UNIVERSITY OF CALIFORNIA,
IRVINE

Narratives of Risk and Reform in Lifer Parole Hearings

DISSERTATION

submitted in partial satisfaction of the requirements
for the degree of

DOCTOR OF PHILOSOPHY

in Criminology, Law & Society

by

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DEDICATION

To

Those who have lost cumulative hundreds of thousands of years to a state that cares very little for their wellbeing. You are seen, remembered, and provide a foundation for a radically different future. Free them all.

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ABSTRACT OF THE DISSERTATION

Narratives of Risk and Reform in Lifer Parole Hearings

By

Kristen D. Maziarka

Doctor of Philosophy in Criminology, Law & Society

University of California, Irvine, 2022

Professor Susan Bibler Coutin, Chair

This dissertation investigates the ways that law and policy (co)construct identity within criminal legal settings, particularly for people often viewed as the 'worst of the worst' in California prisons – those sentenced to life in prison, though still with the possibility of being paroled. I explore how punishment-driven identities—such as violent, risky, and dangerous—intersect with other identities like age, race, gender, and disability within the parole hearing process. I examine this through the analysis of lifer parole hearing transcripts, the observation of public meetings of the Board of Parole Hearings and other parole-related events, and informal interviews a variety of actors involved with California parole. I employ ethnographic, textual, and narrative analysis within socio-legal and critical race theoretical frameworks to examine the relationship between identity and institutions of punishment, resulting in several main contributions: (1) an overview of common institutional and individual narratives in lifer parole hearings, as well as how they interact; (2) an analysis of how mental health, aging, and disability are used as an indicator for risk in both parole law and practice and how mental health is uniquely understood in these settings; (3) the role of expertise in understanding risk, identity, and mental health status within the lifer parole process; and (4) a comparative analysis of how time and temporality in carceral settings outline the way time is understood and discussed in relation to people with life sentences

and rehabilitation. I end the dissertation with a discussion of how my findings fit into abolitionist goals of transformative reform of carceral systems, as well as practical suggestions for addressing issues with the parole hearing process that are addressed throughout my findings.

CHAPTER 1: INTRODUCTION

"I remember the van – it was probably – no, not probably, it was animalistic behavior… That's something you see in the animal world where a pack of animals will attack something vulnerable, innocent, and it just – that's the only way I could say it, you know"

- Julio Perez[1], describing at his parole hearing the life crime that he was sentenced for: a gang-involved beating death when he was a teen

The focus for this study began, as many research projects do, while I was investigating another research topic. A researcher friend and I, both interested in California's recent policy changes, were looking into how they were being implemented among prisoners in the state considered 'serious' or 'violent.' In the process of tracking down how case reviews were being done for resentencing of long-term prisoners, I was led to the California Board of Parole Hearings (BPH) website. There I found that the process I was originally interested in happened on paper and was not public, but that every lifer parole hearing held in the state was recorded, transcribed, and available with a simple records request to the BPH office. I immediately requested a few transcripts to see what kind of information they held, and what I found was a complex, fascinating set of documents that shifted my interests for the next few years. The quote

[1] Pseudonym – all prisoner names have been changed. Despite being public record, I do not wish to name any lifers because of the power differential they already experience because of their status and inability to control the privacy of this data.

above was in the first transcript I read and it hit me, hard. What made this man characterize his teenage self as 'animalistic'? More importantly, what made him think that was what the parole board wanted him to think of himself? Establishing your early identity as an uncontrollable animal is a hard point to come back from in a process that is meant to demonstrate a prisoner's lifetime of rehabilitative progress. I wondered what stories other lifers told about themselves during these hearings and how those stories fit into the broader assumptions about people labeled the 'worst of the worst.'

I say that these transcripts shifted my interests, but really they introduced me to a new place where I could explore my original questions – how policy and reform measures were being applied to people that are considered the most serious offenders. Not many of the policy reforms that came with California's 2011 Realignment initiatives, meant to address federal directives to reduce prison overcrowding across California, (Petersilia & Snyder, 2013) directly addressed what to do about people with life sentences. In fact, they almost exclusively tried to achieve prison population reduction by extending sentencing relief and other legal changes to people with non-violent, non-serious, non-sex offense convictions. Lifers[2] are categorically excluded from those labels because of the nature of their convictions. Almost all parole-eligible lifers in California have been convicted of murder, a violent and serious offense, and the remaining lifers have similarly regarded convictions such as kidnapping and robbery. Interestingly, however, some provisions in reforms such as Proposition 57 (Bhandal & Nevarez, 2016) were used in lawsuits that argued that the lifer population could be eligible for similar relief. What followed were court decisions, language clarifications, and new laws that greatly impacted the lifer

[2] In this dissertation, I use the term lifer to refer to anyone serving a parole-eligible life sentence. This is the term used in my fieldwork by advocates and lifers themselves, though they may also include lifers without the possibility of parole in this term.

community. For example, changes in both state and federal law regarding youths sentenced to life without parole (LWOP) meant that all those sentenced to LWOP as a juvenile now became eligible for resentencing and a parole hearing (Rovner, 2021). Similarly, the felony murder rule in California changed, so that many people who had been sentenced as participants in a murder that they did not commit themselves were able to seek relief and potentially a parole hearing. There was also a general understanding that the state's priorities had shifted in a direction that might make arguing for parole more successful than it had been in the past.

To begin this project, I analyzed 30 transcripts during 2015-2016 so that I could understand the structure, actors, and practices involved in California lifer parole. It became clear to me that while the documents were rich, what I was reading needed context and history, leading me to expand my data collection methods beyond these texts as the project developed into my dissertation research. I ultimately collected multiple sources of qualitative data, including 60 total transcripts and over 100 hours of fieldwork in the parole process and with people who advocated for lifers that built into an ethnographic study of lifer parole in California. What this meant to me was that no one source of data could adequately address my research questions; instead, I needed to immerse myself in as much of the lifer parole context as I could.

In this first chapter, I establish the contours of the lifer parole system as an object of research. I situate the California lifer parole system within the broader socio-legal discourse about policy reform, mass incarceration, and legal categorization. Then, I present my research questions and objectives for this project. The chapter also describes my methods, including my methodological perspective, a description of my data and data collection strategies, analytic strategies, and adaptations made in response to challenges in project development. Finally, I outline each chapter of the dissertation.

The context of lifer parole

Parole hearings for indeterminate sentences represent the 'back-end' of sentencing, at a moment of decision about whether or not someone deserves freedom. Sociolegal and criminological research frequently focuses on the 'front-end' of sentencing, when the judge imparts some length of incarceration as punishment for a crime (e.g. Bushway & Piehl, 2001; Harmon, 2016; Steffensmeier, Ulmer, & Kramer, 1998; Steffensmeier & Demuth, 2000). However, of equal importance is the process by which indeterminately sentenced prisoners, such as those with a 20-to-life sentence, leave prison. Parole boards hold a great deal of discretionary power in deciding how long that indeterminate "20 years to life" really is – and, if denied, the prisoner may have to wait years before they are considered again. Lyon (2020) reported in Prison Legal News that in 2020 over 38,000 of the total 122,000 California prisoners were serving life sentences with the possibility of parole. California's lifer population sits over 30%, down from its peak of 40%, and stands in stark comparison to lifers' nationwide share of 14% of the total prison population (Lyon, 2020; Nellis, 2021). However, the use of life sentences has consistently been on the rise nationwide (Nellis, 2017; 2021; Nellis & Chung, 2013; Nellis & King, 2009), making lifer parole an important phenomenon to study at both the state and national level, though this dissertation only focuses on this phenomenon in California.

Lifer parole hearings are a rich setting for examining the construction and contestation of the concepts on which release depends, namely criminality, risk, and rehabilitation. In California, only those convicted of serious crimes, which almost exclusively involve murder, have indeterminate sentences that set out a minimum number of years that prisoners must serve but leave the decision of when to release the prisoner up to a discretionary parole board (Ghandnoosh, 2017; Nellis & Chung, 2013). These prisoners are commonly understood both

within the legal system and in the broader culture as the 'worst of the worst.' They almost never receive the benefits of sentencing reform, and easily fit into legal categories such as violent, serious, and high-risk[3] (Seeds, 2017). These terms, while used in lawmaking broadly and in California specifically in laws like Assembly Bill 109 and Proposition 47, are not clearly enumerated and end up being ambiguous in practice. The terms are conferred by the crime and not the individual, yet it is the individuals that fall into these categories who need to demonstrate that they are no longer violent, serious, or high-risk when they go through the parole process. By studying the various narratives that are presented during these hearings in order to construct[4] the lifer prisoner in these categorical terms, as well as how counter-narratives challenge this categorization, this dissertation lends insight into a process through which foundational legal concepts in the criminal legal system are defined and debated.

Correctional systems in many states have reached their financial, physical, and political limits as evidenced by recent reversals in correctional policy, resulting in changes to who is imprisoned and for how long. California represents an extreme and infamous example of this overextended prison system and was ordered by the U.S. Supreme Court[5] in 2011 to drastically reduce its prison population (Gerlinger & Turner, 2015). Other states have preemptively responded to prison overcrowding with sweeping changes in their sentencing laws. Though the sentencing reductions being implemented across the country are touted as a solution to overcrowded prisons, there is evidence that even such changes are inadequate to keep the population down long-term (Patterson, 2015; Seeds, 2017), and more worrisome, that they reify

[3] See Assembly Bill No. 109 (2011), Public Safety Realignment; see also California State Penal Code for use of these categories in the law.
[4] In addition to constructing and deconstructing narratives, other formations happen with the parole hearing, including reconstruction, reification, transformation, etc.
[5] Brown v. Plata, 563 U.S. 493

stereotypes and disparities related to race, gender, and criminality that are already present in the criminal justice system (Patterson, 2015). Furthermore, these sentencing changes are limited in application, as states have strict criteria to determine who will benefit from the reforms.

The rhetoric used in determining who is excluded from sentencing relief mirrors that in the political sphere, often focusing on reducing time for those socially constructed as non-threatening (e.g. non-violent, non-sexual and non-serious prisoners) (Seeds, 2017). The categories used to differentiate between prisoners who are eligible for the benefits of reform are near-ubiquitous in every step of the criminal legal system and therefore crucial to deconstruct in order to understand the logic and potential implications of their use in policies touted as contributing to 'decarceration,' which is, in theory, meant to reduce the prison population and overall size of the prison-industrial complex. In this dissertation, I focus on the lifer parole hearing as a site where legal categories regarding risk and rehabilitation are defined and contested. By deconstructing the legal categories central to policies meant to contribute to reform and decarceration, I contribute to uncovering the logic behind and understandings of who is considered worthy or unworthy of such reform. Because of the paradox of the lifer parole hearing, where the possibility of release is contrasted with the social and legal construction of lifers as the 'worst of the worst,' it presents a unique setting where legal categories relevant to sentencing reform can be examined in practice. Legal categories used to determine outcomes in parole hearings and sentencing reform are not given; rather, they are continuously interpreted as they are applied to cases and used in discretionary decision-making.

Research question

My main research question for this project is *how do punishment-driven identities like violent, risky, and dangerous, intersect with other identities like age, race, gender, and ability*

within the parole hearing process? My findings reveal that punishment categories themselves are raced, gendered, and linked to particular understandings of these social categories. Further, the punishment categories themselves are understood and applied as their own form of identity category. The label of 'criminal' becomes complicated as groups of prisoners are divided up by the criminal legal system, labeled, and then evaluated based on expectations for those in their punishment categories. During a parole hearing, a narrative of the 'criminal'[6] is constructed; in this study, I seek to understand how the 'criminal' is constructed and dismantled in the justice system by examining the circumstances of a specific, highly discretionary event in the course of punishment – the lifer parole hearing. Specifically, this project focuses on ways that violence, risk, reform, and identity are constructed, mobilized, and challenged in social and legal contexts related to parole.

Study objectives

To study legal categories, narrative, and discretion in lifer parole hearings, this project pursues three objectives. First, I examine the language of the law used in discretionary parole hearings. I focus on language that is used to categorize people and mark some form of difference from socially dominant identities, whether that be difference based on punishment status, race, class, gender, age, disability, sexuality, etc. These linguistic categories are important to understand for many reasons, not least of which is the role they play in power relations. Power relations are intersectional, meaning they proceed from a combination of social hierarchies that may include dominance based on race, class, gender, and sexuality, to name a few. From an intersectional perspective, language and categorization must be understood within the context of

[6] I use the term 'criminal' here to refer to people already labeled as such by the justice system. Through the parole hearing, this label may be changed, retracted, or reified, and prisoners may not identify with that label, but without it no prisoner would be at this stage of the punishment process.

domains of power such as “structural, disciplinary, cultural, and interpersonal” domains (Collins & Bilge, 2016, p. 27). In this dissertation, I examine how language holds and conveys meaning that structures power relations within the lifer parole hearing. Parole laws indicate that ‘insight’ and ‘change’ are required for parole eligibility, but those words are not value-neutral. Instead, actors within the hearing draw on their own understandings of these words to categorize prisoners. Further, these legal categories lend insight into the processes of legal and social exclusion that connect marginal identities with legal ideas of risk, rehabilitation, and dangerousness. Understanding the connections between language and identity reveal the limits of the law in accounting for intersecting identities, as well as the process of racialization that happens as identity is connected with legal categories that render people punishable under the law.

Second, this project examines the narratives of risk and reform (de)constructed within the parole hearing. While much research focuses on the sentencing process, which happens at the front end of a prison sentence, similar decisions are made during back-end sentencing, which happen at a parole hearing (Lin, Grattet, & Petersilia, 2010). In these hearings, the parole board is tasked with examining relatively objective factors that are procedurally stipulated and unquestioned in this context (like minimum sentence length and disciplinary record) but is also given leeway to assess more discretionary factors that point to reform (such as insight, motivation, and behavioral change) (Caplan, 2007; Rhine, Petersilia, & Reitz, 2017; Travis & Stacey, 2010). Here, the narrative of reform is constructed by claims and counterclaims, requires different types of evidence and documentation that must be established by the prisoner, and often proves to be much more salient and easier for the prisoner to challenge than the court record and other legal facts of the case as all these factors are woven together into stories. The stories people

within the hearing tell build into a narrative that ultimately results in a decision about eligibility for parole. There may be conflicting or competing narratives for several reasons. First, the prisoner and the parole board members will likely have different characterizations of the commitment offense and the amount of change that the prisoner has made over their incarceration. The lifer may maintain their innocence or dispute the facts of the case, but the parole board is legally required to accept those facts as truth. Second, there may be different understandings and expectations of eligibility among any actors in the hearing. I discuss throughout the dissertation instances of agreement and disagreement between interpretations and stories that contribute to an understanding of the subjectivity of parole law and policy. Uncovering different stories within the hearing is key to understanding the way that facts and interpretation build into a narrative within the parole process, as well as whose narrative is favored in the final decision regarding eligibility. My analysis reveals that there are patterned contours to the stories that are expected by the parole board. These stories conform to institutional understandings of personal, internalized reform, they are usually well-articulated by the lifer, and they contain a record of behavioral and attitudinal change over a period of time. They reflect concepts from literature on incarceration such as redemption (Haimson, 2022; Maruna, 2001), insight (Hannah-Moffat & Yule, 2011; Paratore, 2016; Shammas, 2019), and remorse (Martel, 2010; Paratore, 2016; Young & Chimowitz, 2022). There are, however, stories that diverge from this expected narrative. In Chapter 2, I discuss some of these common divergences. One is characterized by instances when prisoners make a clear argument about their personal stories of change, but center factors like age and maturity rather than the terms used in the parole checklist. Another happens when some aspect of the prisoner's identity, such as native

language, deteriorating health and cognition, or inadequate communication skills, make it difficult for the prisoner to communicate their story in a manner legible for the board.

Third, I examine the ways that discretion is used in lifer parole hearings. Language and narrative are important to understand, but it is the weight of the decisions based on them that likely have the most impact on prisoners' lives. There are many points within the criminal legal system where discretion is exercised, such as in police stops (Epp, Maynard-Moody, & Haider-Markel, 2014) or during a trial (Lynch & Haney, 2000). This discretion is always problematic, particularly when decision-makers draw on biased understandings of law or deeply ingrained stereotypes that connect marginalized identities with concepts like risk and dangerousness. The parole hearing is just one of these discretionary moments, but one that likely has more potential for the incorporation of bias than other criminal legal settings. Importantly, lack of discretion can be equally problematic and worthy of scrutiny. Salyer (2014) produced one such critique of rigid decision-making in immigration law that fails to allow for context and complexity in the course of an immigration case. Studying the breadth of discretion in the parole hearing, as well as the logic that the parole board uses to interpret a prisoner's case in light of the legal guidance about parole sheds light on the role of discretion in lifer parole.

Methodology

Traditionally, ethnography has taken on a very particular methodological meaning that stems from its use in anthropology. That form of ethnography consists of long-term, immersive fieldwork. In this project I do not practice that version of ethnography, yet I still consider my methods deeply ethnographic. I conceptualize the lifer parole process as the object of my ethnographic study and focus the scope of my project on understanding the contours of that object. My research design is informed by ethnographic methods, which leads me to collect data

from the field in a way that captures both the context and practices that constitute that field. My ethnographic field site is centered on lifer parole hearings in California and radiates out from there to include the texts, practices, people, and institutions that are involved in that hearing process. As such, my data collection methods are not immersive, as I would not be able to immerse myself in the many groups and locations that make up the parole hearing process. Instead, I think of my study as utilizing 'mixed-ethnographic' methods. To me, this means that I draw on all of the resources in my ethnographic toolbox such as document analysis, participant observation, and interviewing and use those techniques to collect data in a variety of forms. Here I will describe those forms, how they complement each other, and why I think what qualifies as ethnographic can be inclusive of such a mixture of approaches (see Coutin and Fortin, 2015 for an expansive definition of legal ethnography).

