2012) that barred mandatory Life Without Possibility of Parole sentences for capital crimes committed under age 18. Mr. O’Brien became parole eligible in September 2012 but on advice of counsel he postponed both that hearing date and a subsequent hearing date in 2019. DOC records indicate that the index offense had “sexual overtones that will require a DA review.”² It is my understanding that ordinary practice is to make a decision about whether to pursue SDP civil commitment only after an individual receives a positive parole vote.³

¹ *Commonwealth v. Edward S. O'Brien*, 432 Mass. 578 (2000). I have been advised that the Parole Board will rely upon this SJC case for the official version of the index offense. I have provided included that section of the SJC decision as Appendix I.

² See, for example, Classification Report for 2018.

³ It is beyond the scope of this forensic evaluation to address the factors for SDP review and possible civil commitment proceedings. However, I am familiar with the statute and the SDP process and it is not clear to me that the index offense would even qualify under the statutory definition for SDP proceedings. For example, the MGL.c 123A, Sec. 1 requires a conviction or adjudication “by reason of a sexual offense” and the index homicide was not also charged as a sexual offense. It also requires a “mental abnormality or personality disorder” that makes it “likely” for the individual to engage in sexual offending “if not confined to a secure facility.” Clinical interview and psychological assessment tools used with Mr. O’Brien yielded no “mental abnormality” or “personality disorder” at all that could be a nexus for a “likelihood” of future sexual offending.

[REDACTED]

DEVELOPMENTAL HISTORY

Developmental Course Prior to the Index Offense

Edward “Eddie” O’Brien is the second of five children born to married parents. He was reportedly born at Winchester Hospital and there is no indication in available history of developmental difficulties or delays in available history (other than a mild stutter in early childhood). He describes a childhood without exposure to significant adversity in a traditional, loving working/middle class Irish-American family. He had no history of special education, significant medical or psychiatric difficulties, nor problems with peer relationships. Indeed, Ms. Downing was the mother of one of his best friends as they grew up together.

He attended Catholic schools for his education where he was an average student and invested in playing sports. He had completed his freshman year at Don Bosco Technical High School prior to his arrest where he also played organized football for the first time.⁵ Mr. O’Brien reportedly had no suspensions or expulsions from a school. He served in his local parish as an altar boy and participated in parish-related community service activities such as volunteering to work with elders. He established good relationships with peers at school and with peers who lived in his neighborhood.

Mr. O’Brien had no arrests or other involvement with the Juvenile Court prior to the index offense at age 15.⁶ His family had no involvement with the Department of Social Services (now the Department of Children and Families). He was tested for possible ADHD at one point but the results suggested that he was capable but not particularly motivated for academic learning. He has no history of counseling or psychiatric treatment in childhood.

Mr. O’Brien reports that he always enjoyed working and did so as a paperboy, babysitting, and shoveling snow on days when weather cancelled school. He began working at age 13 at neighborhood convenience store and remained employed there until his arrest in July 1997.

Official Version of the Index Offense

I have been advised that the Parole Board will rely upon the recounting by the Supreme Judicial Court (2001) of “the facts the jury could have found” as the official version of the index offense. Reader is referred to **Appendix I** of this report for that version.

Mr. O’Brien’s Version of the Index Offense

Mr. O’Brien has consistently denied committing the murder of Ms. Downing and has maintained his innocence over the years. Records indicate that he has been advised by counsel to make no comments about the official version of events at Classification Hearings in anticipation of further application for appellate review of a request for new trial. Counsel instructed me not to inquire about Mr. O’Brien’s version of the events of the day of the homicide and Mr. O’Brien was aware of that guidance from counsel.

⁵ My recollection is that Mr. O’Brien was viewed by his football coach as disappointingly unaggressive for a relatively large boy whom he hoped would play a lineman position.

⁶ His history with police prior to the index offense is reportedly to a single incident where he had impulsively lit a book of matches and tossed it into a mailbox (in what he termed a “Bevis and Butthead move”). Medford police took him to the station but he was never charged.

I have read Mr. O'Brien's pre-hearing packet that he submitted to the Parole Board, including his section on the commission of the crime. I have included it for the convenience of the reader as **Appendix II** to this report. From a forensic perspective, I note that Mr. O'Brien acknowledges that he was in the home of Ms. Downing, proximate to her prone body, and "bent down to shake her" when she was unresponsive to his presence.

