

CURE-ARM, Inc.

Donna Barnoski
President

P.O.Box 396, Billerica, MA 01821
susanmmortimer@hotmail.com

Susan Mortimer
Treasurer

February 7, 2014

PAROLE OF JUVENILE ADULTS "Degeneration of Criminal Justice"

CURE-ARM's Position on Juvenile Offenders
Serving Life Without Parole

by Timothy J. Muise

CURE-ARM (Citizens United for the Rehabilitation of Errants with Adherence to the Rehabilitation Mandate)
is a special interest group which is dedicated to the reduction of crime through the reform of the
Massachusetts criminal justice system and holding the Department of Correction
to their legal mandate to rehabilitate

PAROLE OF JUVENILE ADULTS

"Degeneration of Criminal Justice"

* * * * *

The Supreme Judicial Court (SJC) decisions on now providing eligibility for parole consideration for first-degree homicide offenders, who were between 14 and 17 years of age at the time of their crime, has finally exposed the festering degeneration of criminal justice that has corrupted the prosecutorial, prison, legislative, executive and parole process; And I mean corrupted morally, ethically, civilly, and criminally.

The two decisions are Diatchenko v. District Attorney and Commonwealth v. Brown, both decided on December 24, 2013. They followed the command of the United States Supreme Court in Miller v. Alabama (June 2012) that depriving such juvenile offenders of parole eligibility, except in the most rare and carefully assessed cases of a person's "irreparable corruption" or "irretrievable depravity," is a constitutional violation of the prohibition against "cruel and unusual punishment."

The SJC forthrightly stepped forward and invoked the Massachusetts Constitution article 26 against "cruel or unusual punishment," founded upon the spirit of the Puritan's 1648 Laws and Liberties of Massachusetts, first codification of law in America, and John Adam's drafting of America's first State constitution in 1780.

In so being faithful to Massachusetts' constitutional birthright, the SJC joined "the world community that has condemned such punishment for juveniles," reconfirming John Adams' humanist 1797 "Defense of the Constitutions of Government of the United States of America" in keeping with the spirit of the Laws and Liberties' faith in Christian redemption and the saving "against satan" of the grace of education and learning as the promise of all human beings.

That saving impulse is codified in the Massachusetts Constitution's Chapter V as Adams' singular contribution to law, mandating the cherishing of science, the arts, education - in a word learning - as the sacred trust of our universal religious and national heritage - a transcendent obligation to ourselves, the world, and "all future periods." In short, the standard of excellence and true measure of human value for this planet.

The mandate of the Supreme Court and SJC that juvenile homicide offenders be given a "meaningful opportunity" to be considered for parole after 15 years of imprisonment is plainly dependent upon a rationale assessment of their rehabilitation, and that assessment is most assuredly determined by a fully scientific evaluation, in this age of the preeminence of science to know, to heal, or to utterly destroy.

The applicable and lawful application of such science to criminal offenders is by statute called "rehabilitation counseling"; in the same way medical doctors are accredited and licensed, so are such counselors, therefore subject to legal, educational, and peer review practices, research, evaluations - in short, ethical protocols.

When, therefore, after 15 years the juvenile, now adult, offender is reviewed by the Parole Board, the questions will be, What rehabilitative development has occurred, who provided it, who professionally assessed it,

and what peer review of social scientists accredited it? That's science, that's the cherishing of learning.

Now it just so happened that Massachusetts in 1972 passed a penal reform law mandating rehabilitation programming, for precisely the reason of bringing science to bear on a failing penal system to curb crime.

It transpired that over the next 40 years that the Department of Correction (DOC) resisting employing accredited, licensed social science practitioners, and in spite of repeated state and federal court judgements against the DOC that it was depriving the prisoners of legitimate rehabilitation programming, the Parole Board continued to make assessments on parole eligibility without that accredited, licensed programming and evaluation.

Now the newly entitled once-juvenile offenders will be appearing before the Parole Board absent the same rehabilitative programming as all others before them, who suffered such abysmally failing re-entry experiences that the Parole Board was recently restaffed because of public outrage.

The corruption of process of such unconstitutionality is flagrantly instanced in the following court judgments over the years:

In 1993, Justice Liacos of the SJC issued a judgment and Order in the Hoffer case that the DOC must cease denying prisoners their statutorily entitled programming rights, that he now explicitly adjudged to be a liberty interest entitlement secured under the Massachusetts Constitution. The DOC not only assented to the judgment and Order, but also signed a settlement agreement to the effect, thereby contracting under the sacred American principle of property rights to such programming and its effects.

In 2001 the SJC confirmed a lower court judgment against the DOC in the Haverty case that it had violated the programming rights that Justice Liacos had specifically ordered them in 1993 never again to violate.

in 2011 the federal district court in the combined cases Tyree/Peterson reconfirmed that the DOC in Haverty had violated both the state and federal constitutional rights of the inmates.

Actually, there has been nothing new about the DOC ignoring or deceiving the courts. In 1995 in the case Superintendent v. Hill, three justices of the Supreme Court accused the DOC of misrepresenting that the inmates had such rights, explicitly admonishing them that such duplicity undermines the integrity of the judiciary.

The long and short of it is that for 40 years the DOC has publically represented that "bleeding heart liberals" have been responsible for the mismanagement of the penal programming - as in the infamous Willie Horton Case - when in fact it has been their own illegally substituted programmers, acting as accredited, licensed social scientists, who have failed the public in accurately assessing prisoners' competence to live in a free society, with the complicit assistance of the Parole Board to turn a blind eye to such a perversion of legitimate rehabilitative counseling assessments, upon

which they are obligated by law to abide by.

What legitimacy, then, can we expect of Parole Board compliance with the Supreme Court in Miller and the Supreme Judicial Court in Diatchenko and Brown to give "meaningful opportunity to obtain release based on demonstrated maturity and rehabilitation" that the concurring justices in Diatchenko "underscore" as good faith compliance with the law?

Answer: NONE!

Timothy J. Muise

February 2014