Data

Hearing transcripts

Amongst the types of data I collected, I consider the parole hearing transcripts core to this project. In addition to the 30 transcripts from my preliminary analysis, I obtained another 30 transcripts for a total of 60 official transcripts from lifer parole suitability hearings held at various prisons across California. While 60 transcripts may seem like a small number in relation to over 1000 held each year, this source of data yielded thousands of pages to analyze. Here I will describe how I selected these transcripts.

My sampling plan for choosing which hearings to request was twofold. The first was through quasi-random sampling of hearings held from 2012-2014. This time period was chosen because of its recency to the beginning of my project, meaning the narratives within hearings at that time were likely to be representative of parole practices during my fieldwork, as well as the

fact that they occurred while major criminal justice reform efforts were underway in California. Further, these represented (at the beginning of my research) the most recent years with a complete listing of all hearings available on the BPH website (Board of Parole Hearings, n.d.). I randomly sampled 20 cases from each year in the selection frame using the following procedure: each list was narrowed to only those resulting in grants or denials (as opposed to those hearings that were waived, postponed, etc.), each case was randomly assigned a number in the spreadsheet, and then the list was sorted according to that randomized number. Based on this randomized list, and sorted by outcome (grant or deny), I then sampled ten cases equally from grants and denials for each year. There are many more denials in a year than grants, but I chose to sample equally from grants and denials to ensure variation.

My second sampling strategy was purposive. After my initial coding of the hearings in my sample, I found a few particularly exemplary or problematic cases that required more contextualization. The two main reasons that made these cases stand out were that there was something about the case that was intriguing, and that the transcript referred extensively to things that happened in prior hearings. In these cases, I requested all the records for that prisoner's past hearings in order to analyze changes in narrative over time and across parole contexts (such as differing institutions or board members). For example, after reading a particularly interesting problem case in my sample involving a trans identified prisoner whose past hearings were continually discussed and debated throughout the transcript, I was able to contact the BPH records department and request transcripts from all of this prisoner's past hearings, which dated back 15 years.

Lifer parole hearings typically have several consistent actors: the parole board (2 members), the prisoner, the prisoner's lawyer, and a correctional officer who does not

participate. Occasionally, others will be present, such as community advocates, victims or their families, and police or prosecutors involved with the case. The main dialogue happens between the board members and the prisoner, but others such as a district attorney or victims' families and representatives are given a chance to speak as well. The hearings are audio recorded and then transcribed verbatim by a professional court reporter.

The length of the hearing transcripts in my sample varied from approximately 50-150 pages. Almost all the cases in my sample were subsequent parole hearings, meaning the prisoner had already been denied parole before. Typically, the findings of previous hearings are part of the file that board members examine. Those previous hearings may be discussed, but do not take the place of a new discussion of the parole hearing checklist items, such as a recounting of the commitment crime and behavioral records while in prison. Furthermore, many new materials may be added for subsequent parole hearings; new letters of support may be written, and risk or psychological evaluations may have been updated. All of the prisoners in my sample are male or male-identified, all were convicted of some form of murder, and all had served at least 19 and up to 40 years of their sentences. Some factors that varied across this sample include age, race/ethnicity, and whether or not the prisoner maintained their innocence. Demographic data is sometimes mentioned within the hearing but is not included with the transcripts; therefore, I do not know, for example, the race of every lifer in my sample. I only mention race if it is specifically noted in the transcript or there is enough context to make an inference (i.e. if the lifer is a native Spanish speaker, I would infer that they are Latinx. This, of course, is not a reliable method of understanding what is a complicated and personal aspect of identity, however, the racial and ethnic designations in my set of data (and in the California prison system in general,

see Goodman, 2008) are not easily accessible[7]. Further, even if I were to access institutional designations of race and ethnicity, they may not reflect how prisoners self-identify. Thus, to avoid being race-blind but also acknowledge the ways in which people are racialized throughout parole narratives, I take a cautious approach to contextualizing the identity narratives in my data.

These transcripts provide a dataset uniquely situated to lend insight into the narratives of criminality that are present in different forms throughout criminal legal settings. As I read through them, I looked for various narratives constructed by any of the actors there – the prisoner, the parole board, the district attorney, and even victims and victim families. Furthermore, I analyzed the ways that these narratives relate to larger socio-cultural scripts, such as those written in the law or present in dominant American culture. In particular, with these transcripts I focused on identifying narratives related to violence, risk, rehabilitation, dangerousness, and personal reform. Because the parole hearing is specifically conducted to gauge a prisoner's risk to the community if released, all of these themes I identified are crucial to the discussion that happens during the hearing.

Fieldwork

The fieldwork for this project was conducted over a period of 14 months in 2018 and 2019. Table 1 outlines the observation sites that were part of my research, as well as where they were located.

Observation sites	Location
BPH executive board meetings	Sacramento, CA
Board training week	Sacramento, CA

[7] Bell et al. (2021) provide an account of their attempt to get even deidentified racial data about parole hearings from the CDCR, which progressed all the way through litigation until a California "court held that race data is public record and, in a companion case seeking access to similar data, stated that there is "a weighty public interest in disclosure, i.e., to shed light on whether the parole process is infected by racial or ethnic bias"" (p. 137).

Board lawyer training	Diamond Bar, CA
Advocacy events	Long Beach, CA; Yorba Linda, CA

Table 1

Executive Board Meetings of the BPH are held monthly in Sacramento and happen over two days; I attended eight of these meetings that yielded over 60 hours of fieldwork and hundreds of pages of fieldnotes and other materials. The full board attends, including all the appointed commissioners as well as the hired deputy commissioners, the board's lawyer, and the executive officer. The agendas are posted publicly at least 24 hours before the meeting, and anyone is able to attend the public portions of each meeting day. The BPH has offices and their public meeting room at a government building in downtown Sacramento, close to the Capitol building. Anyone can enter the building, but there is a security checkpoint with guards and a metal detector that attendees other than the director and commissioners must navigate before being allowed into the meeting room. The room itself is not particularly large, but has enough space for an elevated bench where appointed commissioners sit and a general seating area that was set up for approximately 100 occupants. Typically, there was a projector set up toward the part of the room in front of these seating areas and some space and a podium for speakers and presenters to use if needed. Between going through security and entering the meeting room, there was always a table set up in the hallway and staffed by BPH personnel where people could pick up a printed copy of the agenda, any handouts they had pre-printed, and fill out a public comment card. These cards are much like I have seen at events like city council or school board meetings, and had space for people to write their name, address, and agenda item they wished to speak on. Only people who fill out the cards are supposed to speak during the public comment portion, although I observed times when the head commissioner, who acted as chair for meeting

procedures, asked if any additional members of the public wanted to make a comment and allowed them to speak. When called to speak, people moved to the podium at the front of the room, stated their name, and spoke to the appointed commissioners. The head commissioner started a clock for each speaker that counted down from five minutes and would interrupt people and ask them to finish at the end of that timer.

The board meeting location is convenient for those in the area, but many people have to make significant travel plans in order to attend. Board members and district attorneys are based all over the state and regularly make the trip for the meeting. Community members are often more strategic in attendance. There were local advocates and interested community members that I saw and spoke to at more than one meeting. However, I met many people who would travel from distant parts of the state simply to be present for and possibly comment on a case or issue relevant to their incarcerated loved one. Part of the work the parole advocacy groups do is help sponsor or arrange travel when they have the resources, because it may be a significant imposition on a family's time and finances to make, for example, an eight hour drive from the Los Angeles area that includes an overnight stay.

Typically, the first day of this meeting consisted of closed-door discussions of policy and lawsuits, as well as public discussion of the same. The first day was reserved for public discussions of policy, training and informational presentations, and then the previously described time for public comment. This first day of meetings was consistently a valuable source of data on the Board's discussion and interpretation of parole laws in California, as well as their role in weighing risk to the community against other pressures (such as legislative mandates and political climate). Because the BPH is more publicly visible than individual parole boards and deals with setting policy and deciding contentious cases, these meetings gave me the clearest

image of the institutional context of typical parole hearings. I took field notes during these days, which lasted between two and six hours depending on how much was on the agenda that month and how many people came to make public comments. My approach to taking field notes was drawn from Emerson, Fretz, and Shaw's (2011) guide to ethnographic field notes. All public comments are limited to five minutes, so the amount of time spent during this portion of the day often varied greatly. A major legal change might draw over ten speakers, but more often only one or two people would sign up to comment on this day.

The second day of this monthly meeting always consisted of an agenda of individual cases that the board hears public comments on. There are various ways a case can make it on the agenda, but most commonly these are petitions for commutation and tie votes that are brought to the full board. Over the meetings I attended, there were always over ten and sometimes over 20 cases on the agenda for this day, although it was common for cases to be added or removed at the last minute, making for an unpredictable schedule. The board does not discuss these cases in public, they simply listen to anyone who wants to make a public comment about a particular case. Many cases had no speakers present and thus did not yield fieldnotes, but some with a higher profile had over 50 speakers, resulting in hours of comments by families, friends, prison education workers, victim families, advocates, district attorneys, and others wanting to weigh in on a prisoner's prospective release. When the agenda was short and few people attended to comment, this day could be as short as two hours. When the room was full of speakers the day would run quite long, sometimes seven or eight hours, until everyone who filled out a speaker card had the chance to speak. While most of those attending the first day of the monthly meeting would stay throughout the full agenda, the second day was much more flexible, with people coming and going as cases came up.

Once yearly the executive board holds a week of training for all its commissioners. Most of this training is open to the public. During the training, they cover ADA issues, common legal issues and precedents, tools used by the board to make decisions, workflow, and other policy matters. I attended the public sessions for this training one year. Though I had picked up some of the information covered in the training over my previous observations, I found it beneficial to experience what is ultimately an orientation and refresher course for current and incoming parole board members. This training included guest speakers from other CDCR departments, a comprehensive orientation to the structure and legal mandate of the parole board, and other information that is not readily available on the BPH website or at regular meetings.

Also once yearly the board hosts training sessions for their prisoner attorneys, or people who are on the list to be state-appointed attorneys for prisoners preparing for parole. I attended this training session one year, which consisted of ADA issues, attorney responsibilities, the hearing process, and common problems attorneys face while representing their clients. Almost all of the information presented at this training was new to me and valuable in understanding more about what goes into the lifer's file that is given to the parole board before a hearing. More importantly, I learned that the obligations for a state-appointed attorney are very minimal, with only a few hours of work required for each client. The compensation was also much lower than I expected at less than $900 per case.

I partnered with an advocacy group that held frequent day-long informational sessions for family and friends of lifers. I attended three of these and took fieldnotes; at these events they discussed the parole process, what the board is looking for to grant parole, recent changes in parole law, how to get and use a lawyer, and what life will be like once a loved one is paroled. These workshops also provided space for people experiencing the confusion of having a loved

one in prison to connect with each other and discuss their struggles and confusion. At these workshops, I had the chance to talk with several former lifers and many family members of incarcerated lifers, as well as a few private attorneys who have represented many lifers in their parole hearings. The workshops were a key source of information about the California lifer parole hearing process that I do not think I could have learned from other sources of data. They also helped me understand how people not working for the state understand and help each other through what is a very complicated, ever-changing legal process.

Ethnographic documents

I obtained many ancillary documents during observations (handouts, powerpoints, agendas), from various people I met (letters, notes, emails, newsletters), or I sought out in order to provide background and context (laws, court cases, website materials). These documents were essential to my analysis, both as a record of what tangible materials are a normal product of different aspects of the parole process, and also as additional substantive material that I analyzed. Without these documents I would have missed out on information that is communicated between the BPH and the public and between people working in all aspects of the parole process. It is not possible for every piece of information to be communicated at in-person events, so a significant amount of knowledge is exchanged through these various forms of documents.

Ethnographic interviews

Throughout the course of my fieldwork, I conducted dozens of informal interviews with people from all kinds of backgrounds. I spoke with advocates and volunteers involved in lifer advocacy, former lifers, friends and family members of currently incarcerated lifers, attorneys who represent lifers, district attorneys, former CDCR psychologists, and several members of the executive board of the BPH. These were not formal, scheduled interviews, but rather

conversations that happened on breaks during meetings, at lunch or on the sidewalk after attendance at an event, and with people who asked about my research and then wanted to talk about their thoughts and experiences related to parole. These interviews were an important aspect of my data collection because they were informal and happened while people were engaged in and processing their parole experiences in the moment. They gave me insight into how information formally presented by the BPH was interpreted by those receiving it, background information as I was invited to talk with groups of people who have long histories of working in the area of parole and parole advocacy and gave me a chance to ask clarifying questions of those who were best positioned to understand the context that I was becoming familiar with through my data collection.

Analysis

My primary analytic strategy for this project involved narrative analysis of my data, including hearing transcripts, fieldnotes, and ethnographic documents such as handouts and legal briefs. The goal of narrative analysis is to uncover the layers of narrative and stories that are happening within a setting. Through a review of the literature and my preliminary analyses, I identified narrative themes such as risk, responsibility, insight, and reform that I used to initially code my data. Additionally, the ethnographic facts of the law and hearing itself, such as the procedure of parole hearings which I gleaned from the BPH website or the legal criteria for parole decisions, which I found in the text of parole law and policy, provided a guiding narrative for the process of granting or denying parole. The parole board follows a checklist of topics they must cover. However, this does not mean that the narratives in a hearing are given, because both the board and the prisoner negotiate narratives of reform and deservedness of release. This happens through a dialectical process whereby different versions of stories clash and combine.

Further, the precipitating incident (also called the commitment offense) is retold in narrative form by multiple actors in the setting. One goal of my analysis was to examine the ways that these narratives worked together, contradicted each other, and overlapped. There were also many other narratives that I found in my data. For example, in cases where victim's families are present, there is often a narrative of loss and retribution. Certain actors such as victim advocates and district attorneys reiterate those narratives, while others such as prison educators and prisoner family members have very different themes to the narratives they present. It is these themes, who uses them, and how they are used, that were the focus of my analysis.

Beyond individual narratives, my analysis also examined other levels of narrative, such as narrative that is further institutionalized through law and policy. Much of my fieldwork and background research provided deeper insight into the ways that law, policy, and institutional context provided or shaped the narratives that legal actors then drew on within the parole hearing. For example, California laws about parole eligibility criteria set out broad categories for inclusion or exclusion from parole. The BPH executive meeting and training sessions then provide guidance on how board members should be directed to interpret the facts in individual cases in light of law and policy. Through the coding of my interview transcripts and ethnographic field notes, I was able to identify themes in how law is interpreted and policy is set, as well as the process of communication of these institutional norms. Those more organizational, macro-level themes that I identified were then used to inform the analysis of the parole hearing transcripts and triangulate my findings about sources of legal language as well as scripts used within the parole hearing setting.

Preliminary analysis of the hearing transcripts helped me formulate my research question, which remained consistent throughout the rest of my project. I approached my fieldwork through

an iterative process. First, I learned all the basics about the board, how they operate, who is involved, and key parole law. Based on that broad fieldwork, I then identified some of the key contours that would help me answer my question, confirmed those contours in the literature, and focused the rest of my fieldwork on those contours (i.e. time, mental health, expertise). Broad analysis took place throughout this process, with more fine-grain analysis of the transcripts and fieldnotes toward the end. I used a typical inductive and deductive coding strategy in Atlas.ti whereby I developed inductive codes based on the legal criteria used for parole as well as themes from the literature, and added in deductive codes as they arose from my initial coding procedure.

Methodological notes

Navigating access and IRB

While applying for IRB approval for this research, I ran into some interesting issues. All of the data I planned to collect was technically public. I included a plan to observe parole hearings in person to supplement what I was reading in the transcripts. These hearings, however, do not fall neatly into the categories of public vs. private. They may be considered public because they are technically legal proceedings and the BPH states on their website that members of the public can attend as long as they ask the scheduling department, who can facilitate clearance to the facilities where the hearings are held. On top of this, I had already been encouraged to set up hearing observations by the Executive Director of the BPH, further solidifying my belief that access to the hearings would not be an issue. The hearings may also be considered private, though, because they happen in a designated hearing room in the facility where the prisoner is located. If this were a courtroom, there would be little question of public access, but their location within a prison instantly complicated my research in the eyes of the IRB committee. Because the hearings were held inside a prison, the IRB wanted me to seek out

letters of permission from the wardens of any facility I wanted to enter, a near impossibility in the state of California and certainly not feasible for a dissertation project that was already well underway.

Luckily, in-person observation of parole hearings was not the crux of my project and I eventually decided not to pursue this form of data collection. While I had not planned to interview anyone currently employed by the CDCR, the IRB wanted me to explicitly state that in my revision. Apparently, the concern was that if I wanted to interview anyone who works for CDCR, I would have to get additional approvals, including approval through the lengthy and almost impossible CDCR research process.

Interestingly, this issue reflected the key questions that I was already asking in this study, such as how people and ideas are defined and categorized. For example, research involving prisoners requires a special level of review for IRB if I am going to interview or observe the prisoners or collect their confidential data. However, the hearing transcripts, which represent verbatim what is said in their hearings, are public data. The information in the hearing is public, yet the setting was rendered inaccessible by the IRB. My IRB experience prompted me to think of other ways this process parallels that of my field site, such as what implications the IRB's categorization choices have on who qualifies as a protected subject and what we can know about them. The deference of the IRB to the tightly controlled research approval process of the CDCR also raises questions of how these institutions reflect and reproduce the legitimacy of powerful institutions. Further, this gatekeeping mechanism plays into my questions about who gets to be an expert and how that expertise is controlled and used in the interest of maintaining the institution's status quo. These are all questions to be explored in a future research paper, but I found them profoundly significant in the ways that they intertwined with what I was finding in my fieldwork.

Coincidentally, just as the IRB returned their questions to my application, an article was published in PoLAR that used the exact observational data that the IRB found problematic in my research design, again prompting questions about how context and discretion can shape an individual researcher's ability to collect data.