Course Since Arrest, Pre-Trial Detention and Incarceration

Disciplinary Summary: Mr. O'Brien has incurred seven disciplinary reports since his DOC incarceration in 1997. Two incidents (2007, 2010) involved physical altercations⁷ and the others were largely for "insolence" or minor possession of contraband. He reports that he has a limited disciplinary history because he does not use alcohol or drugs, stays away from gangs and gang-related activity, and "surround myself with like-minded people who are not about drama." Mr. O'Brien reports investing himself in his work, positive programming and leisure activities, and helping out others – including his advocacy for expanded programming at NCCI-Gardner.

The most significant disciplinary incident was in 2013 when he was found in possession of a cell phone and its accessories. At the time, possession of a cell phone accessories was routinely regarded as an "unauthorized possession of items of material likely to be used in an escape." There was reportedly no evidence of actual planning for escape or attempted escape⁸ and so Mr. O'Brien was never criminally charged with Attempted Escape and the sanctions imposed were limited to a brief SMU admission and a period of loss of telephone privileges. This 2013 infraction was also his last disciplinary incident.

Summary of Completed Rehabilitative Programming: DOC records indicate that Mr. O'Brien has completed or is currently engaged in the following programming:⁹

Legal Assistant/Paralegal Certificate	2022	Leadership/Transformational Thinking	2022
Alternatives to Violence (Trainer)	2022	Enlightenment Group for Lifers	Ongoing
Library Clerk Training	2022	Re-Entry Seminar Series Certificate	2015
Alternatives to Violence-Advanced	2021	Alternatives to Violence	2012
Cognitive Skills – Active Listening	2017	Formative Writing for Success	2017
Book Discussion I	2016	Writing for Results	2016
Toastmasters	2016	Alternatives to Violence	2012
Jericho Circle	2012	Tufts Univ Inside/Out Program	2018
Restorative Justice Reading Group	2018	Negotiating Workshop Certificate	2017

⁷ One was a fight with another inmate who insisted on turning a unit fan off although the majority of inmates housed on the unit wanted it left on. This incident is described in Mr. O'Brien's submission to the Parole Board. The other incident was a scuffle with a correctional officer; Mr. O'Brien reports that both he and the CO involved considered it "horseplay" rather than a fight.

⁸ The Memorandum of Appeal (05.28.13) issued after a Guilty finding for this infraction notes that Mr. O'Brien "admitted to ownership of the contraband items. Subsequently, IPS Officers conducted an investigation and issued an IPS report, which found no indication that O'Brien attempted to use the cell phone in an escape." Records indicate that he had used the cell phone multiple times to call his parents.

⁹ This list does not include programming where he was not eligible due to his lengthy sentence or risk status (between 2013 – 2018), or was accepted but waitlisted. Reader is also referred to Mr. O'Brien's submitted materials to the Parole Board for a comprehensive list of his program participation and documentation of his successful ongoing engagement or completion.

His 2023 Personalized Program Plan indicates that the following are *not* considered as “need areas” for him: Academic Education; Anger; Cognitive Behavioral; Criminal Thinking; Emerging Adults. He is considered “low need” by DOC for substance misuse programming. Medical records available through September 2023 for his participation in the Lifers’ Mental Health Group describe him as “Low” Risk due to “stable mental status, distant/no history of suicidal or self-injurious behavior, minimal distress, available protective factors.”

Summary of Course of Detention/Incarceration: Mr. O’Brien was arrested by state and Somerville police on 07.25.95 and subsequently a juvenile complaint filed in Somerville Juvenile Court and placed at the DYS Juvenile Unit at the Plymouth County Jail to await trial. While there, he was briefly involved in a brawl involving multiple juvenile detainees. He reports coming to make positive relationships with other detained youth (of a variety of ethnic and racial backgrounds) that eventually served as positive supports as they crossed paths over the years in DOC facilities.

He had completed Grade 9 prior to his arrest and continued to earn high school credits although he did not complete high school while detained by DYS. He reportedly developed an enduring love of reading widely while in DYS custody. Mr. O’Brien also reports that his accrued high school credits were eventually compiled and resulted in his GED.

In May 1997, he was indicted as an adult before Middlesex Superior Court and transferred to the East Cambridge Jail to await trial. Records indicate that while there he was not a management problem, worked in the facility kitchen, and received favorable unit reports. He was then transferred to Middleton House of Correction where he incurred no disciplinary reports. Records indicate that his parents remained supportive and regularly visited him while detained by DYS and then subsequently at the East Cambridge Jail and Middleton House of Correction.