Covid interruption

All of my fieldwork happened before the onset of the COVID-19 pandemic. At the beginning of 2020, I was planning one to two more trips to Sacramento and attendance at another advocacy event before Covid intervened and made additional fieldwork impossible. While my data collection was sufficient at that point, it was a very abrupt exit of the field and left me without the ability to wrap up with many of my regular contacts at these sites. The inconvenience to me, however, was nothing compared to what incarcerated lifers experienced during the pandemic. While I did not include any 2020 data from emails, press releases, virtual meetings, or the BPH website in my analysis because of the rapidly changing context Covid imposed on the system, I was still receiving all of this information. Hearings were halted and then moved to a virtual format for the duration of the health emergency. Lifers with upcoming hearings had difficulties making the contacts and preparations they needed, not least because all in-person visitation was suspended. Over 75,000 CDCR prisoners were infected with Covid, with more than 250 deaths reported[8]. My fieldsite was completely transformed in a matter of days, mostly in ways that I cannot account for in this dissertation. Perhaps a future extension of the current research could examine the way the Board adapted their policies and practices during the pandemic.

Dissertation Outline

[8] https://www.cdcr.ca.gov/covid19/population-status-tracking/; as of June 2022

In the following chapters, this dissertation delves into the complex world of California's lifer parole system. By drawing on archival data and over a year of fieldwork, I address questions of power, narrative, and identity within this system. I provide a thick description of the organizational structure of the parole board, the actors that are involved in different parts of the parole process, and the law, policy, and institutional culture that act as the backdrop to lifer parole. I argue that the law and expectations of the parole board are deeply enmeshed with cultural ideas about criminality, deservingness, and rehabilitation. Further, I discuss the ways that these conflations result in a unique logic, language, and practice of lifer parole that maintain its legitimacy. As an arm of the larger prison industrial complex, parole boards draw on and recreate carceral logics that preclude the type of transformative reform many scholars claim is needed to dismantle systems of punishment that perpetuate harm. The way the system is structured creates a procedure where even though the hearings exist, it is very hard for lifers to challenge the ways that law and society characterize them. The themes I present in the following chapters demonstrate various barriers to changing the way that lifers are viewed and understood, as well as their chances of achieving parole under this system.

In Chapter 1, I have established the context and purpose for my study, as well as detailed my methodology. This chapter illustrates the development of my project and the mixed ethnographic methods that I used in my qualitative research design. It also provides context for how my data collection strategies changed over time and were impacted by things such as the IRB process and the beginning of the Covid pandemic.

Chapter 2 provides an analysis of the dominant narratives and power relationships in the parole hearing process. This chapter's analysis relies solely on my transcript data. By limiting the analysis, this chapter provides the most opportunity for lifer prisoner's words to come through.

They do not get to participate in any of the parole process or advocacy that happens outside of prison, so the key source of data containing their voices is the transcripts. While the parole process and subsequently my research largely happens outside of prison institutions, this chapter is rooted in my commitment to including incarcerated voices in the dissertation, even though I was not able to interview currently incarcerated lifers in the course of my research. This chapter is also where I establish the Board of Parole Hearings entity as its own social field, distinct from the CDCR or the Division of Adult Parole Operations (DAPO). The findings established in this chapter describe the contours of what I call institutional narratives and individual narratives. Institutional narratives are guided by parole law and typically adhered to by those holding institutional power in this process, such as board members and district attorneys. Sometimes lifers adopt or at least conform to these narratives, and they tend to be more well-received if they can achieve this conformity. Individual narratives are established by the lifer, and while they may conform to the model, institutional narratives the board expects, they often differ in both small and large ways, incorporating or focusing on other facts or life events. These narratives tend to be more difficult for the board to understand as they compare the way the lifer describes their rehabilitation to the checklist of topics and requirements standard in all parole hearings.

In chapter 3, I broaden out and describe the fuller cast of characters who weigh in on everything parole in California. While chapter 2 establishes common narrative interactions and power dynamics, this chapter goes deeper into a specific theme throughout parole narratives – the conflation of mental health and risk. My analysis here demonstrates how mental health, aging, and disability are used as an indicator for risk in both parole law and practice and how mental health is uniquely understood in these settings. This chapter also delves into ways that

parole actors establish expertise and maintain their internal and public legitimacy within this social field.

Chapter 4 is a theoretical analysis of how time and temporality are understood in carceral settings and how carceral logics structure the way that time is understood and discussed in relation to people with life sentences. Here I present time as an 'overlay' to parole narratives, and open up a new way to think about the unique logic of narratives in carceral settings. My findings include different narrative strategies, or a 'narrative toolkit' that different actors use. They may minimize time spent incarcerated, compressing a lifetime of experiences into a few key moments. Victims, victim advocates, and district attorneys often use this strategy. They may maximize periods of a person's lifetime, elongating and contextualizing what is often a life mostly spent incarcerated. Lifer advocates, lifer attorneys, and lifers themselves tend to deploy this strategy. And, parole actors may apply moral arguments to specific incidents in a lifetime, using them to negate other incidents or lengths of time that a lifer may have spent in prison. Who deploys this strategy depends on what they want to negate. A lifer's lawyer may argue that the length of time spent in prison negates a short amount of time spent, for example, in a gang. A district attorney may make the opposite argument, and say that a lifer's disciplinary incident in recent years negates previous time spent without infraction. These temporal narrative strategies are a way of framing the argument and marshalling the facts in order to create a persuasive story that other actors will understand.

In Chapter 5, the conclusion, I reiterate my key findings about parole and the power of narrative, discuss the importance of my findings, and point to ways that my work could be applied in other carceral settings. I also discuss some practical applications of my research in the parole advocacy and policy reform arenas. Throughout the dissertation and reasserted in the

conclusion are my commitments to looking beyond carceral solutions for reform for lifers. This work has only strengthened those commitments as my findings contribute to academic understanding of the inadequacy of the carceral system in understanding and dealing with social problems like crime and the complex lives of the people it seeks to punish. I hope this work continues to add to the discourse of the movement to abolish these practices in favor of building systems of care, community, and accountability when addressing harm, instead of relying on punitive practices aimed at individuals rather than structural problems.

CHAPTER 2: NARRATIVES OF RESPONSIBILITY AND REFORM IN LIFER PAROLE HEARINGS

> ***Board**: Please, sit down. Ellis Boyd Redding, your files say you've served 40 years of a life sentence. You feel you've been rehabilitated?*
>
> ***Redding**: Rehabilitated? Well, now, let me see. You know, I don't have any idea what that means.*
>
> ***Board**: Uh, well, it means you're ready to rejoin society.*
>
> ***Redding**: I know what you think it means, sonny. To me, it's just a made-up word, a politician's word, so that young fellas like yourself can wear a suit and a tie and have a job. What do you really wanna know? Am I sorry for what I did?*
>
> ***Board**: Well, are you?*
>
> ***Redding**: There's not a day goes by I don't feel regret. Not because I'm in here, or because you think I should. I look back on the way I was then, a young, stupid kid who committed that terrible crime. I wanna talk to him. I wanna try to talk some sense to him, tell him the way things are. But I can't. That kid's long gone and this old man is all that's left. I gotta live with that. Rehabilitated? It's just a bullshit word. So you go on and stamp your form, sonny, and stop wasting my time. Because to tell you the truth, I don't give a shit.*

Toward the end of the iconic movie *The Shawshank Redemption* (Glotzer et al., 1994), Morgan Freeman's character Ellis 'Red' Redding faces the parole board after decades in prison. In the passage above, his dismissal of the parole board's ability to determine 'rehabilitation' is clear; Red feels that the man he is at the end of the prison sentence is completely different from

the young man who committed murder so many years ago. The board's idea of rehabilitation—being ready to rejoin society—has little meaning for the story of Red's life, which has mostly been spent in seclusion from society. At the end of this scene, the parole board grants Red his freedom, despite his flippant attitude during the hearing. In reality, the short narrative that Red uses to describe his 'rehabilitation' would probably not be accepted by parole board members. The narrative they expect from a prisoner is one of penitence, demonstrable reform, and low risk for reoffending. Often to their detriment, the narratives presented by lifers at their parole hearings often sound much more like Red's story than the model narrative expected by the parole board. In this chapter, I examine both institutional (model) narratives and the individual narratives of prisoners as they meet within the parole hearing. By using the analytic framework of Critical Narrative Analysis, I identify and situate the individual, micro-level narratives of prisoners within larger institutional narratives that hold much more power in this setting. Through this analysis, I point to three forms of narrative interaction that are important in parole hearings: alternatives to institutional narratives, conformity to institutional narratives, and inability to address institutional narratives. Finally, I point out the importance of understanding narratives in the parole hearing setting and outline potential lines of inquiry that this analysis has brought up.

Narratives of lifer parole

Parole hearings are a key site in examining criminal legal system narratives. They happen long after trials and sentencing have passed yet they play a significant role in deciding whether someone deserves freedom; they depend almost entirely on the presentation of a narrative worthy of release. Prisoners who are sentenced to an indeterminate term of life in prison with the possibility of parole must first serve a minimum number of years imposed by a judge. Once they

reach their minimum eligible parole date, they are given a hearing where a state parole board assesses whether they are suitable for release into the community. Often this first hearing and subsequent others result in a denial[9]; the next hearing date is set by the parole board for one to fifteen years in the future. The parole board has access to a host of information about the prisoner – their Central File that contains a full report of their time in prison, court documents explaining their commitment offense, and various release-related psychological and risk assessments that offer suggestions as to whether the prisoner should be considered a danger to society. Before the hearing, prisoners have a chance to submit a written personal statement and letters of support from family or community members (Young, Mukamal, and Favre-Bulle, 2016). In addition to all these materials is the discussion in the hearing itself, which is the focus of my analysis in this chapter.

Research frequently focuses on narratives at the front end of the criminal legal system that happen in legal texts (Hanne & Weisberg, 2018), courtrooms (Weisberg, 2008), or during a plea deal; for example, Kaplan (2012) has extensively documented ideological narratives used in California death penalty cases. Others have examined legal narratives in sexual assault trials (Hlavka & Mulla, 2018; Kilty & Weir, 2021; Rayburn, 2006) and the narratives victims contribute to criminal legal cases (Brooks & Gewirtz, 1998; Gewirtz, 1995). However, of similar narrative importance and with less extensive documentation is the process by which prisoners leave prison, at least for those who are subject to discretionary parole. Parole boards ultimately decide the length of an indeterminate sentence, including whether a lifer is ever released at all. With this pressure to gain parole, California lifers face an intimidating setting that they often

[9] The grant rate for lifers stayed below 8 percent before 2008, but jumped to 30 percent by 2015, likely due in part to landmark California cases such as *In re Lawrence* and *In re Shaputis*. However, in California the governor can reverse any parole hearing decision, resulting in some years with zero lifers released. However, as of 2015 the reversal rate for lifer parole grants was at just 13.5 percent (Young, Mukamal, and Favre-Bulle, 2016).

spend months preparing for by writing letters, formulating statements, and discussing the case with a lawyer. The hearing becomes a place where lifers have the opportunity to craft their own narrative about their crime, reform, and plans upon release. On the other hand, the parole board also has the job of crafting a narrative: they need to characterize the lifer as worthy of parole or not. These two narratives do not always mesh, and frequently the job of the prisoner is to make their narrative match what the board expects of a deserving lifer. The Board is provided with statutorily defined criteria[10] that they use to evaluate the lifer's suitability to be released on parole, but also draws from cultural, legal, and institutional conceptions of reform which come with their own biases similar to those present at other stages of the criminal legal system. It is in this setting, where narratives and power clash and compete, that I conduct my analysis.

Constructing an appropriate narrative

Risk is one of the most pervasive frameworks used in the criminal legal system.. Logic underlies all decision-making, and consists of values, assumptions, and decision pathways that make sense within that framework. Risk constitutes a logic that encompasses fear, threat, predicting future behavior, classification, and assessment Risk assessments are used at many points throughout the criminal legal system, such as in determining bail, sentencing, probation, and parole eligibility. In California, people coming up for lifer parole complete a psychological evaluation, which is the de facto risk assessment for the hearing and consists of a battery of tests and interview questions administered by a psychologist. This report is then given to the parole board and weighs heavily in their decision. In particular, they use the risk assessments to

[10] Under Title 15, section 2316, only example criteria for unsuitability are given, including (a) A history of violent attacks, (b) A history of forcible sexual attacks on others, (c) A persistent pattern of criminal behavior and a failure to demonstrate evidence of a substantial change for the better, and (d) The presence of a psychiatric or psychological condition related to the prisoner's criminality which creates a high likelihood that new serious crimes will be committed if released.

evaluate the prisoner's likelihood of future offending, particularly violent offending (McCann, 1997). The commitment offense presents a challenge to the evaluation of risk, because at some point the lifer will become eligible for parole, regardless of the circumstances of that offense. While those with life sentences may have the possibility of parole, they are not guaranteed to receive it. One particularly important legal decision regarding the consideration of the commitment offense was established in the 2008 case *In re: Lawrence*. In this case, the Supreme Court of California held that some evidence of an unsuitability factor, including the aggravated nature of the commitment offense, is not enough to deny parole—there must be evidence supporting a conclusion of *current dangerousness* to the public. This presents an interesting complication in the parole hearing, as the board needs to weigh the prisoner's narrative of change that is inherently related to their commitment offense, while at the same time making sure that they are not simply denying parole because of the circumstances of that offense.

Another important aspect of the prisoner's narrative is admission of guilt. Though no prisoner is required to admit their guilt, they are expected to have a narrative of insight and remorse with regard to their crime. The law guiding parole suitability criteria, Title 15 of the California Code of Regulations, lists remorse as something the parole board must consider. According to section 2281 of these codes, remorse is evidenced when a lifer has, "performed acts which tend to indicate the presence of remorse, such as attempting to repair the damage, seeking help for or relieving suffering of the victim, or the prisoner has given indications that he understands the nature and magnitude of the offense." These things are hard to include in a narrative framed in innocence, thus admission of guilt plays an important role in providing a context in which a prisoner can demonstrate that they understand the causes and motivations for their crime, and that they have progressed through a process of reform. According to Medwed

(2007; 2008), not admitting guilt can adversely affect a prisoner's chances of being granted parole. Part of demonstrating insight also includes empathizing with and understanding the position of the victim. Even though a prisoner may display a development of empathy, the feelings of the victim can impact the hearing's outcome. Victim participation is allowed at parole hearings and can have a significant impact toward the board's decision of denial (Morgan and Smith, 2005). In fact, California voters passed a bill in 2008 that strengthened the role of the victim in the parole hearing process; the bill, known as Marsy's Law or the California Victim's Bill of Rights, provided for the notification of victims or their families when parole proceedings are scheduled and carved out extensive rights for victim participation in the hearing itself, with room for victim advocates to attend with every victim as well (Young et al., 2016; Young & Chimowitz, 2022).

Analytic approach

While many fields, including socio-legal and jurisprudential studies, have embraced the importance of narratives, these methods are at best a marginal part of the field of criminology. However, research on crime, criminals, and the criminal legal system is particularly suited to a narrative approach because of near-ubiquitous cultural scripts regarding American crime and justice. Where narrative research has been used, it has mostly focused on corroborating other, non-narrative, accounts of reality (Dollinger, 2017). Some notable exceptions include Maruna's (2001) research on the "redemption scripts" that former prisoners create to distance themselves from past offending, Liem and Richardson's (2014) work on transformation narratives and the role of agency among released lifers, and Dollinger's (2017) examination of youths' narrative positioning in a cultural discourse of criminality. In this vein, any analysis of narrative must deconstruct traditional criminal legal frameworks of crime and criminality, and uncover the ways

that, “narrations represent a mode—albeit not the only one—which constitutes reality linguistically” (Dollinger, 2017, p. 2). Seeing narratives as a way of constituting reality is a core perspective of this approach (Bruner, 1986, 1991; Laszlo, 2008; Squire et al., 2014). Bruner (1991), in his essay *The Narrative Construction of Reality*, describes the importance of the narrative approach by stating, “while we have learned a great deal indeed about how we come eventually to construct and ‘explain’ a world of nature in terms of causes, probabilities, space-time manifolds, and so on, we know altogether too little about how we go about constructing and representing the rich and messy domain of human interaction” (p. 4). Because narratives are part of the way that people imagine and construct reality, their empirical examination can offer a more culturally situated, relevant study of the ways in which people interact both individually and with larger socio-cultural scripts.

The narratives that board members, lifers, and other actors construct within the parole hearing expose how risk, criminality, and rehabilitation are understood and applied more generally. Beyond just the legal input, the parole hearing is also a place where participants bring their own understandings of risk and reform to the table that often come from more colloquial and cultural sources (Fissel, 2014; Galtung, 1990; Garber and Maslach, 1977; Ghandnoosh, 2017; Hannah-Moffat, 2004; Hawkins, 1983; Kaplan, 2012; Morgan and Smith, 2008; Palacios, 1993; Potter, 1996; Rossmanith, 2015; Silverstein, 2005). Because this setting allows for a great amount of discretion, parole hearings present a unique look into the ways that people interpret and construct narratives based on broad legal categories. This process reflects the reality that categorical definitions set out by the law are not ubiquitous, but instead represent just one way of thinking about categories like violence, seriousness, risk, and reform.

While the terms ‘narrative,’ ‘story,’ and ‘discourse’ may be defined in numerous ways (see Brooks and Gerwitz, 1996; Bruner; 1986; Laszlo, 2008; Miller, 2000), there are several definitions that illuminate how scholars have approached these concepts with regard to law and culture. One definition in particular informs the conceptualization of story and narrative in the present study. Baron and Epstein (1997) discuss the way that stories combine in order to constitute narrative, saying that a story is, “an account of an event or set of events that unfolds over time and whose beginning, middle, and end are intended to resolve (or question the possibility of resolving) the problem set in motion at the start,” while a narrative is, “a broader enterprise that encompasses the recounting (production) and receiving (reception) of stories” (p. 147). In the context of lifer parole hearings, the problem being resolved is eligibility for release, and stories about past crimes, institutional behavior, and future prospects are combined to (co)construct a broader narrative about whether a prisoner remains ‘risky’ or has become ‘reformed.’ Examining how stories and narratives are deployed and navigated in legal settings, then, has the potential to reveal something about their legibility within a particular institutional context.

Different analytic approaches have been used in the pursuit of the study of narratives. Discourse analysis is a more mainstream methodological approach that is still related to narrative analysis; Van Dijk (1993) outlines a form of this method known as ‘Critical Discourse Analysis’ (CDA). Those who practice CDA are concerned with, “the role of discourse in the (re)production and challenge of dominance” (Van Dijk, 1993, p. 249). CDA offers a macro-level approach for examining cultural narratives, which differs from the more micro-level, individual approach of traditional narrative methods. Traditional methods of analyzing discourse focused more on individual linguistic interactions, while CDA allows for a macro-level analysis by viewing

discourse as a social process, one that can function to maintain social inequalities embedded in the structure of society. These analyses examine patterned ways that language reinforces hegemonic ideologies (Blommaert & Bulcaen, 2000). More recently, several scholars have proposed the combination of the two in a practice called "Critical Narrative Analysis" (Souto-Manning, 2013; 2014). According to Souto-Manning (2014), "CNA allows us to learn how people create their selves in constant social interactions at both personal and institutional levels, and how institutional discourses influence and are influenced by personal everyday narratives" (p. 162).

My main research question for this analysis is how institutional narratives of risk and dangerousness contrast with prisoners' narratives of risk and reform. In addition to this main question, I have several sub-questions to help narrow down and contextualize these relationships. These sub-questions proceed from a CNA framework and include (1) how powerful discourses are asserted in the institutional narrative of the parole board, (2) how prisoners construct their own narratives in relation to the expected institutional narrative, and (3) how these narratives align and contrast in the parole hearing setting. For the analysis in this chapter, which establishes key narrative interactions and power relationships in the parole hearing setting, I followed the analytic methods of CNA as described by Souto-Manning (2013; 2014). Initial data analysis consisted of reading through the many transcripts in order to identify potential emergent themes and categories. The first set of findings identified common themes in what I call 'institutional' narratives and 'lifer' narratives. After identifying these themes, I further analyzed the way these narratives interacted and formulated three types of narrative relationships between the institution and the lifer. The relationships that I identified were (1) alternatives to institutional narratives, (2) conformity to institutional narratives, and (3) inability to address institutional narratives. A

key aspect of this part of the analysis was examining how lifers positioned themselves in relation to the powerful discourses of risk, reform, and deservedness in the institutional narratives.

Narrative constructions of identity

To study narrative in a discretionary context, understanding the role of identity is key. Identity frequently overlaps with the categorizations made by the law and legal actors, and while the law is generally imagined as unbiased, its lived experience related to personal identity is often quite different from that ideal (Alexander, 2012; Barnes, 2006; Spade, 2015). In fact, Barnes (2006) identifies the deconstruction of identity within legal settings as one of the endeavors critical race scholars should pursue. The current project has the potential to contribute to literature on discretion, identity, and narrative through the analysis of narratives that (de)construct identity in the highly discretionary legal setting of the parole board hearing.

Legal scholars such as Scheppele (1994, 2017) and Matoesian (1995, 2001) have examined how reality is constructed in legal settings (Anita Hill's testimony from Clarence Thomas' Supreme Court confirmation hearings and the Kennedy Smith rape trial, respectively) by analyzing narratives of sexual violence. The implications of these studies indicate that first, "subordinated peoples are often further oppressed in courts because they do not have access to the means that allow them to demonstrate in evidence that their experience is fact" (Scheppele, 1994, p. 996). Further, in the courts and in broader public discourse, the lived reality of specific experiences is often disconnected from common knowledge about general legal categories. For example, while a parole board member may acknowledge that disabled, elderly prisoners have an extremely low risk of reoffending and may struggle to be accepted and supported once released from prison, that same board member will likely struggle to acknowledge those truths when presented with a *specific* prisoner with an *individual* narrative.

According to critical race theorist Delgado (1989), not only do legal actors struggle to acknowledge individual lived experiences, they interpret and (re)construct narratives of their own that make more sense within the legal and socio-cultural scripts that match their understanding of who the legal subject is. He writes, "the dominant group creates its own stories, as well. The stories or narratives told by the ingroup remind it of its identity in relation to outgroups, and provide it with a form of shared reality in which its own superior position is seen as natural" (p. 2412). Delgado's conclusion is echoed in the work of other socio-legal scholars, including Reiter and Coutin (2017) who demonstrate how the law's function in othering subjects such as immigrants and supermax prisoners leads to a reification of the state's power to control and exclude individuals through a process of categorization and labeling. In this way, the examination of conflicting narratives "demonstrates how doctrinal narratives fail to acknowledge the way social constructions of minority identities shape the formal scripts of legal stories" (Barnes, 2006, p. 941). Therefore, it is important to acknowledge that not only does doctrine fail to account for narratives of minority identity, it may ultimately benefit from such failure. By creating and reinforcing the boundaries of who is excluded or punishable, as well as whose stories are legible and hold power, criminal legal processes reaffirm the state's identity and may assure the public that problems of crime and violence are being controlled.

The examination of story and narrative not only has the potential to show how legal categorization serves the power of the state, but also can reveal possibilities for legal change. Delgado (1989) points out the way that "[stories and counterstories] can show that what we believe is ridiculous, self-serving, or cruel. They can show us the way out of the trap of unjustified exclusion. They can help us understand when it is time to reallocate power. They are the other half – the destructive half – of the creative dialectic" (p. 2415). From this perspective,

stories may not just be the problem or the unit of analysis but can present a powerful challenge to dominant narratives belonging to the state.

Lifer parole narratives and narrative interactions

Institutional narratives in parole hearings

There are clear components of a successful narrative that the parole board looks for when making a decision about whether to grant release. The primary source of these narrative components is the legal criteria for suitability and unsuitability factors, which I discussed in the previous chapter. The board looks for evidence of the suitability factors such as insight, remorse, and plans for release, and minimal evidence or mitigating evidence of unsuitability factors, such as institutional misconduct and lack of insight. I encountered these components over and over again in my fieldwork; not only are they written in the law, but their meaning and weight was discussed during BPH meetings I attended. During the time I was in the field, the board was considering adopting a tool that would help standardize the way they applied the suitability and unsuitability criteria. This tool, called a Structured Decision Making (SDM) framework, was developed by a Canadian research team and first used in Canadian parole hearings. The board invited the creators of this tool to give a presentation at a public meeting and discussed its utility in the California system at several subsequent meetings. They ultimately decided to adopt a version of this tool, which is replicated in part in Appendix A, with the hopes of applying the criteria more uniformly across cases and speeding up board members' preparation for hearings. The SDM is really just an assessment sheet that includes all the criteria and a weighting system based on whether the criterion is overall aggravating, mitigating, or neutral to the lifer's case, that asks the board members to consider the components individually and holistically. The fact that the board was not already using a systematized scoring system surprised me, and I followed

the discussions about this tool with particular interest because they spoke to the desire of the BPH director and board as a whole to further legitimize their decision-making process by seeking out new, formalized ways of standardizing the application of the criteria that guide the overall narrative of every parole hearing.

The BPH was not my only source of data about what goes into hearing narratives. I worked with a lifer advocacy group that was started by a former journalist and spouse of a released lifer. Her husband as well as others like former CDCR employees, people with lifer family members, and other community members are all an active part of the Sacramento-based organization. I was even told that former parole board members have volunteered with the organization in the past, and this group seemed to be well-regarded among the various advocates and parole actors I encountered in my fieldwork. The group took a particular interest in documenting what they believed were successful narratives and teaching both lifers and their family members how to craft these narratives. For example, the group created a curriculum for an in-prison lifer workshop called "Connecting the Dots" that they ran several times over the course of my fieldwork. As those advocates explained to me, the purpose of this workshop was to help lifers identify life events and personal behavioral patterns and 'connect' those dots of their stories into a narrative that would help them explain insight, a particularly important yet elusive concept used to judge parole worthiness. Appendix B replicates several handouts from this group explaining the things they believe contribute to a successful narrative demonstrating insight; this handout was part of the packet they distributed during their training for family and friends of lifers with the purpose of helping them understand what would be expected of their loved one when it came time for their own hearings.

The narrative that the board is looking for I call the "model" or "institutional" narrative, in line with the concept of institutional discourse described in Critical Discourse and Critical Narrative Analysis (Souto-Manning, 2013; 2014; Van Dijk 1993). While this institutional narrative is primarily dictated by legal criteria, those criteria are not strict, objective categories. Their creation and interpretation are contextualized by macro-level, commonly held cultural discourses about crime, criminality, and reform that are then manifested in policy, research, and conversation about parole eligibility. For example, insight into the life crime (the term the parole board uses to refer to the conviction that resulted in a life sentence) is a suitability factor heavily influenced by popular ideas about personal reform and the purpose of punishment. In this context, insight can hold several meanings. According to a handout included in Appendix B, lifer advocates have their own informed perspective on what the parole board is interested in. One handout titled The Big 5: What the Parole Board Needs to See lists insight, understanding, responsibility/remorse, change, and parole/relapse prevention plans as the key factors relevant to the parole board. In this handout they describe insight in the following way:

> *Evidence that the prisoner has looked into his life history to discover how it got to be okay to commit his/her crime. Often this progression begins in childhood or adolescence, some event or series of events that cause the individual to become distrustful of authority and develop the feeling that he/she has to do everything to protect themselves. Figuring out what caused this mind shift and how it affected your outlook and actions leads to understanding of the causative factors of crime, which is the key to the next step.*

In my data, board members typically discussed two aspects of insight that were important to the lifer narrative. First, they wanted to see personal insight, meaning that the lifer could talk about their life circumstances and decisions and how those provided a context for the life crime. Second, they wanted to see insight into the crime, meaning that the lifer could communicate why they did that behavior and that they understood the impact of their life crime both on the victims'

and their own lives. In the context of the board's function as a risk assessor, insight may be a small indicator of a lifer's understanding of social circumstances they can avoid in the future in order to change their behavior. However, in parole hearing narratives the expectations of and weight given to insight point to its bigger role in determining suitability. In the popular imagination, evidenced by the comments of people at public hearings as well as victim, advocate, and District Attorney participation in hearings, insight is similar to the 'redemption narrative' that Maruna (2001) describes in his research on prisoner reentry. It is a way for the lifer to make their personal change legible to the board and to the public in a way that a prison record and letters of support cannot. In one hearing, the importance of the lifer's ability to present this narrative of insight *in the moment* became clear as the commissioner summed up the reasons for the board's denial of parole:

> *The Panel took into consideration Mr. Trent's past and present mental state, his past and present attitude toward the crime and basically into his insight not only into himself but into the life crime. The Panel found that Mr. Trent has failed to show adequate signs of remorse and accept full responsibility of his criminal actions.* ***The Panel looked specifically into the insight into the changes into Mr. Trent's maturity and his understanding and his mental state and we found that he lacked the insight, he didn't demonstrate the insight into himself or his prior criminality. There was a material deficiency in his understanding and acceptance of the life crime****. And the Panel recognized that time has passed since the life crime and his prior criminality but* ***Mr. Taylor today, continued to minimize his actions about the life crime, about his prior criminality, and about his conduct while he has been incarcerated. And his inability to recognize these circumstances that led him to commit this crime the Panel cannot say that if he was confronted with those circumstances again that he would not behave in a similar manner****… The Panel did take into consideration the Comprehensive Risk Assessment prepared by Dr. Kuekes in 2012 which did find Mr. Trent to be a low risk of re-offense in the community. But the risk assessment was just one factor that the Panel takes into consideration and the Court has held that determining a prisoner's suitability for release is ultimately the Panel's decision. Based on these findings this Panel concludes that Mr. Trent poses an unreasonable risk of danger and threat to public safety if he is released from prison at this time.*

In this example, the board members acknowledge that the risk assessment interview indicated that this lifer was low risk, but because they did not hear a narrative of insight during the hearing, they could not come to that same conclusion.

At the end of each hearing the board members have the job of constructing their own narrative about the lifer, one that will justify their final decision to grant or deny the lifer their parole. During these summaries, the narrative the commissioners create typically reads like a comparison of how the lifer's individual narrative 'measures up' to the institutional narrative that the board expects. If the decision is to grant parole, the narrative the board creates focuses on the ways the lifer has met their expectations. For example, in the hearing where Mr. Laurence was granted parole, the decision mentioned contradictory evidence but centered on the ways the lifer met their expectations:

> *While the record reflects some circumstances tending to show unsuitability for parole, which were considered by the Panel during deliberations, these are far outweighed by other circumstances tending to show suitability… he literally has no juvenile record at all, and the adult record were two misdemeanors… The Panel finds also that Mr. Laurence has shown signs of remorse, and has taken full responsibility for the criminal actions. He understands the gravity. He takes responsibility for what he has done. He has provided remorse letters. In addition to that, the Panel felt like he had very good insight as to who he was and how he got to the point in his life that he had a total disregard of human life. And this is very important, because this insight, if you understand how you get there, then it's – then it's less likely to ever occur again.*

If the decision is to deny parole, such as in the example from Mr. Trent's hearing in the previous paragraph, the board's narrative focuses more on the reasons for unsuitability and is completed with suggestions for what the lifer can do to prepare for their next hearing in several years' time.

Constructing a lifer narrative

Prisoners present their own narratives, which I call individual narratives, throughout the parole hearing. While much of what they discuss mirrors the things that the board, as

institutional representatives, is looking for, often they focus on different things as well. These individual narratives are really a way for lifers to constitute themselves and their identities through the social interaction of the parole hearing. They are, of course, influenced and guided by the macro level, institutional discourses, but prisoners do not have the same access to and institutional knowledge of institutional narratives as the parole board. Their narratives, when different from the typical topics the board expects, may present as a form of resistance, but often in my data the mismatch was rather the result of factors influencing the construction of this narrative and reflected the incredible power differential between the lifer and the board throughout the hearing process.

Often there is very little or no help for prisoners when they are preparing for a hearing. My fieldwork included attendance at a state-appointed lifer lawyer training day that laid out the minimum requirements for those paid by the state to represent indigent lifers. Lifers in California do have a right to counsel if they want it, and for those that cannot afford a private lawyer, the state has a pool of attorneys that can be assigned to their cases. What I learned from this lawyer training was that the work state attorneys are required to do is quite minimal. Typically, an attorney will meet with a lifer once for an hour or two before their hearing and then accompany the lifer to the hearing itself and represent them in the room. The rest of the time that they are paid for is focused on helping the lifer assemble documents to submit to the board before the hearing. The total number of hours an attorney is expected to spend on each case is less than ten, making their involvement in a lifer's case tangential at best. I did encounter one lawyer in the state-appointed pool (and there may be others) who invested quite a bit more time in each case than the bare minimum. She was well known and regarded among the advocates I spoke with for her extensive experience with lifer parole hearings and willingness to put in whatever work was

required to give her clients the best chance at succeeding, whether she was being paid private rates or the state-appointed flat fee. This was in contrast to what people told me about the typical experience with state-appointed attorneys; even though these attorneys were usually seen as competent, they are not known for spending more than a few hours working on a lifer's case, and rarely put the time into communicating with lifer family members on the outside.

There are a few ways that lifers might have help constructing a narrative beyond just a state appointed lawyer. Some lifers (or more likely their families) choose to hire private lawyers that specialize in parole hearings. Most private lawyers spend much more time with their clients and the lifer's family, but this does come at a cost. While the state-appointed lawyer is free for the lifer, a private lawyer starts around five thousand dollars up front and can easily go up to ten thousand dollars for some attorneys. Usually what comes with that cost is more frequent communication both with the lifer and their family and additional help assembling documents including guidance on what to write in personal statements and how to curate a packet that will appeal to the board. Another benefit of having a private attorney comes with their experience; as a result of their more dedicated practice, they often have better knowledge of what the board wants to hear in a lifer narrative and know how to get that information out of their clients. Many lawyers spend time practicing questions with their clients to help them articulate what they want to say before they enter the high-pressure environment of the hearing room. Unfortunately, just like all state-appointed lawyers are not equal, neither are all private lawyers. I heard from advocates and lifer family members about private lawyers that took their client's fees up front and still only met with them once and went to their hearings. Other family members complained about leaving numerous messages by phone and email for attorneys they had hired for their loved one and never getting a response. While other attorneys told me that this is considered bad

ethical legal practice, it seemed to be a fairly common occurrence among lifer attorneys to the extent that the advocates I worked with kept lists of lawyers in the state that they would either recommend or warn people away from because of past experiences they were aware of.

Advocate intervention was also a significant way that lifers learned about and prepared their narratives before a hearing. The advocacy group I became familiar with during my fieldwork targeted this need in a few different ways. As discussed previously in this dissertation, the organization held day-long trainings in different regions of California that acted as a sort of training and informational session for lifers' loved ones. They handed out informational folders at the training that contained handouts about laws, what to expect in the parole process, contact information for lawyers, and numerous informational handouts about ways to prepare for a hearing. Some of these handouts are replicated in Appendix B, such as one titled "Tips From a Hearing." This handout outlines 13 short tips to help alleviate some of the stress of a lifer's upcoming hearing. For example, some tips about presenting a narrative include number four, "Don't use 'bad decisions' as the reason for your crime; bad decisions lead to wearing brown socks with a black suit, not committing a crime," and number seven, "Don't say you'll deal with anger and stress by never getting mad or letting yourself get stressed. Reality check—it will happen, but it's how you deal with it that matters." These sessions were very helpful for lifers' loved ones, but also served as a sort of intervention by proxy. Usually this happened when family and close friends of lifers attended, learned about the parole process from the outside and used that information to support their loved one on the inside when they had a hearing coming up. Some folks I spoke with at these training said they wanted to learn from the advocates so they could practice writing statements with their incarcerated loved one; others said that they wrote everything down and talked over the information during phone calls and prison visits. This was

one way that the information could reach lifers, but in perspective this form of advocacy has quite a limited reach. Each workshop I attended had between 20 and 40 people in attendance. Even with the three to five workshops held each year, that barely scratches the surface of reaching the family and friends of the thousands of lifers with hearings scheduled each year. Furthermore, many prisoners do not have people on the outside who can or will take an active interest in their parole.