He was sentenced on 10.01.97 and transferred to MCI-Cedar Junction on 10.07.97 for initial classification. At the time of classification, he had no prior criminal history, no other legal issues to be resolved, no escape history, and no known or suspected gang or organized crime affiliation.

He was age 17 when transferred to DOC and because of his youthfulness was an open mental health case until his transfer to Souza Baranowski. His only subsequent mental health involvement was when he participated in the Lifers’ Mental Health Group at NCCI-Gardner.

He was briefly transferred in 1997 to MCI-Concord but administratively returned to MCI-Cedar Junction due to his Life sentence. While there, he was employed in the auto plate shop incurred his first disciplinary ticket (destruction of state property – ripping a mattress). Due to positive adjustment, Mr. O’Brien was then transferred to the Souza Baranowski facility where he received average evaluations. He was the target of a racially motivated attack in October 1999 but remained free of disciplinary reports for approximately two years while working as a runner in the gym.

In 2003, Mr. O’Brien was granted a lower security rating due to satisfactory adjustment at SBCC and transferred to the Old Colony correctional facility. He was there from February 2003 to November 2007 and worked as a unit runner and received favorable housing and work reports.

He was waitlisted for several programs (due to his sentence) but did not participate in any programs.

In November 2007, Mr. O'Brien was transferred to the SMU at MCI-Norfolk following a scuffle with a correctional officer. He was released to general population there in January 2008 where he held several jobs over time (NIC member, runner for the Probation Unit, gym worker) and earned positive work evaluations. He was involved in the NEADS dog-training program, Jericho Circle, Alternatives to Violence, and completed the computer skills program. Mr. O'Brien incurred four disciplinary reports while at MCI-Norfolk (12.03.09 -present in the cell of another inmate where fermenting juices were found;¹⁰ 04.18.10 – fight with an inmate; 05.14.11 – possession of a radio with a broken seal; and, 03.14.13 – possession of a cell phone and accessories in his cell).

This last infraction (possession of cell phone and accessories) increased his security rating and prompted transfer back to SBCC in June 2013. It is also his last disciplinary report of any kind. He received positive work ratings as a runner but was denied entry into the culinary program due to the risk rating resulting from the cellphone incident. He attended Catholic Services, participated in Catholic Sacraments Class and Toastmasters, attended AA 12-Step meetings, and was the inmate speaker at the Volunteer Luncheon in May 2014. He completed the Reentry Seminar Series facilitated by former DOC Commissioner James Bender.

His January 2023 Classification report describes him during his time at SBCC as “[continuing] to actively seek programming opportunities, and is always the first to sign up for any programs being offered, whether or not good time is awarded.” In November 2018, the Security Risk Committee conducted a review and lowered him to “No Rating” status as no longer requiring the “Level A Restrictions” imposed following discovery of him being in possession of a cell phone in 2013.¹¹

Course at NCCI-Gardner since 2019: Mr. O'Brien was transferred to NCCI-Gardner in January 2019. He participated in forming the Enlightened Group for Lifers (EGL) and remains actively

¹⁰ Disciplinary Hearing record on 12.15.09 indicates that the inmate occupying the cell where the fermenting juice was found reported that Mr. O'Brien was present in the cell for a moment to drop off a newspaper and that O'Brien “had absolutely nothing to do with this [fermenting juice] at all.” That record also indicates that urinalysis conducted at that time was negative for him. Records indicate that Mr. O'Brien has no known or suspected history of substance use over the course of his incarceration other than being in another inmate's cell when fermenting juices were discovered. For his part, Mr. O'Brien acknowledges imbibing alcohol on one occasion since incarceration (for his birthday in 2003 or 2004) but no other use of substances since his arrest in 1995 and subsequent detention/incarceration.