Although these handouts were given to those on the outside, I did learn of ways that the advocates communicated this information to lifers in more direct ways. One of these was through the aforementioned "Connecting the Dots" training that the organization developed to help lifers understand their triggers and insight and write up a narrative that could help them prepare for their eventual hearing. While this was an ongoing curriculum that this advocacy group ran in prison, they also had a history of running other shorter programs targeted at the lifer population, which they saw as being underserved and ill-informed when it came to developing a narrative that spoke to the factors they believed were important to parole boards. For lifers wanting more intensive assistance in their hearing preparation, advocates also provided an option for that, but it costs upwards of one thousand dollars and is used infrequently. A small economy has cropped up that is built on the specialized expertise of those deeply embedded in the parole process, particularly on the advocacy side. These people have read hundreds of transcripts and psychological assessments, are familiar with parole law and process, and have likely been through that process with a loved one or other lifer who has sought out their help. One advocate I knew and others that I heard of have begun providing individual coaching to lifers who are able to pay. The fees they ask are nowhere near attorney fees but are still prohibitive for incarcerated lifers and their families, not to mention that those who provide this service have very limited

availability and are selective about who they take on for this personal coaching. When they do accept a client, I learned that they begin by reading past hearing transcripts to assess the areas that the lifer may need to work on in preparation for their next hearing. The advocate/coach then looks over any documents that the lifer has collected for their hearing, assists with letter writing, and generally provides support for hearing preparation. This is an invaluable service for those who manage to find it because it is one of the only opportunities they may have to get individualized help in crafting both an oral and written narrative. Based on my findings, I believe that this type of 'lifer coaching' is one of the only approaches that directly addresses many of the things that the board expects from lifers. Unfortunately, for now this is a very rare privilege for only a handful of lifers. They may be lucky enough to get a fraction of this type of help from their lawyer or family members, but the vast majority have very little help and feedback when preparing for their hearings.

Narrative Interactions

Now that I have established some of the contours and sources of both institutional and individual narratives in the parole process, I turn to explaining how these narratives interact in actual parole hearings. The cases I outline here were chosen as examples of different relationships between institutional and individual narratives. To be clear, these are non-exhaustive categories. They are representative of common narrative interactions, but there are others that do not fit neatly into these categories for a variety of reasons or might have characteristics of multiple categories depending on the topic and conversation of the day. I am also not arguing that these interactions are predictive of hearing outcomes. Some are more likely to result in a grant or deny, but there are also other signs of compatibility with institutional narratives that may influence the decision (length of discussion, follow up questions, tone of

board members in response, etc.) The content of a lifer's file is extremely important in making these decisions and may contribute to a favorable decision even if the conversation during the hearing does not go smoothly. My analysis contributes to an understanding of commonalities amongst the verbal, hearing portion of the decision-making process, but board members have access to and rely on a broader set of information than only what happens in the hearing. Other researchers have, for example, examined the impact that things like non-victim correspondence from family, friends, or other actors (Hail-Jares, 2021); institutional records (Caplan, 2007; Young et al., 2016); and history of postponements (Timor & Elisha, 2021) have on parole board decisions.

In this section I present three case studies of common narrative interactions. First, Branson's case is an example of a mismatch between the 'model narrative' of reform that the board expects and the understanding of reform that the prisoner has. Second, Ruiz's case exemplifies a hearing where the prisoner is able to articulate an appropriate narrative of change and reform that fulfills the board's expectations. Finally, Rodriguez's hearing shows the conundrum that happens when a prisoner, for some physical or mental reason, is unable to engage in the kind of narrative formation expected in this setting.

Alternatives to institutional narrative

Branson has been in for 34 years for kidnapping and armed robbery. He is severely disabled because he broke his neck after falling out of bed several years earlier. While he has regained some mobility, he is still partially paralyzed and in constant pain. He was just 18 when he entered prison. His hearing is an example of a mismatch between a lifer's personal narrative of reform and the board's expectations for a conforming narrative.

***Board**: Just in general, why should you get out of prison?*

***Prisoner**: I've grown old and I've learned my lesson. Matured tremendously.*
***Board**: Have you taken any classes or any self-help to understand your criminal history and your criminal ways?*
***Prisoner**: Yes, in my earlier years. I haven't taken any in the last several years… because I was in vocational training.*

Here, Branson begins his narrative with an almost universal theme in lifer parole hearings by pointing to the sheer amount of time he has spent in prison as an indicator of reform. Understandably, prisoners often cite the fact that they were very young when they committed their crimes and are now quite old after several decades locked away; there is an inherent understanding that they have changed quite a bit just because of aging. On the outside, the aging narrative is a common way for people to make sense of the differences in their behavior over time. In a parole hearing, it is rarely enough on its own to meet the institutional expectations for reform. Whether the crime was 35 years ago or not, the board expects more detailed insight and understanding of past behavior than simply "I was young and foolish." As the questioning continues, the lifer struggles to provide a deeper explanation for his behavior as a teenager:

***Board**: Why were you a criminal?*
***Prisoner**: Naïve and stupid, just wanted to strike out on my own at a young age, didn't know no better.*
***Board**: Did your mother teach you right and wrong?*
***Prisoner**: Yes, she did. She raised ten of us, and the decision was solely my –*
***Board**. So out of ten brothers and sisters, are you the only one that went to prison, or were there others?*
***Prisoner**: I'm the only one that went to prison. My little brother, I have a little younger brother that died – he had went to prison.*
***Board**: So two of you went to prison. So the rest of them did okay.*
***Prisoner**: Yes.*
***Board**: So why'd you go off onto the dark side of life?*
***Prisoner**: Foolish. I wouldn't say – it would be inexcusable to try to blame it on the neighborhood, but just a stupid decision on my part.*
***Board**: What I'm looking at is why'd you make that kind of decision? Your brothers and sisters except one didn't make that decision.*
***Prisoner**: They were young. All them were young at the time when I made that –*
***Board**: Yeah, but they grew up –*

***Prisoner**: They grew up, you know – I spoke with them, you know, throughout my whole incarceration time, let them know it's – you know, you're doing the right thing, staying school, get a job, you know.*
***Board**: So why didn't you get a job?*
***Prisoner**: I did. I had one, but the money wasn't fast enough for me.*
***Board**: Why'd you go out and do burglaries and things like that? What was the purpose of that?*
***Prisoner**: Just trying to strike out on my own, at a young age, early.*
***Board**: So somebody told you the best way we can strike out on our own is do burglaries?*
***Prisoner**: No.*
***Board**: Well, then, how'd you learn how to do that?*
***Prisoner**: Just people I hung with in the neighborhood.*
***Board**: So your peer group were… members of the criminal element?*
***Prisoner**: Yes.*
***Board**: So you decided to embrace those ways?*
***Prisoner**: I decided to give it a try, you could say yes.*
***Board**: Well, after the first time you got arrested, why didn't you just quit?*
***Prisoner**: Didn't learn my lesson.*

As the board member questions Branson, he narrows in on the lifer's individual responsibility by comparing Branson to his siblings and peers. By pointing out that Branson's path is different from those who grew up with him, he tries to push the prisoner into recognizing some personal trait or decision that led to his criminality. Despite his efforts, Branson still seems to attribute his behavior to his social circumstances and immaturity. His reference to 'learning his lesson' indicates that he does understand that the board wants to hear a narrative of reform, but he continues to attribute that reform to the maturity and life experience that comes with aging:

***Board**: So now here we are in 2012, and you say you've learned your lesson?*
***Prisoner**: 35, nearly 40 years later, yes.*
***Board**: How do I know that?*
***Prisoner**: You don't.*
***Board**: But you have to tell me.*
***Prisoner**: I haven't – I mean, I wouldn't have wasted all my term trying to learn a vocation or skills to –*
***Board**: Well, let me ask you this: Is part of the lesson that we learn when we go to prison, is it to stay out of trouble?*
***Prisoner**: Very much so, but I –*
***Board**: Have you stayed out of trouble?*
***Prisoner**: I haven't been –*

***Board**: No.*
***Prisoner**: -- a model prisoner.*
***Board**: No, you have not been a model prisoner.*
***Prisoner**: Yes, sir.*
***Board**: Since your last hearing:*
***Prisoner**: No, sir.*
***Board**: So what lesson have you learned? If you learned the lesson, what lesson have you learned? Especially dealing with cell phones[11]. What lesson have you learned?*
***Prisoner**: Cell phones. I haven't learned – obviously, I haven't learned my lesson. You know, to obey rules.*
***Board**: But you told me you've learned your lesson.*
***Prisoner**: Yes.*
***Board**: But yet, you haven't.*

Despite Branson's assertion that he learned his lesson in the decades since his commitment offense, the board presents a narrative connecting his past criminality with his rule-breaking in prison. What they fail to distinguish is that his criminal behavior as a teenager involved violence and robbery, while his rule-breaking in prison entailed offenses like possessing contraband in the form of a cell phone. By conflating these behaviors, the board can counter Branson's reform narrative by showing that he has persisted in unacceptable behavior instead of being a "model prisoner" with no infractions.

The board member doing the questioning in this exchange switches into a patronizing tone several times, which was a common theme for many speakers across my data. He does this first by changing voice: "So somebody told you the best way we can strike out on our own is do burglaries?" and "Is part of the lesson that we learn when we go to prison, is it to stay out of trouble?" Then, he asks a question about "what lesson have you learned," hinting that the specific answer is "especially dealing with cell phones." These linguistic shifts are reminiscent of

[11] Possession of a cell phone is considered a serious safety risk to a prison and is treated as a significant disciplinary issue. However, it is common knowledge that prisoners do obtain cell phones and while they might use them to coordinate criminal activities, many people routinely use them to communicate with friends and family on the outside. Phone possession infractions frequently came up in my transcript and fieldwork data.

how a parent might talk to a misbehaving child; using the third person references a larger moral code that all must adhere to, and the leading question about cell phones adds a scolding tone that indicates the board member believes the prisoner is avoiding taking responsibility for his infractions.

In his closing statement, Branson's attorney tries to summarize his reform narrative, pointing specifically to how the lifer has taken responsibility for his past actions:

> ***Attorney****: In this case, I would argue that Mr. Branson is a danger to no one. He is classified as fully medically disabled. His last 115 [disciplinary report] predated his accident, he's had no disciplinary actions. I understand the concern of the board, and I think Mr. Branson, which I think echoes his evolved insight, acknowledged himself that he's no model prisoner – those were his words, or he hasn't been a model prisoner… But he has called himself impulsive, irresponsible, foolish, all those things he used to describe his actions back then, and that he said – and this is again consistent with the report, that he was violent to get cooperation, and that his sole motivation was money. And so I do believe that he has acknowledged everything and taken responsibility for everything he can possibly take responsibility for in this crime. His institutional adjustment has at times been poor, but I believe that's changing, and has changed, and it's different in the last three years.*

The prisoner adds to this plea by making a short closing statement, in which he indicates his desire to create a different ending for his story, one where he can at least die with his freedom:

> ***Prisoner****: The only thing I can say, I've always regretted, you know, my crime. I've always said I was sorry about that. That's still the case. You know, if I could take it all back, I would. I certainly don't want to die in prison. That's about all. I just – you know, tired.*

In contrast, the board presents a decidedly different characterization of Branson's reformation. While delivering the final decision denying Branson's parole, the presiding commissioner brings up a comment from the prisoner's previous hearing, in which a board member told him, "You're the captain of your own ship." This phrase reinforces the board's expectation that a lifer takes personal responsibility for his actions, shows individual initiative to change, and does not attribute his reform to external factors such as aging and natural maturity,

or structural factors such as neighborhood context or experiences in prison. As the captain, Branson is completely responsible for all his life decisions and the path his story takes. Evidently, Branson has not taken up his captaining role well, as the board summarizes in their reasoning for his denial:

> ***Board**: Mr. Branson has the inability to focus his life, if you will, in the right direction. He has continued to get rules violations while incarcerated, which is a factor of his unsuitability… Furthermore, you look at the past, present mental state and attitude toward the crime, and Mr. Branson has not gained insight into the causative factors of his conduct, in spite of all these years of incarceration… You look at page 8 of the psych report, and I think it gives you a summary and a thumbnail sketch of who Mr. Branson is in terms of focusing and ability to come to grips with his commitment offense, and ability to articulate why he is in prison and what he's done to address the causative factors of his conduct. Has he taken responsibility?... And both the Deputy Commissioner and myself today made numerous attempts to come – to have Mr. Branson articulate level of insight in terms of why this crime occurred, what he's done to address those issues, and that was not possible here today… And what we have here is a nexus of the inability to have current insight with the life crime, which is still relevant.*

And so, despite 34 years in prison, a debilitating injury, and acknowledgment of bad decisions as a teenager, the board finds Branson at too much risk for reoffending to grant him parole. They further justify the decision by pointing out that they "made numerous attempts to have Mr. Branson articulate level of insight," firmly cementing the more powerful, more standardized institutional discourse that Branson seems unable to portray.

Conformity to institutional narrative

The next hearing involves a prisoner named Ruiz. At the time of the hearing, he has already been in prison for 29 years for stabbing someone to death after a bad drug deal. He was 21 at the time he was committed. Ruiz's hearing exemplifies a narrative of reform that conforms to what the board expects based on their familiarity with institutional standards of reform. Ruiz has quite a few examples of program and vocational training completion and is able to articulate a cohesive reform narrative that spans the past 30 years and indicates his plans for the future. At

one point in the hearing, he explains his personal changes in detail as his attorney asks him a series of questions:

> ***Attorney**: Why did you choose to get a business degree?*
> ***Prisoner**: Well, I began investigating the market on the outside, and right now, the current employment is real low, and so higher education is the only way that I feel that will give me an upper hand in applying for employment. Right now, computer technology, medical, in the medical field and the other one is truck driving. Those three fields, and with our, they have a high opening for those careers. So with the business, it would assist me in all three levels. That's why.*
> ***Attorney**: Okay. What's the most important step to you out of the 12 steps?*
> ***Prisoner**: I believe step eight is very important because it has to deal with making amends to people you have hurted in the past. And I made a list, and my – the first person on the list was Jesse's family.*
> ***Attorney**: I know one of the contributing factors was your history of holding on to anger. How do you cope with that now? How have you learned to cope with that?*
> ***Prisoner**: One of the main things I do is I speak with my higher power. I meditate. I exercise to relieve frustration, and I rely on a trusted friend, a sponsor or family member to communicate whatever I'm going through with.*

Although his answers seem standard, in this exchange Ruiz has the opportunity to explain to the board that he has been on a path of redemption throughout his incarceration. He is able to connect his past behavior with his programming, such as anger management and drug treatment. Additionally, he shows that his story of reform can continue post-incarceration because of his plans for education and a career. The prisoner's attorney, in his closing statement, sums up the key points of this narrative:

> ***Attorney**: This is a classic example of a crime whose time being 30 years in a couple months here is no longer a reliable indicator of his current risk of danger… It was noted that he's been sober for ten years, and I would suggest that this is evidence of his ability to remain sober on the outside… You know, it's noted that he does have insight and that he does have remorse, and also that he's not impulsive. He doesn't exhibit any impulsivity. And that's important because he did have that when he first came into prison, but he, you know, currently, he doesn't exhibit any of those symptoms… He's matured, you know, mentally in prison, and statistically, he only has a 1 percent chance of relapse given his age.*

Here, the attorney repeats the aforementioned common narrative of aging and maturity. While this was not sufficient to show Branson's board that he had reformed, Ruiz is able to couple that story with a narrative of insight and responsibility for the board to consider before their deliberations:

> ***Prisoner****: I'd like to read something I have prepared. It's very short.*
> ***Board****: That's fine.*
> ***Prisoner****: I thank the members of the, today's panel for providing me the opportunity to respond to the questions on my suitability for parole. I want the members of this panel to know that I am fully aware of society's and the public's expectations of myself should I be released from prison as a result of this hearing…My conduct and behavior are that of an – excuse me – of an individual who no longer presents any danger to the public safety. This being said, I extend my apologies to all those who have been hurt by my wrongful actions, especially Mr. Salazar and his family. Thank you.*

Clearly, the board is impressed not only by the substance of Ruiz's file and the steps he has taken to engage in worthy programming while incarcerated, but they also accept the narrative of continuous reform that Ruiz is able to articulate. He seems well-spoken and well-versed in the type of language and phrasing that indicates to the board that he has reformed himself into a low-risk prisoner deserving of parole. The resulting decision supports this conclusion, as they grant him parole and wish him luck with his reentry plans.