¹¹ The Objective Classification/Reclassification risk score is increased by 5 for a history of Escape or Attempted Escape occurring within the past 10 years (previously 7 points for Attempted Escape within past five years). Mr. O'Brien's 2013 disciplinary incident involving possession of a cell phone is considered by DOC as an Attempted Escape. The 5 – 7 point increase in his risk score and his Level A Risk rating (until 2018) precluded any recommendation for Minimum security placement. Presumably, as he passes 10 years since that incident the current 5 points will be removed from his Total Reclassification Score and his Objective Risk Classification score will be substantially lowered and he will be within the range where the Preliminary Recommendation based on his lower objective risk rating score will be for “Minimum or Below” placement. His January 2024 Classification objective risk score is 4.

engaged with that group. He also led an EGL inmate volunteer workforce in restoring a former recreation building (Laurel Hall) for use for programming at the facility.¹²

He reportedly continues to speak frequently with family members and to often receive visits from them and other community members. His approved visitor's list includes family members, a state representative, journalists, and various professionals. Mr. O'Brien remains employed in the weight gym where he receives favorable reviews.

Mr. O'Brien is a practicing Catholic, remains a member of that faith community, and has participated in retreats. He has earned a Certificate in business studies from Mount Wachusett Community College and takes two classes weekly in anticipation of hearing his Associate's degree in business.¹³ Mr. O'Brien reports that he and other inmates have repeatedly petitioned facility administration at NCCI-Gardner for permission to organize Restorative Justice and other programming, and to receive certificates for completion of other programming such as the Mental Health Group for Lifers.¹⁴

CLINICAL AND FORENSIC ASSESSMENT

Edward "Eddie" O'Brien is a right-handed White male with a tall, full build and short-cropped blonde hair. He came to each interview with a file case containing documents relating to his case, paper, pens and a notebook. He was casually but neatly dressed and well-kempt. He presented as a talkative, engaging, outgoing man with a wide range of emotion that was consistent with the specific topic under discussion. He has a ready sense of humor, a keen sense of what seems reasonable and fair to him, and demonstrated willingness to advocate for himself and for others.

There were no observed disturbances of either his form or content of thought. Range of emotion/affect was broad and appropriate to the topics under discussion. He demonstrated no challenges with attention and concentration, prosody and content of speech was within normal limits. Short-term and long-term memory are both intact and he demonstrated a detailed grasp of the details of the index offense as well as of his course since arrest. He is not on any psychiatric medications and is generally healthy except for bone spurs so does not require medications for common physical conditions of middle age such as high blood pressure or diabetes.

No known or self-reported history of suicide attempt or self-injurious behaviors, psychiatric hospitalizations, or episodes of substance misuse treatment.

¹² Mr. O'Brien reports that the building was decorated with pictures and murals, included a children's visiting area and classrooms, and used for activities such as fund-raising (\$3,000) for a local women's shelter. Facility administration reportedly halted these activities and use of the building arbitrarily, prompting the inmates to file a class action lawsuit.

¹³ He reports that he currently has about 30 credits towards the Associate's degree. Records indicate that his college courses have included: Intro to Business, Principles of Accounting I, Topics of Mathematics, College Writing I, Marketing, Intro to Sociology

¹⁴ Mr. O'Brien is currently a plaintiff in a class action lawsuit alleging that only 6 of 18 named Institutional Programs at NCCI-Gardner currently operate, that most of the programs have not operation, and that administrators have essentially blocked Restorative Justice and other proposed programming by failure to respond to applications for this programming from EGL and other inmates.

Results of Clinical/Forensic Assessment Tools

Personality Assessment Inventory (PAI): The PAI is a 344 item self-report tool widely used to assess for potential psychiatric diagnoses, substance use disorders, and personality disorders. It is a widely used, psychometrically validated tool that includes validity measures to assess for factors that might distort the results of the tool (e.g., carelessness, low reading level, malingering, defensiveness).

Mr. O'Brien produced a protocol indicating consistent attention to items and consistent responses to similar items. There was no indication that he attempted to portray himself in either a more positive or a more negative manner than his overall profile would warrant. The protocol did flag that persons with his personality features are typically more likely to use substances and that he did not acknowledge difficulties with substance misuse. However, there is no indication in his pre-incarceration or post-incarceration history to indicate problems with substance misuse.

His PAI protocol is valid. The *clinical profile* is entirely within normal limits with no indications of significant psychopathology reflected in psychiatric symptoms, substance misuse, or personality functioning. His *self-concept* is likely to reflect a tendency to be self-critical and to focus upon past failures or lost opportunities; he may appear to be more self-assured to others than he is internally. Overall, however, he profiles as generally satisfied with himself as he is, not currently experiencing marked distress, and feels capable of managing stresses he does experience.

His *interpersonal style* is characterized by autonomy and his assertiveness, friendliness and concern for is in the typical range for normal adults. Mr. O'Brien's appraisal of his *social environment* is also within the normal range, including his perceived level of positive social supports he receives from persons in his personal life.

Inventory of Offender Risks, Needs and Strengths (IORNNS): The IORNNS is a psychometrically validated tool that is designed for use with offenders and compares their pattern of responses to offender norming populations of same gender and similar age range. This tool includes items that assess Static (historical, unchangeable) risk, Dynamic (current, changeable) risk, and Protective factors. Static and Dynamic Risk Index scores are then statistically offset by the score on the Protective Strength Index to yield an Overall Risk Index score.

Mr. O'Brien produced a protocol within the Acceptable range. His Static Risk Index score was at the 50th percentile for past criminal and institutional adjustment history. His Dynamic Risk Index as at the 46th percentile with elevations on criminal orientation¹⁵ (87th percentile) and negative social influences (96th percentile)¹⁶ but low on psychopathy (17th percentile) and alcohol/drug problems (22nd percentile). Mr. O'Brien's Protective Index placed him at the 80th

¹⁵ Despite this elevation on Criminal Orientation, his score specifically on Procriminal Attitudes subscale was in the average range.

¹⁶ This elevated score on Negative Social Influences likely reflects his social network of persons convicted of crimes with whom he is incarcerated as well as a history of criminal convictions among extended family members.

percentile with average personal resources (64th percentile) and extremely high environmental resources (99th percentile).

His Overall Risk Index score places him at the lower 43rd percentile (average) range for criminogenic risk-needs. His profile identifies negative social relationships¹⁷ as areas for attention in risk management, but also identifies his currently strong capacities for cognitive-behavioral regulation and anger regulation as protective factors to be built upon. Consistent with the PAI, he does not profile with personality features suggesting personality disorder.

Level of Service/Case Management Inventory (LS/CMI): The LS/CMI is a psychometrically validated tool for assessing criminogenic risk-needs and individual factors that should be considered in risk management and/or intervention planning. It compares the individual to persons who are involved with the criminal justice system and are incarcerated or under community supervision (parole, probation).¹⁸ It yields risk ratings of Very Low – Low – Medium – High – Very High based upon a total score ranging from 0 – 43.

Mr. O'Brien scored a 6 on the LS/CMI. This places him at the **Low Risk** rating (range 5 – 10) with scores on the component domains as follows (Strength areas identified with asterisks):

Criminal History	Low	Employment/Education	Very Low**
Family/Marital	Low	Leisure/Recreation	Very Low**
Companions	Low**	Alcohol/Drug Problem	Very Low**
Procriminal Orientation	Low	Antisocial Pattern	Medium

The score of 6 places Mr. O'Brien at the *lowest* 2.3 percent of criminogenic risk-needs among incarcerated males, and at the *lowest* 18.2 percent among male offenders under community supervision. Persons with this score and domain profiles are generally regarded as low risk/needs, suitable for parole, and suitable for immediate minimum security or half-way house placement. Note that this risk profile is for *any* criminal recidivism- no matter how minor-rather than risk for conduct similar to the index offense in this case.

Notoriety of Offense is identified as a potential barrier to release. Another potential barrier to release may be referral by the Middlesex District Attorney's Office for preliminary evaluation by Qualified Forensic Examiners (QFE) for potential civil commitment proceedings under the Sexually Dangerous Persons statute.¹⁹

PROPOSED PAROLE PLAN

Mr. O'Brien proposes that if paroled he be permitted to reside at Healy House in Boston. This would also allow him to access the LiFT (Life Foundations Training) program that is

¹⁷ While his affiliation with persons convicted of crimes is a function of long-term incarceration, he continues to have relationships and communicate with a wide variety of positive persons in the community.

¹⁸ The LS/CMI typically has high inter-rater reliability (+/- 2 points of scoring) and discrepancies outside of that range typically reflect differences in information available to the rater or discrepancies in applying the scoring rules. Discrepancies can ordinarily be readily resolved by sharing information and/or reviewing the scoring rules together where scoring deviates more than 2 points.

specifically” designed to offer a safe space for those looking to build community and resources while transitioning back into life after incarceration.” He reports that he can work with Paul Revere Transportation to earn a commercial drivers’ license and then be employed by them, and indicates that he also has other possible job opportunities through his community friends. Mr. O’Brien has also engaged with the Vending Collab Program which allows formerly incarcerated persons to earn money through their vending machine program while facilitating access to education, housing, employment and mental health supports.