Inability to address institutional narrative

The final narrative interaction example comes from the hearing of prisoner Rodriguez. Rodriguez is a 74-year-old native Spanish speaking man whose use of the English language is limited such that he requires an interpreter for the hearing. More importantly, Rodriguez has advanced dementia. He is functionally illiterate, does not understand what is happening around him, does not remember anything the board asks him about, and lives on a unit where he receives help with even the most basic elements of his daily self-care. He either barely answers or incoherently answers the questions that the board asks him. Further, his psychological report was

not finished because the psychologist was not able to get him to complete the interview. He was incarcerated 25 years ago for second-degree murder, which arose from a situation that arguably involved self-defense, and most likely stemmed from his cognitive issues. Much of the hearing proceeds without his input, moving along as if he is not even there because his ability to participate is so limited. The board and his attorney discuss his institutional behavior and the many disciplinary write-ups he has had, though they neglect to relate the nature of those infractions (e.g. refusing to work, bothering the guards, fighting with other prisoners) to his present mental condition. At one point, a board member attempts to ask Rodriguez some questions to get at how he might interact with others if he is released:

> ***Board**: Let me ask you a couple of questions, Mr. Rodriguez. Do other prisoners here at this prison – do they make you angry sometimes?*
> ***Prisoner**: I got no problem with the prisoners here. I get along real good.*
> ***Board**: You get along with all of them?*
> ***Prisoner**: Yeah, I got no problem.*
> ***Board**: Does sometimes – if someone calls you a name, does that make you mad?*
> ***Prisoner**: You know you're there (inaudible). Hector sometimes he mad or the guy, you know.*
> ***Board**: Does it make you angry and want to hurt someone if they call you a name?*
> ***Prisoner**: I don't want to hurt nobody. I want my freedom is what I like to have, my freedom.*
> ***Board**: Right. Now, let's talk about that. Last time you had your freedom and you were on the outside, someone called you a mean name. They called you a son of a bitch and you got very angry with them.*
> ***Prisoner**: I don't remember.*
> ***Board**: And I know we asked you about that and you said you didn't remember it, but let me ask you, if somebody called you a name like that – if someone came up to you and said, Mr. Rodriguez, you are a son of a bitch, would that make you mad?*
> ***Prisoner**: I don't know about that.*
> ***Board**: What would you do if someone came up to you and called you a name?*
> ***Prisoner**: Don't talk to him, that's all.*
> ***Board**: What if he was persistent? What if he lived where you live?*
> ***Prisoner**: I know on the streets I got – I mind my own business.*
> ***Board**: So that's your plan for the future, is to mind your own business?*
> ***Prisoner**: Yeah, I want no problem nobody.*

Later, this same line of questioning is brought up again:

> ***Board**: How do you keep from getting yourself involved in fights – any more fights? You haven't had a fight since December of 2011, so it's almost a year. How do you keep yourself out of fights?*
> ***Prisoner**: Get older. I thinking better now.*
> ***Board**: Say it again?*
> ***Prisoner**: What? Fights?*
> ***Board**: Yes.*
> ***Prisoner**: No, I do my time. I mind my own business.*
> ***Board**: Mind your own business?*
> ***Prisoner**: Yes.*
> ***Board**: Okay, thank you. That's my only question.*

In these excerpts, which are arguably the most coherent point of Rodriguez's contributions that day, there is almost no narrative offered by the prisoner to support his 'reform'. The board members ask about what he would do if he had a conflict with someone else on the outside, and the only answer he can give is that he plans to "mind my own business". Because he seems to not remember his commitment offense, and cannot provide any narrative related to it, the board keeps returning to his history of infractions and lack of participation in self-help programming. Toward the end of his hearing, Rodriguez's attorney offers a unique narrative for the board to ponder, one that presents an alternative way of conceptualizing the prisoner's risk and responsibility, as well as the connection between his past and present:

> ***Attorney**: …The question is whether or not there's a nexus between his mental state at that time and his current mental state, and whether or not he's made any character changes… If you look at what and who he was during his incarceration by his 115's [disciplinary reports], they're not violent 115s per se, they're attitude 115s, I would say, more than anything else. And the question is, is now that he has dementia, is his attitude sort of like erased? And that's a key question, I think, and I can't answer it… So it's almost as if who he was has been wiped clean.*

Rodriguez's attorney proposes that his dementia should take the place of the necessary reform narrative. If he is "wiped clean", then there is no need for a progression from his past behavior to

his reformed present self; since he cannot remember who and how he was 25 years ago, he should not be held accountable for a story of change and rehabilitation.

In addition to his 'erased' attitude, the attorney paints a more sociological story about Rodriguez's risk for future violent acts:

> ***Attorney**: His age, now that he's 74 years old, certainly is a predictor of – almost 75, a predictor that he wouldn't recidivate violently… I see him more in the victim role in the community. Whereas maybe when he was in the community prior to his incarceration, the escalation of the argument to somebody who's drunk was definitely overboard. And so it may be that how he reacts to somebody out in the community, he probably would be the victim of a crime at this point rather than him being the perpetrator as another violent recidivist act.*

Because of his age and mental condition, the attorney points out (correctly) that Rodriguez is significantly more likely to be the victim of a crime than a perpetrator. This falls in line again with narratives of aging and desistance, though Rodriguez's case is at the extreme. Not only is he almost 75, but his dementia would likely lead to his having a "victim role in the community." Once more, in the absence of a coherent narrative from Rodriguez himself, the attorney offers another alternative for the board to grasp.

Unsurprisingly, the parole board did not accept Rodriguez's attorney's alternative narratives. His history of disciplinary reports and lack of programming outweighed his age and mental status, and they end up denying his parole.

> *Board: The first consideration which weighs heavily against suitability is a serious misconduct while incarcerated… Most recently, you received a 128A…and that was of most significant concern to this panel… And while it was for behavior which could lead to violence, a read of the description of that incident sounds more like a violent incident [it involved slapping]. It was certainly a mutual combat with another prisoner. And it was a fight with a peer, which does create a nexus back to the commitment offense, which was also a fight with a peer that resulted in a shooting death of the victim in that case.*

With regard to his mental state, they only briefly refer to his dementia, framing it as a strike against him instead of a mitigating factor for his release:

> *Board: Dr. Atwood wrote, under the Overall Risk Assessment… Mr. Rodriguez presents as a relatively moderate risk for violence in the free community. This estimate is predicated upon the above-mentioned risk factors and is influenced by the prisoner's dementia and cognitive limitations, which appear to impact his current level of self-control and functioning.*

Another board member even dismissed his age and current mental status, referring back to the beginning of the prisoner's sentence:

> *Board: This panel is concerned about the fact that, you know, you've been in prison for 24 years, Mr. Rodriguez, and we know that recently in the last four to five years, you've been struggling with dementia, but for the first 20 years in prison, many of the benchmarks that we look for in terms of your participation and what's available for you here in prison, you also did not take advantage of. Didn't upgrade academically, you did not upgrade vocationally. You did not participate in meaningful self-help for any length of time.*

Ultimately, in the absence of a reform narrative from Rodriguez, the board made sense of his time in prison by looking to his past record to reconstruct a story of his behavioral patterns. Their story concluded that Rodriguez, despite his illiteracy, language barriers, and current state of dementia, had not taken enough initiative to bring about behavioral change, and was too much of a risk to gain his freedom.

Discussion

My findings on the construction and deployment of narratives in a setting structured by quite clear institutional expectations suggest that there are very few tools available to assist prisoners in approaching this opaque experience. While much time and money are spent developing and improving the parole board's consistency in applying the suitability and unsuitability criteria, there is little opportunity for prisoners to access that same body of knowledge, and even less opportunity for them to receive assistance in preparing themselves to successfully integrate those expectations into the narrative they prepare for their hearing. Lifers experience financial barriers that make it unlikely they will be able to hire a private lawyer or professional coach to help them more extensively. Many may also experience institutional

barriers to accessing assistance. It would be hard for lifers at remote prisons like Pelican Bay to benefit from visits from family, lawyers, and advocates who are much more active in prisons located near population centers like San Francisco, Los Angeles, and San Diego. It can also be hard for them to learn about the potential assistance they might seek out, as much of this information is spread by word of mouth and the involvement of family members outside of prison, which many lifers do not have.

The varying types of interactions that my findings outline reveal that certain things make people better at presenting a coherent narrative in their parole hearings. One important characteristic of the hearings with productive conversations is the lifer's ability to articulate the concepts that speak to the things the institutional narrative requires. Those who can articulate tend to be better speakers, which is demonstrated in the visual structure of their hearings. These hearings often have full paragraphs spoken by the lifer and other participants, such as in the case of Mr. Ruiz presenting a conforming narrative, rather than the less well-articulated ones that read like a back-and-forth interrogation with the lifer speaking only a sentence or fragment of a sentence at a time. The lifer's capacity for self-reflection is also a factor in structuring the narrative interaction of the hearing. Many prisoners, such as Mr. Branson in the first case presented above, do not seem to have enough social-emotional skills to speak to the insight portion of the criteria the board are looking for. This is not necessarily indicative of any criminality, or cognitive or emotional deficiencies on the part of the lifer; these skills are often difficult even for people outside of prison who may have access to things like talk therapy to help them develop the reflexive practice that lends itself to this aspect of the model narrative. Others, like Mr. Rodriguez in the last case example, may have substantive cognitive and language barriers that make both articulation and self-reflection extremely difficult in this

context. While those factors do not make it impossible for lifers to be granted parole, they do present significant barriers.

This chapter further complicates the question of what the parole board is really looking for. The model narrative is not just based on risk, because arguments including social factors and research on recidivism are not successful. It is not just stipulated evidence of change such as program participation, because they need a story from the lifer that explains how those things relate to their inner lives. In the same vein, they are not simply looking for reform, but based on my findings seem to be more interested in the *articulation of reform* that a lifer can present. Furthering that emphasis on articulation of internal change, the board consistently looks for a narrative that contains insight. However, this insight cannot be discussed in a shallow way, but requires some amount of storytelling that connects past behavior with the current self rather than an admission of guilt alone.

Overall, the findings in this chapter contribute to an understanding of the differences in lifers' ability to succeed in gaining parole. Those with disabilities, particularly related to aging, may have a hard time understanding themselves in the way the board requires, while cognitive ability may limit the extent to which people can match the institutional expectations of their narrative. Those from more marginalized groups (e.g., non-English speakers, people of color, those raised in poverty) cannot center those important parts of their identity in their narrative. Additionally, low education is often associated with these marginal identities (and with imprisonment as a whole), meaning that many of these lifers likely do not have equal verbal skills to formulate and present a narrative in a way that conforms to institutional expectations. Finally, these expectations were crafted and continue to be refined by policymakers, academics, and lawyers, who likely have much higher levels of education than the people they apply to.

Conclusion

The findings on the construction of narrative and forms of narrative interaction I presented in this chapter are informative for anyone interested in cultural understandings and representations of crime and violence. Each of these men offered the board a narrative about their own character and reform efforts. These narratives were, of course, rooted in the substance of their files and experiences, but their narratives were something more than just a recitation of their programming and infractions. Instead, my research shows that their narratives are filled in with meaning and story and interact in complex ways with the similarly meaning-laden expectations of the parole board. Branson relied, unsuccessfully, on the understanding that time had done its own work of reformation as he matured and aged out of youthful indiscretion. Ruiz portrayed a successful story of his strategic involvement in self-help and programming that gave him skills and insight for his release. Rodriguez, unable to construct his own narrative because of his dementia, had his attorney present potential stories about his age and mental condition that could replace the expected reform narrative; the board rejected these alternatives and chose to return to the prisoner's past to construct a narrative of dangerousness that was more legible to their institutional goals.

While this is only one analysis of parole hearings using a relatively new method for criminological research, it creates a myriad of potential new avenues of inquiry. First, it provides an example of how Critical Narrative Analysis can be used to examine individual stories of crime and criminality and how they relate to powerful cultural and institutional narratives of the same. Second, it raises questions about an oft-overlooked data source by utilizing lifer parole hearing transcripts. Aside from their potential for narrative analysis, these transcripts are a rich source of data for researchers looking to examine everything from decision-making to identity

construction in an important criminal legal system site. Finally, it opens the door for further examination of the strategies, both successful and unsuccessful, that prisoners use to gain parole.

This chapter has established some of the common narratives in parole hearings, how they are formulated, how they interact, and their relationships in terms of power. This analysis provides context for the next two chapters which present a more nuanced analysis of how particular phenomena – mental health and time– are understood, negotiated, and mobilized within these narratives. This analysis was also mostly limited to the hearings, and the next chapters will bring in findings from additional fieldwork to help further explain and contextualize some of the important components of parole hearing narratives. In the next chapter, I turn to a specific theme that turned out to be critical to every aspect of the parole hearing process – mental health and its role in the construction of risk for lifers seeking parole.

Chapter 3: Framing Mental Health as Risk in Parole Hearings

> *"Sadly, at a time when so much sophisticated cultural criticism by hip intellectuals from diverse locations extols a vision of cultural hybridity, border crossing, subjectivity constructed out of plurality, the vast majority of folks in this society still believe in a notion of identity that is rooted in a sense of essential traits and characteristics that are fixed and static" (hooks, 1996; from Art on my mind: Visual politics)*

When can a mental illness be used as evidence to deny someone release from prison? What if that illness is not diagnosed but is instead inferred by people who have input in a prisoner's case? People serving parole-eligible life sentences experience this 'armchair psychology' in a variety of ways and with grave consequence. They are called antisocial, sexual sadists, pathological liars, and sociopaths in order to justify their continued confinement, and these labels are handed out by clinicians and non-clinicians alike. Assumptions about mental illness play a part in the demonization of lifers, contributing to their status in society as the worst of the worst. Their characterization as the worst is not simply based on the behaviors or crimes that got them where they are; instead, lifers are continually constructed as inherently dangerous, depraved, and unworthy of release. My findings indicate that both clinical and non-clinical judgments about lifers' mental health are used by parole actors to impart meaning to the concept of risk that stands at the forefront of any parole decision. The connection between mental health and risk is made without consideration for, and actively negates, the way that the criminal legal system produces mental harm for the incarcerated; in fact, my findings show that ignorance of how mental health and mental illness are experienced inside of prison furthers assumptions about the individual's ability to produce a narrative of insight and change. The issue here is not whether assumptions about mental health are based in some clinical notation or assessment, as even clinical diagnoses of mental illness in prison are problematic at best. Instead, I examine the

wholesale pathologizing of lifers themselves that contributes to the justification of their treatment as an exceptional, subhuman category of prisoners.

In this chapter, my analysis focuses on the ways that mental health is understood and (co)constructed within the lifer parole process, the assumptions legal actors make about the availability and role of mental health service provision in prison, and the narrative strategies used in the law and in practice to frame mental health issues as evidence of risk. I draw from both my fieldwork and the parole hearing transcripts as described in Chapter 1. Included in this chapter is a discussion of the contrast between how mental health is understood in the context of punishment and how it is understood in public clinical practice, as well as the implications those understandings have for legal categorizations upon which release depends.

I am not a trained mental health professional. I use the term mental health broadly here, and not exclusively to refer to what are considered clinical diagnoses. For the purposes of my data collection and analysis, I considered myself a layperson with as much general level of knowledge about mental health as the average person. Of course, much of how mental health is assessed has to do with clinical assessments, diagnoses, and treatment, and I include what I learned about those things here. However, mental health manifested in my fieldwork in many ways. For example, parole law requires a lot of discussion about rehabilitation, which involves concepts like insight, understanding, remorse, and motivation. These tend to be largely mentally internal concepts expected of people who have a healthy understanding of themselves and their behavioral patterns and can communicate these things to others. We might expect to see people on the outside learn these skills through strategies like Cognitive Behavioral Therapy (CBT) as they improve their mental wellbeing. Mental health also showed up in my data in implicit ways, such as when people making statements to the board called prisoners narcissists, psychopaths, or

simply crazy. These terms were not delivered by clinicians, but rather were used by laypeople with only a general, popular understanding of what they meant about their perception of a person's character and flaws. In everyday conversation as well as in my fieldwork, it was not uncommon for people to talk about developing healthy coping mechanisms, maintaining healthy relationships, setting goals and boundaries, etc. I understand these to all be a part of mental health and as I will demonstrate in this chapter, they all played into the assumptions and expectations various actors had of incarcerated lifers.

Reform, identity, and the 'worst of the worst'

Categorizing the worst of the worst

Despite significant moves toward legal reform regarding sentencing in the United States, many scholars remain critical of the ability of reform to produce a lasting shift toward decarceration (Davis, 2003, 2011; Murakawa, 2014; Spade, 2013, 2015; Thuma, 2015; Vick, 2016). In fact, scholars have pointed out the ways in which relying on legal reform may actually reify the very problems law is trying to ameliorate, whether discussing human rights (Simon, 2014), racial violence (Alexander, 2012), disability (Galvin, 2003), poverty (Gustafson, 2011), gender (Whalley and Hackett, 2017), or LGBTQ issues (Spade, 2015). In many ways, sentencing reforms built on legal binaries such as violent/nonviolent or risky/reformed only serve to recreate and further retrench the carceral logics of punitiveness and incapacitation that underpin them. By extending sentencing credits or reductions only to those constructed as "non-threatening," legal reform reinforces the notion that certain categories of prisoners are irredeemable and justifiably excluded from legal relief. In this chapter, I examine how mental health judgments are a direct part of constructing irredeemability. This retrenchment is clearest in situations such as lifer parole where legal actors are able to exercise discretion in their decision-making. In discretionary

settings, broad legal categories are left open to interpretation by decision-makers, giving them leeway to construct the meaning of categorizations such as 'risky' or 'reformed' (Lynch, 2000; Musheno and Maynard-Moody, 2015; Nellis, 2009; Scheppele, 2017; Shah, 2017). The degree of discretion in a given setting is influenced by the specificity of the law; for example, during initial sentencing some jurisdictions have strict sentencing guidelines that determine a narrow sentence range that the judge can apply. Other jurisdictions may give much more leeway to judges or other decision-makers when deciding the type and length of punishment (Bushway and Piehl, 2001; Kutateladze et al, 2014).