Being placed in the Boston area will allow him access to supportive family members and community friends. These programs and supportive persons can assist him in securing a driver’s license or other official identification, MassHealth, and other possible entitlements. It would also permit him to live where medical and behavioral health supports are readily available.

However, if the Parole Board would prefer him to begin re-entry in an area away from Somerville, alternative residences and programs have been identified in the Springfield, MA area and in Vermont where a sister resides.

Mr. O’Brien reports that he has no problems accepting conditions of parole such as GPS monitoring, curfew or other common conditions of parole.

In my opinion, this proposed Parole Plan covers the essential elements likely to foster successful community reintegration. Unless already included in one or more of the proposed housing and program plans, I also recommend access to a behavioral health professional to assist in adjustment issues following a prolonged course of detention/incarceration starting at age 15. Optimally, this person would have experience working with persons returning to communities after length incarcerations and the adjustment challenges they are likely to experience.

CLINICAL AND FORENSIC CONCLUSIONS AND OPINIONS

Clinical: Mr. O’Brien experienced a basically benign and supportive childhood and adolescent developmental trajectory to the point of the index offense in July 1995. He does not present with a history of childhood or adolescent behavioral turbulence nor a history of involvement by child protection, special educational, or juvenile justice entities. He does not present with a history of substance misuse.

Mr. O’Brien does not present currently or by history with indications of any diagnosable psychiatric or substance misuse disorder. There is no indication of learning disability or other cognitive impairment. In short, does not present currently or by history with obstacles to social learning likely to derail familiar processes of neurodevelopment and social maturation.

Forensic: Mr. O’Brien has consistently denied that he was involved in the brutal stabbing death of Janet Downing in July 1995. He acknowledges that he entered the Downing house but states that she was already prone when he did so, and then kneeled proximate to her body and touched her in an effort to prompt a response from her before leaving the house.

If this denial is essentially accurate, then from a forensic perspective it is promising for any successful future community reintegration that his course of adjustment while detained and then incarcerated for almost 30 years includes: (a) a minimal history of disciplinary reports with the last report dating to 2013; (b) education to at least a Grade 12 level and continuing to accrue credits towards an Associate's degree in business student; (c) consistent and successful employment in prison jobs; (d) avoidance of gang and organized criminal companions; and, (e) continued engagement and support from his family and multiple persons in the community. In short, Mr. O'Brien has managed to avoid the kinds of institutional adjustment issues that can inadvertently increase rather than diminish recidivism risk. He is also advancing into middle age where recidivism risk diminishes further with the passage of time.

If Mr. O'Brien's denial of perpetrating the brutal stabbing death of Janet Downing is essentially inaccurate, then what significance might that have for a parole decision or his prospects for successful community reintegration if paroled?

First, Mr. O'Brien's overall developmental course - whether or not he committed the index offense - is consistent with a trajectory of "*adolescence-limited*" criminality and not "*life-course persistent*" criminality. With the exception of the index offense for which he was convicted, his developmental trajectory through age 15 is limited to very minor and non-delinquent misconduct that did not prompt school suspensions/expulsions or a history of juvenile arrest.

This trajectory - when seen in light of his subsequent long-term institutional adjustment - indicates that from a forensic behavioral science perspective Mr. O'Brien has substantively avoided and/or addressed any criminogenic risk-needs. For example, consistent successful employment and education to or beyond a Grade 12 level is correlated with reduced recidivism risk, as is the absence of a history of substance misuse or of gang affiliation. This, in addition to the lowered risks of criminal recidivism that come as men age, indicate that he is strong candidate for parole from both risk-management and recidivism risk perspectives.

Second, we have known for decades (and the US Supreme Court acknowledged as early as the 2005 *Roper v. Simmons* and the 2012 *Miller v. Alabama* decisions) that even a heinous crime committed in adolescence does not diminish an adolescent offender's prospects for ultimate rehabilitation. Indeed, the *Miller* decision articulated the need to distinguish between even heinous crimes committed during the "transitory" developmental transitions of adolescence and those "uncommon" or even "rare" crimes reflecting "permanent incorrigibility." Mr. O'Brien's course since age 15 certainly does not suggest a "permanent incorrigibility" predisposing him to violent criminal misconduct.

Third, there is a body of research regarding the utility of expressions of responsibility and remorse for criminal misconduct. Most of it involves admissions or denials of sexual offenses or intimate partner violence. Despite a "folk psychology" that places weight on expressions of responsibility and remorse for these criminal acts, the existing research suggests that they are of little actual value in making decisions about risk and risk management - and may actually mislead decision-makers.

In fact, for sexual offense recidivism, the two broad risk domains of (a) deviant sexual interests and (b) persisting antisocial orientation and lifestyle are the strongest predictors of sexual offense recidivism. For recidivism in violent intimate partner cases, the factor of “accepting responsibility” for the violence against a spouse or partner does not itself contribute to reliable risk assessment and management. DOC records do not indicate a known or suspected history of sexualized behavior or preoccupations, nor sadistic or coercive misconduct.

Denial has also not been correlated with violent recidivism in large meta-analyses of multiple studies. Research indicates that specifically targeting criminogenic risk/needs is what lowers recidivism risk (e.g., problems with self-regulation, employment instability, low educational achievement, relationship instability and intimacy deficits, substance abuse, criminogenic thought patterns). These kinds of familiar criminogenic risk-needs have been addressed during Mr. O’Brien’s lengthy incarceration.

Assigning weight to an individual’s acknowledgement of offenses and expressions of remorse for them is intuitively appealing but significantly complicated by the fact that antisocial and psychopathic inmates have been known to admit anything asked of them (whether accurate or not) and enact elaborate expressions of remorse if they believe it will help them minimize or elude unwanted consequences. But these false admissions to criminal conduct and enacted expressions of remorse would add nothing to the calculus of risk and can be dangerously misleading if they are weighted more than empirically-based assessments of recidivism risk. Despite the intuitive appeal of a link between greater expressions of responsibility for a crime and a lower likelihood of recidivism,²⁰ this link has not been consistently demonstrated empirically among male perpetrators of intimate partner violence²¹ or adult male sexual offenders.²² In any event, without more, the criminal recidivism rates of persons incarcerated following conviction for a homicide tend to be extremely low, especially when released after 30 years of age.

How much punishment is enough upon conviction for a brutal crime committed at age 15 is a social and moral matter properly reserved to the Parole Board. Whether or how to weigh Mr. O’Brien’s consistent denial of perpetration of the index offense is also a social and moral matter properly reserved to the Parole Board although research provides some guidance in making that decision.

19 There is virtually no research on the relationship between acceptance of responsibility by a perpetrator of a violent crime and recidivism except for male perpetrators of intimate partner violence or sexual offending.

20 See, for example: Henning, K. & Holdford, R. (2006). Minimization, Denial and Victim-Blaming by Batters: How Much Does the Truth Matter? *Criminal Justice and Behavior*, (33)1, 110-130. Concludes that “[l]ittle evidence was found to support the hypothesis that minimization, denial and victim blaming are associated with recidivism” among domestically violent men. Note also that in development of the Spousal Abuse Risk Assessment (SARA) tool that acknowledgment and “accepting responsibility” for domestic violence did not contribute to assessment of recidivism risk, presumably because more antisocial or psychopathic perpetrators would admit to offenses but later reoffend (“cycle of violence”) or would admit to offenses simply to improve their prospects for outcomes in court (e.g., probation rather than incarceration).

21 See, for example: Yates, P.M. (2009). Is Sexual Offender Denial Related to Sex Offense Risk and Recidivism? A Review and Treatment Implications. *Psychology, Crime & Law*, 15(2-3), 183-199.

However, in my opinion from a behavioral science perspective, Mr. O'Brien's course of maturation, conduct, and demonstrated positive achievement over the past almost three decades of detention/incarceration would strongly support a Parole Board finding that his release at this time would not be incompatible with the welfare of society. He has achieved the standard indicator for rehabilitation, there is little to suggest that he needs further incarceration in the service of specific deterrence, research indicates that there is very limited – if any – general deterrent effect by threat of prolonged incarceration among adolescents, and there is little to suggest that community safety requires his continued incapacitation through incarceration.

Furthermore, results of this forensic evaluation also would support a finding that there is a strong likelihood if paroled that Mr. O'Brien would live and remain at liberty without violating the law.

Respectfully submitted,

Robert Kunschek, PhD, JD