The legal categories most relevant to lifers in California are not clearly defined or tested in the law or literature. For example, decisions often rely on risk heuristics that conflate 'low-level' and 'low-risk' prisoners (Gerlinger and Turner, 2015). While 'low-risk' is a term that some scholars claim can be supported by validated assessment tools, 'low-level' is a wholly discretionary term that often refers to people whom judges and parole boards deem a threat based on the 'heinousness' of the crime and not on actual risk of reoffending, which is legally required to be based on current risk and not only on past crimes[12]. Even more troubling is that exclusionary labels such as that of "habitual" offender have been shown to contribute to disparate racial impact (Crawford, Chiricos, and Kleck, 1998). Those prisoners sentenced to life with the possibility of parole are universally sorted into the most serious categories, so how their risk of reoffending is constructed is important to evaluate because it has larger implications for the use of categories to sort people who do not fall so easily into one category or another. If the logic used to evaluate risk for the 'worst of the worst' is deeply flawed, how then can we expect that same logic to be effective in distinguishing between, for example, 'serious, 'non-serious,'

[12] See *In re* Lawrence, 190 P.3d 535, 539 (Cal. 2008)

and ‘low-level’ prisoners who are often targeted for sentencing reform? Rather, my research points to the fundamental inadequacy of processes of legal categorization in achieving any sort of just or fair criminal legal system. In the end, all of these processes assume that these tools, assessments, discretionary decisions, etc. are able to lead decision-makers to the ‘right’ decision, without questioning the underlying assumptions these categorizations require them to make about who is inherently dangerous and what they deserve.

Risk and rights

Over the past few decades, the logic of risk has come to dominate the rhetoric of literatures on business, economics, organizations, and public policy. It has gained particular prominence in criminal legal policy with the advent of risk assessments—tools used to identify individual risk factors that correlate with group-level likelihoods of offending (Feeley & Simon, 1992; Kemshall & Maguire, 2001; Monahan & Skeem, 2016). The language of risk serves to animate discussions of the government’s role in protecting the community (Kemshall & Maguire, 2001), but also represents policymakers’ and decisionmakers’ need to protect themselves politically. Managing risk to the community can be a mechanism of managing risk of political repercussions for themselves in the event of public criticism regarding safety concerns. The main critique of the logic of risk is its nature as a social construct and in the implications its applications can have on marginalizing already disempowered groups. Douglas and Wildavsky (1982) describe the social process of selecting which risks to acknowledge, arguing that no one can be aware of every risk facing them and so heuristics are put into play to organize and choose which risks are imminent. According to the authors, “We choose risks in the same package as we choose our social institutions. Since an individual cannot look in all directions at once, social life demands organization of bias… By bringing these biases out into the open, we will understand

which policy differences can be reconciled and which cannot" (Douglas & Wildavsky, 1982, p. 50). They argue that we must address the social aspects of how we construct risk in order to mitigate bias in risk management. More recent empirical research supports this critique; Monahan and Skeem (2016) point to the various meanings of risk and differing jurisprudential theories engaging risk to show the major problems risk assessment introduce to sentencing decisions: "conflating risk and blame, barring individual inferences based on group data, failing to adequately distinguish risk assessment from risk reduction, and ignoring whether, and if so, how, the use of risk assessment in sentencing affects racial and economic disparities in imprisonment" (p. 2). Silver and Miller (2002) provide a different critique of risk management strategies in criminal justice policy, pointing out that these strategies are often focused less on actual risk and more on institutional management masquerading as being attentive to risk. Finally, Stalling (1990) presents empirical evidence of media impact on the construction of risk, lending support to the idea that risk is not simply an actuarial measure but is instead a fallible, impressionable concept that is influenced by many factors.

The presence of rights logic in criminal justice policy, especially sentencing, weighs heavily on the side of victims and the community. Rarely are the rights of the prisoner explored as legitimate in the process of sentencing and parole. Victim rights especially have gained prominence in recent years and have been supported by legislation and public interest as an important component of the punishment process, such as through the passage of Marsy's law. These rights often come in the form of victim participation at trial but are most frequently exerted through the use of victim impact statements (VIS) during the sentencing phase and at parole hearings (Bernat, Parsonage, & Helfgott, 1994). There is debate over whether victim input is productive, efficient, or fair to the convicted. Research has shown that victim participation

significantly impacts sentencing outcomes and parole decisions (Erez & Tontodonoato, 1990; Morgan & Smith, 2005) and that this impact overreaches the original intent of victim input as a communicative model rather than a determinate one (Roberts & Erez, 2004). The impact of VIS can become problematic when victims have unrestricted input at decision-making points in the punishment process and when there are differing levels of victim participation across individual cases. According to Bernat, Parsonage, and Helfgott (1994), during the early 1990's two states even allowed victims to veto parole decisions if they did not receive proper notification of the parole hearing. Despite the pervasive use of VIS and other forms of victim rights, there are still those questioning whether victims' voices are actually being heard in the courtroom and by the parole board (Davis & Mulford, 2008).

The logic of rights can also be applied at the community level, as the public often expects the government to protect them and mitigate their fear of crime through control and punishment of prisoners (Burgess, 1936). This logic may be coupled with the logic of risk as criminal legal policy and language, such as focusing on the "non-non-non's" (those considered non-violent, non-sex offenders, non-serious offenders, etc.) and managing risk in order to protect the public (Gottschalk, 2014). However, Gottschalk warns against the retrenchment of risk rhetoric and the focus on the "non-non-non's", as it has the potential to backfire by creating a group considered especially heinous in the eyes of the public, which is the population centered in this dissertation.

While prisoner rights are largely absent from the sentencing and parole processes, scholars have recently taken up the cause of arguing for their inclusion in the American system of sentencing (Henham, 1998; Tonry, 2016). Henham (1998) responded to increased punitiveness and managerialism in sentencing by proposing the adoption of a rights-based approach to the criminal process, especially sentencing. By focusing on fulfilling prisoner rights,

he argues that we will achieve a more complete theoretical and empirical agenda for making normative claims about sentencing policy. Tonry's (2016) contribution builds on Henham's critique by comparatively examining American sentencing policies with those of other countries, namely those in Western Europe. He argues that American sentencing is lacking in equality and human dignity as animating principles, and where they are present they are merely surface-level at best: "Most would say they believe in the principles the words [equality and human dignity] embody. However, in the criminal justice system, they are the merest rhetoric. They lack teeth. Neither the words nor the principles that underlay them provide significant constraints on the state's criminal law powers over individuals" (Tonry, 2016, p. 2). Any examination of the logics underlying criminal legal decision making must account for this lack of human dignity principles and examine the power differentials exhibited by the language of sentencing policy.

Critiquing reform

Critical race scholars in particular are concerned with discretionary moments in the legal system because they open up the door for bias to creep into decision-making (Armstrong, 2015; Delgado and Stefancic, 2017; Robinson, 2011; Spade, 2015). This is not to say that removing discretion would also remove bias; rather, discretionary moments in legal decision-making are a place to examine the structural inequality that underlies the system as a whole. In the parole hearing setting, board members are given broad indicators of unsuitability that they use to assess the prisoner but have discretion when interpreting those indicators through the lens of a particular prisoner's record. In this chapter, I examine the shortcomings of the broad legal categories used to judge suitability for prisoners with unique and complex backgrounds, paying special attention to the role the rhetoric of mental illness plays into the law, policy, practice, and popular understanding of lifers. This analysis, in turn, contributes to theoretical critiques of

discretion and legal categories, demonization of mental health, stereotyping of prisoners, and the feasibility of rehabilitation in an inherently traumatizing institution. Abolitionist thinkers have critiqued the focus of reform by characterizing them in a few ways. Gorz (1967) defines reformist reform as something that, “subordinates its objectives to the criteria of rationality and practicability of a given system and policy. Reformism rejects those objectives and demands—however deep the need for them—which are incompatible with the preservation of the system” (p. 7). In contrast, non-reformist reform, “does not base its validity and its right to exist on capitalist needs, criteria, and rationales. A non-reformist reform is determined not in terms of what can be, but what should be” (p. 7-8). Further, revolutionary reform moves toward, “an advance toward a radical transformation of society” (p. 6).These contributions are important in the larger scheme of policy reform, because in order to have “non-reformist” or revolutionary reform (Gorz, 1967) that does not perpetuate inequality, scholars and policymakers alike must critique the practice of discretion and confront the inadequacies of legal categories and legal reasoning based on evidence that challenges the carceral logics that form the basis of the criminal legal system.

According to Brown and Schept (2017), scholars challenging the logic of the prison-industrial complex must engage in interrupting, "dominant understandings of crime, law, punishment, safety and accountability, and justice, and the generation of alternative vocabularies and analyses from which to begin to work our way out of the carceral state" (p. 444). Part of this ‘new abolitionist' project consists of deconstructing the very legal categories that are taken for granted throughout the text of criminal law. It is important to critically examine these categories, as they inform the logic used for decision-making, categorization, and construction of narrative not just in parole, but in almost every step of the criminal legal system.

What's at stake

Parole hearings are a site where broad discretion is given to the parole board to apply legal categories and construct narratives to fill in those categories. In this discretionary setting, the parole board participates in one step of a long process of sentencing decisions that happen for lifers. While much research has been done specifically on the impact of discretion on decision-making in the legal system, such as that focusing on policing (Epp, Maynard-Moody, and Haider-Markel, 2014), juries in criminal courts (Lynch and Haney, 2000), judges in civil court (Krieger, Best, and Edelman, 2015), or judges in sentencing (Petersen, 2017), many scholars have particularly focused on bias and discretion in sentencing. Some of this research focuses on the factors that decision-makers like judges and juries take into consideration when meting out punishment. For example, race is an identity shown to have a particularly problematic impact on decision-making. Research has consistently shown that racial disparities are present in various forms at almost all points of the adjudication and punishment process (Wooldredge et al., 2015) and that even when guidelines are present to reduce bias there are still discrepancies with regard to race, gender, and age (Steffensmeier and Demuth, 2000). Steffensmeier, Ulmer, and Kramer (1998) examined age, race, and gender as independent and intersecting factors that affect judicial decision-making during the sentencing process. They found that age, race, and gender all influenced sentencing outcomes such that being male, black, and young all were correlated with harsher sentencing. The strongest interactive effect of these statuses resulted in young, black men being constructed as the most dangerous class of people in judicial decisions. More recent research on racial disparity has resulted in Pettit and Western (2004) arguing that imprisonment has become a new stage in the life course of young, unskilled black men.

The prevalence of penal inequality extends beyond blackness to other minority groups; when Steffensmeier and Demuth (2000) examined the usage of federal sentencing guidelines, they found that non-black Hispanics experienced the greatest level of disparity. Bushway and Piehl (2001) also studied the use of sentencing guidelines but focused their analysis on the small ways that judicial discretion is present in sentencing outcomes. They found that, while black defendants' sentences averaged 20 percent longer than those of white defendants, the disparity mostly occurred because discretion is less favorable for those who fall into the high end of the sentencing guidelines (who also tend to be black). The biggest issue that many of these researchers faced in their analyses was accounting for the relationship between race and stipulated factors like criminal history, which sets up disparities before the sentencing process even begins. In order to take such compounding disparities into account, Wooldredge et al. (2015) calculated the cumulative effect of bias at multiple decision points in the legal process. According to their findings, bias "accelerates" throughout the process as previous disparities (i.e. those in legal representation and pretrial detention) influence subsequent decisions such as custodial sentences and sentence length (Kutateladze, et al., 2014). I argue that decisions about granting parole, especially for people with life sentences as studied in this project, fall along this process of cumulative bias and reflect many of the disparities that influenced earlier decisions. This idea is supported by Patterson's (2015) consideration of race and ethnicity in prison release, about which scholars know very little. Her analysis emphasizes the importance of studying the release process in order to see how it may be one more place where inequality is perpetuated by the criminal legal system.

The importance of identifying bias in the criminal legal system cannot be overstated. Criminal convictions today carry a myriad of consequences impacting access to housing,

employment, political participation, and social support. This constellation of disadvantages has been phrased as 'social death,' and is disproportionately cast on people of color (Patterson, 1982; Pettit and Western, 2004; Price, 2015; Wooldredge et al., 2015). Price (2015) argues that the cost of a prison sentence must be examined—in many cases, to be sentenced to prison is actually to be sentenced to complete or partial social death that can remain permanent after release. This is what is at stake when making parole decisions that determine who is considered dangerous enough to warrant continued confinement.

How mental health becomes risk

> *"In our nation masses of people are concerned about violence but resolutely refuse to link that violence to patriarchal thinking or male domination Feminist thinking offers a solution. And it is up to us to make that solution available to everyone" (hooks, 2000; from Feminism is for Everybody)*

In this section I examine how mental health becomes marked as risk within the parole process. There are three important ways this happens. First, I discuss the process of individualization. This works by separating the individual from their social context and putting the expectation for change solely on the prisoner. Next, I focus on the process of internalization. This happens when parole actors[13], particularly the lifers themselves, buy into the institutional language and expectations for change. Coupled with individualization, internalization contributes to the domination of carceral logic as actors come to understand what change means in this context. Finally, I outline the process of demonization that connects beliefs about mental health with ideas about who presents a risk to society. This process provides the context for interpreting the data I present throughout the rest of the chapter, which shows the tools, language,

[13] I use the general term 'parole actors' to refer to the variety of people whose lives and interests intersect with the lifer parole system. This includes lifers, prisoner attorneys, board members, BPH staff members, district attorneys, victim advocates, victim family members, those in education and advocacy programs, to name a few.

assumptions, and arguments that contribute to individualization, internalization, and demonization.

Individualization

The process of individualization begins with separating the individual from their social context and placing the responsibility for change solely on the individual. In Chapter 2, I mentioned a lifer who was told by board members encouraging him to continue making changes when faced with another denial of parole, "you're the captain of your own ship." This sentiment is prevalent throughout the parole process – a continued refocusing of complex situations to a singular, individualized fault. Much like the 'pull yourself up by the bootstraps' rhetoric of American conservatism, this focus on individualizing self-development and stripping it of any social responsibility ignores the realities of living in a society plagued with systems of domination. This sentiment is even more ironic for lifers, as it assumes a level of agency that is impossible to achieve when living in what some have called a 'total institution' (Farrington, 1992; Goffman, 1961)). This message is not subtly presented to potential parolees - the first heading in the CDCR's "Parolee Handbook" states: IT'S YOUR CHOICE – SUCCESSFUL PAROLE, boldly followed up by A GOOD ATTITUDE IS A KEY TO SUCCESS[14] .

Change must happen regardless of availability of tools and treatment. While the responsibility for change is ultimately placed solely on the individual lifer, the tools acceptable for achieving that change are less than widely available. After one presentation about mental health service delivery at a monthly BPH meeting in 2018, a senior psychologist making the presentation was asked by the executive director what types of resources and programming were

[14] https://www.cdcr.ca.gov/parole/parolee-handbook-home/parolee-handbook/

actually available to people who were living in restrictive housing[15]. The presenter did not have an answer to the question, indicating that the care facilitated by mental health system did not include the type of programming typically looked upon favorably by the board. This is problematic for a number of reasons, because if programming were accessible to those living in restricted housing, even those receiving outpatient care could find that their treatment conflicts with the timing of things like consistent work duty or participation in scheduled self-help groups. In this way, receiving treatment in prison could actually be a barrier to achieving the standards the board expects for a grant of parole, rather than facilitating them.

Internalization

Because mental health and change are individualized, prisoners must internalize those individualized expectations. This requires them to buy into (or at least appear to buy into) contextually appropriate ways of demonstrating growth whether they are accurate or helpful for the lifer's progress. Equally likely is that lifers might not actually be internalizing those expectations but instead are taught and conditioned to speak the language and present the narratives that conform to what others expect. The lifer advocacy group that I worked with contributed to the maintenance of expected internalization through their rhetoric and programming. At times they had former lifers tell their stories during workshops, and those stories usually included an "aha moment" when that person recounted realizing that they were a bad person, and progressing past that turning point. They also used the language the advocacy group used to describe this process, such as "connecting the dots." While these narrative trends are not inherently problematic and likely helped lifers make sense of their past behavior and life trajectories, they do center an individualized narrative of 'badness' and change. I observed a

[15] Restrictive housing can include segregation, solitary confinement, placement in a reception center, living in an in-patient facility, etc.

deep commitment to helping incarcerated lifers internalize proscribed narratives of change, often using the language of improved mental health and self-awareness through the lens of insight. On the other hand, even without the sincere commitment to internalization, the rest of my fieldwork would indicated that it was to their advantage to teach lifers to buy into the rhetoric of internalization to achieve their advocacy goals of getting lifers parole grants.

Demonization

There is a double bind of individualizing and internalizing that creates a ripe environment for demonization of mental health issues and the lifer in general. Because at least the performance of individualization and internalization are required for release, this creates the opportunity to single out aspects of a person's psyche and essentialize them. These processes make it much easier to point to a simplified indicator of mental health as a signal of risk than accept the messy social context these things are inherently a part of. This mirrors Aviram's (2020) discussion of heinousness in the parole hearings for those convicted in the Manson family crimes and presents a conundrum - how can one accept that what they did and who they are is heinous, and then find a way to distance themselves from that while maintaining insight?

Constructing mental health in California prisons

> *"The mass media dwells on and perpetuates an ethic of domination and violence because our image makers have more intimate knowledge of these realities than they have with the realities of love" (hooks, 2001; from All About Love)*
>
> *"The mass media, film, tv, all of these things, are powerful vehicles for maintaining the kinds of systems of domination we live under – imperialism, racism, sexism, etcetera. Often there's a denial of this and art is presented as politically neutral, as though it is not shaped by a reality of domination" (hooks, 2012; from Reel to Real: Race, Sex, and Class at the Movies)*

According to my field notes and documents from the Board of Parole Hearings (BPH) Commissioner Training session in October 2018, the prevalence of mentally ill prisoners held in California Department of Corrections and Rehabilitation (CDCR) facilities was 28.3% at that

time, amounting to almost 40,000 people. The presenter at that meeting described this as a trend, saying, “even with the drop in prison population, we have seen an increase in the number of seriously mentally ill inmates.” The CDCR itself acknowledged in this training that there is a tendency for prisoners who are part of the Enhanced Outpatient Program (EOP), a level of care reserved for those with the most serious impairments that do not require emergency in-patient treatment, to end up in segregation (also known as administrative segregation or solitary confinement.) In this section I describe the way mental health is incorporated into parole law, how the so-called “Mental Health Services Delivery System” (MHSDS) is organized, how treatment does or does not happen within this system, and the assumptions parole actors have about how this system works.

Mental health in parole law

Mental health issues are written into parole law as a potential unsuitability factor with the broad caveat that the issues must be related to the life crime[16]. Prisoners with mental or cognitive issues can have a hard time articulating the desistance narratives that the board expects to hear to grant parole. They also may not demonstrate other indicators of suitability by virtue of institutional barriers because of their mental status; for example, missing work histories, inconsistent or lack of programming, disciplinary violations for outbursts, and other behavior that can be attributed to mental illness may all contribute to an overall picture of an unstable prisoner who poses a risk to the community.

[16] One might think that anti-discrimination laws such as the Americans with Disabilities Act (ADA) would be relevant to the use of mental illness in parole law. Based on my data, the ADA influences the accommodations that the board must make for people with documented disabilities (i.e. hearing or vision impairment), and ADA compliance is brought up at the beginning of each hearing, these protections do not extend to relevancy in decision making.

There is also frequent armchair diagnosing of antisocial personality, sexual sadism, pathological lying, and sociopathy by people speaking to the board and sometimes board members themselves. District attorneys almost universally oppose release and commutation and often cite these characteristics as evidence of dangerousness. Victims' families and advocates also tend to include sweeping statements about mental health issues that they assume the prisoner has, which can be quite inflammatory during hearings.

It is no surprise that there is a severe lack of good mental health care in prisons, particularly the kind that could help with the things the board is looking for. Board members often assume that prisoners can formulate insight and self-awareness on their own or that they can go to counseling, but non-psychiatric care is extremely scarce. Even what the mental health department tells the board is available is not reflected in what I heard from former lifers, advocates working with lifers, and a former CDCR psychologist. I detail the mismatch between what is expected and what is available in this section.

I further analyze the list of suitability and unsuitability factors in other chapters but I want to detail several factors here that speak directly to the way that mental health is embedded in parole law and decision making. Parole law outlines several factors for decision-makers to consider as evidence of either suitability for release or unsuitability for release. These come from Title 15, Section 2281:

> *Suitability-Signs of remorse: "The prisoner performed acts which tend to indicate the presence of remorse, such as attempting to repair the damage, seeking help for or relieving suffering of the victim, or the prisoner has given indications that he understands the nature and magnitude of the offense."*

This relates to a factor not detailed in Title 15 but discussed extensively throughout the parole process - "lack of insight." Remorse is usually evidenced by acceptance of the life crime, the

lifer's responsibility for it, and the impact it had. This is more than just regret or wishing it did not happen. The board looks for more cultural understandings of remorse, like displaying shame and understanding of impact. Remorse typically ends up being discussed in terms of responsibility and insight, which is analyzed further in chapter 2. Lifers demonstrate remorse through having insight into what circumstances and personal decisions led up to and contributed to the life crime, and voicing regret or shame about their behavior and the impact it had on the victim or others. Technically, lifers do not have to accept guilt during their parole hearing. The judgment of the court is taken at face value, but some people maintain their innocence. Even if they maintain their innocence, they need to demonstrate remorse, which can be very difficult if they claim they were not responsible. Like the insight criteria, lifers have to find a way to indicate remorse for the general circumstances of the crime, and for any past crime/anti-social behavior.

> *Suitability-Motivation for the crime: "The prisoner committed his crime as the result of significant stress in his life, especially if the stress had built over a long period of time."*

This factor also plays into insight and in my fieldwork, seems to be drawn from cultural ideas about appropriate justification and context of crime and heinousness. Motivations supporting suitability could include being part of a gang at the time, which involves social pressure that likely does not exist anymore and getting in a fight that led to the life crime, which does not excuse it but provides a clear circumstance to avoid in the future. Motivations supporting unsuitability could include a random attack that the board considers sadistic or unprovoked; anger; or a history of abusive behavior that escalated to the life crime. The *In re: Lawrence* case stated that the actual crime cannot be the only reason someone is denied but can be considered if there is a 'nexus' between that past behavior and some current behavior. Thus, if someone's

motivation was that they got in a fight and were angry, any arguments or fights while incarcerated could bring in the circumstances and motive of the commitment offense. This means that the life crime can always be centered in some way.

> *Unsuitability-Commitment offense: "The prisoner committed the offense in an especially heinous, atrocious or cruel manner. The factors to be considered include: (A) Multiple victims were attacked, injured or killed in the same or separate incidents. (B) The offense was carried out in a dispassionate and calculated manner, such as an execution-style murder. (C) The victim was abused, defiled or mutilated during or after the offense. (D) The offense was carried out in a manner which demonstrates an exceptionally callous disregard for human suffering. (E) The motive for the crime is inexplicable or very trivial in relation to the offense."*

The Board takes the court record and adjudication as fact; whatever is in the record are the facts they use. Sometimes victim family members and/or district attorneys will offer their own characterization of the motivation or 'heinousness' of the commitment offense. This is, again, a tricky criterion because of the ruling in In re: Lawrence. As discussed previously, the commitment offense on its own cannot be used as justification for denial. Some more recent behavior, including mental state, must create a 'nexus' with that original offense.

> *Unsuitability-Psychological factors, including prisoner's history of mental problems related to the crime: "The prisoner has a lengthy history of severe mental problems related to the offense."*

Many records can contribute to this factor. Health records in or out of prison, the psychological assessment, any diagnoses, and contact with correctional counselors can provide this information. Board members and other participants often speculate about mental problems and their connection to the crime. Sometimes it is used to establish a 'nexus' with past behavior.

The state of the CDCR mental health system

Mental health treatment in California prisons has a storied bad reputation. Two legal cases in recent history have structured this system since about 1990. The first is Coleman v.

Brown[17], a class action lawsuit brought on behalf of the tens of thousands of prisoners who, their lawyers argued, were subject to inadequate and neglectful mental health care that "place prisoners at serious risk of death, injury and prolonged suffering.[18]" In 1995, the case was brought to trial and a federal court issued an injunction against CDCR that required changes to the way the prison system delivered mental health care. The Coleman case has been in and out of court ever since, with the injunction still in place as of 2022. An even more comprehensive case, Brown v. Plata[19], alleged significantly more widespread problems that included the issues under injunction in Coleman and extended to prison overcrowding and general healthcare neglect. Ultimately, the Plata case made it to the Supreme Court which ordered the state of California to make significant changes to its entire correctional system, not just the mental health system at issue in the Coleman case. Needless to say, there is a documented history of significant shortcomings in the CDCR's ability to provide for the basic needs of those under its care.

At the end of 2018, when I was midway through my fieldwork, another significant chapter in the ongoing Coleman case unfolded. Shortly before the plaintiffs were set to come to an agreement that would end the injunction, CDCR's chief psychiatrist filed a 161-page report with nearly 400 pages of supporting documentation that halted that agreement. The Golding report[20], as it came to be known, described the atrocious conditions of the MHDS, including the gross misrepresentation of statistics about the level of care that incarcerated patients were receiving.

I attended a BPH monthly meeting in December 2018, just after the Golding report was released by the court. Whether coincidence or not, this was also a meeting with a scheduled

[17] Coleman v. Brown, 938 F. Supp. **2d 955** (2013)
[18] https://rbgg.com/coleman-v-brown-update/
[19] Brown v. Plata, 563 U.S. 493
[20] See for copies of documents filed by Golding

presentation about MHSDS classifications and treatment. During that presentation, the presenter did not mention the report that was already making waves across the state, but a few public commenters used their time to bring it up. One in particular that I had frequent contact with during my fieldwork was a retired CDCR staff psychologist who frequently shared her critiques and experiences working as a mental health provider in California prisons. During her public comment, she pointed out specific concerns about the MHSDS presentation given earlier, including the fact that the program guide the presenter was using was an outdated one from 2009. She also pointed out that there was a lack of transparency about what services those patients in the CCCMS level had access to, which she said was particularly important because it is the largest cohort of people in the system (confirmed by the numbers presented earlier that indicated almost 30,000 patients classified at this level). Importantly, she referred to the Golding report and offered her own recollection of her time as a staff psychologist that matched the concerns raised in the report:

> *This is about the culture in the mental health department. They have always been more in line with the custody mindset. There is a tendency to treat the chart, not the patient, and that treatment was often superficial and inadequate in the time I was there. And, to clarify questions brought up earlier, as a practical matter grief counseling is not available. (paraphrased from field notes)*

I asked this retired psychologist later that day what she thought about the Golding report and if she knew how other people were reacting to its contents. She expressed that she had longstanding concerns about the poor state of mental health treatment in California prisons and that nothing in the Golding report surprised her. From her perspective, the shoddy care outlined in the report is something of an open secret among those involved in the system. This sentiment aligned with that of others I talked to, who had long been critical of the rhetoric the MHDS had been presenting to the public.

Parole and risk assessment

The most important risk assessment tool used in the parole process is the Comprehensive Risk Assessment (CRA) that is conducted by the Forensic Assessment Division (FAD) of the CDCR. Every lifer must have one before their parole hearing, "as long as more than three years have passed since the last risk assessment was approved" (field notes, 2018). Title 15, the parole statute text, describes the requirements for these CRAs in section 2240:

> *A Comprehensive Risk Assessment will be completed every five years. It will consist of both static and dynamic factors which may assist a hearing panel or the Board in determining whether the inmate is suitable for parole.* ***It may include, but is not limited to, an evaluation of the commitment offense, institutional programming, the inmate's past and present mental state, and risk factors from the prisoner's history.*** *The Comprehensive Risk Assessment will provide the clinician's opinion, based on the available data, of the inmate's potential for future violence. Board of Parole Hearings psychologists may incorporate actuarially derived and structured professional judgment approaches to evaluate an inmate's potential for future violence.*

This creates a highly discretionary context for what actually happens during this evaluation and what is included in the assessment of risk for each individual lifer. The broad risk categories the psychologists can use are simply low, medium, and high risk. Table 2 is recreated from a slide in a presentation by the BPH chief psychologist given at a monthly board meeting in 2018.

Risk Categories		
Rating	Definition	Implications for Violence Recidivism
Low Risk	Non-elevated risk relative to long-term offenders and to other parolees.	Low-risk examinees are expected to commit violence much less frequently than all other parolees.
Moderate Risk	Elevated risk relative to long-term offenders and non-elevated risk relative to other parolees.	Moderate-risk examinees are expected to commit violence more frequently than Low-risk long-term parolees but less frequently than other parolees.
High Risk	Markedly elevated risk relative to long-term	High-risk examinees are expected to commit violence more frequently than Low- and

	offenders and average risk relative to other parolees.	Moderate-risk long-term parolees and similarly to other parolees.

Table 2

The presentation, titled, “Analysis of Comprehensive Risk Assessments Administered in 2017” included a host of vague descriptive statistics with no discussion of whether or how these categories were normed by comparing outcomes of non-parolee and non-prisoner groups to those under the department’s purview. More significantly, the presenter never discussed the predictive validity of these categories or any of the factors that go into the risk calculation. Any of these practices are standard for researchers establishing the ability of their measures to achieve the outcomes they claim they can, but it seems as though the Forensic Assessment Department has not more extensively tested the tools they use to make parole recommendations Overall, this meant that the presentation consisted of a circuitous description of how the factors used to assess risk level were consistent with those risk levels and mapped on to parole decisions in a somewhat predictable fashion. Even if the presenter had considered researching the empirical validity of these categories, which he clearly did not, the measures used to place examinees into each category lack consistent application and are highly influenced by the discretion of the examining psychologist. Finally, it is important to note that ‘implications for violence recidivism’ descriptions all compare the examinee to other parolees. This is included without specifying whether lifer parolees are being compared to other lifer parolees, in which case the overall recidivism rate, not to mention the violent recidivism rate, is extremely low at well under one percent.

During a public comment period at a BPH meeting in 2018, the director of the lifer advocacy group central to my fieldwork discussed the results of a conversation she had with a group of incarcerated lifers during an in-prison program she runs, saying, “we asked the group

what they'd like to ask the commissioners if they could ask any question," and one of the main things the lifers wanted to know about was the CRAs, including "a better understanding of what it is, how much does this count in hearings, and how does the panel use it." These questions indicate that while the CRA is a key part of a lifer's preparation for their parole hearing, there is a widespread lack of knowledge about what it actually is. These same questions appeared over and over during my fieldwork, with everyone from lawyers to lifer family members to long-term advocates struggling to feel like they had a clear and consistent grasp on how the CRA works in lifer parole. The answers I got when asking people what they knew about CRAs varied widely – they're significant to parole decisions, they're not weighed that heavily, they're more of a general overview, they focus on specific diagnoses, they're inconsistent, they're intimidating – in general, the CRA is mysterious.

Another case on the monthly docket came up in which the issue consisted of legal and factual errors in the CRA the lifer received that contributed to the board's decision to deny parole. In this case, the factual errors in the CRA conflicted with what the lifer spoke about during the hearing, effectively destroying his credibility in the eyes of the board. While this was being explained, one of the commissioners nodded along and commented that it was her hearing and the incorrect CRA was a problem for the commissioners.

A similar issue with lifer CRAs was recounted to me by several members of the advocacy group from my fieldwork. Part of this group's advocacy work includes reading through CRAs that lifers voluntarily send them, so certain advocates have read dozens of these reports over the years. It is also common for incarcerated lifers to communicate issues they have that might benefit from an outsider's advocacy. Problems with CRAs came up in one instance when a few lifers were having a conversation during yard time one day. They had all recently had CRAs, and

one complained about errors he found when he received a copy of the report. As told to me, the interaction went something like this:

> *Lifer 1: I told my lawyer that the psych interview was bullshit, like they didn't even know who I was. They said I was lying when I talked about my military service and then talked about a brother I don't even have.*
>
> *Lifer 2: Wait, mine was bullshit too and they also thought I had served, but I never did. Someone else was just telling me about theirs – hey Brown! Come tell this guy about your crazy psych report!*
>
> *Lifer 3: Yeah man, I met with the psychologist and he tried telling me I was lying when I said I was never in the military, and some other crazy shit about people they say I was involved with on the streets that I never heard of.*
>
> *Lifer 2: Man, they don't even know who we are. They can't keep us straight. And they don't even care that our lives are on the line here, like how am I supposed to get parole if the psychologist thinks I'm someone else?*

After comparing notes on the yard, one of the lifers got in touch with someone in the advocacy group and told them the story. The advocate had each man send her a copy of their CRA and ultimately found out that the same psychologist had done all the reports and had interchanged facts from their lives and cases across the reports. When I spoke to that advocate, she remarked that it was pure chance that these guys had talked to each other about their evaluations and discovered the errors, and that there is a possibility cases have been mixed up before and just have not been identified.

These errors are common enough that there is a statutory appeals process for dealing with problems in the CRAs:

> *The CDCR inmate appeal process does not apply to the psychological evaluations prepared by the Board's psychologists. In every case where the hearing panel* ***considers a psychological report, the inmate and his/her attorney, at the hearing, will have an opportunity to rebut or challenge the psychological report and its findings on the record****. The hearing panel will determine, at its discretion, what evidentiary weight to give psychological reports.*

> *If a hearing panel identifies a substantial error in a psychological report, as defined by an error which could affect the basis for the ultimate assessment of an inmate's potential for future violence, the Board's Chief Psychologist or designee will review the report to determine if, at his or her discretion, a new report should be completed. If a new report is not completed, an explanation of the validity of the existing report shall be prepared. (Title 15, Section 2240)*
>
> *If a hearing panel identifies at least three factual errors the Board's Chief Psychologist or designee will review the report and determine, at his or her discretion, whether the errors invalidate the professional conclusions reached in the report, requiring a new report to be prepared, or whether the errors may be corrected without conducting a new evaluation.*

This is the mechanism by which the earlier cases were resolved, but it clearly draws out any attempts to correct the record presented in the CRA, puts the onus on the board to interrogate the errors *during the hearing*, and leaves layers of discretionary decision-making throughout what is arguably the key form of risk assessment presented as evidence during a parole hearing.

Parole actor assumptions

Seeking treatment while in prison may come at a high cost for incarcerated folks. At a meeting I attended in 2018, the BPH executive director mentioned some key points of a summit held about statewide public health, emphasizing that there were concerns from prisoners about how the board would perceive them if they did seek out medical treatment, particularly for mental health issues. These fears conflict with much of what my data showed me about the expectations of board members, who frequently assumed that prisoners had access to things like personal or group counseling and thus had expectations that they would participate in this form of programming. Thus, the board's assumptions about counseling and mental health treatment mismatched both the lived experience of the lifers they were judging and also held an expectation that conflicted with the perceived stigma of receiving treatment in prison.

Armchair diagnosing happens when any parole actor makes assumptions about clinical diagnoses or traits they believe belong to the lifer. These are largely based on popular

understandings about disorders, including things like psychopathy, sociopathy, and antisocial personality, all of which are rare or nonexistent but get thrown around as likely diagnoses for many prisoners. While antisocial personality disorder (APD) is included in the Diagnostic and Statistical Manual of Mental Disorders (DSM) used to standardize clinical diagnoses (APA, 2013), the prevalence is very low and often resolves itself by middle age (Martens, 2000). Psychopathy and sociopathy are social labels (Simonsen, 2022), often used interchangeably (Babiak et al., 2007), that are not used in clinical diagnosis but have some connection to the DSM because of their use as a descriptor for characteristics of APD (Johnson, 2019). Despite the relative rarity of APD and the social nature of the labels psychopath and sociopath, these were terms I heard over and over again throughout my fieldwork, mostly by victims, victim advocates, and district attorneys but at times by others. For example, this happened when the mother of a murder victim spoke at a case review for lifer James Ranca, calling him a manipulator, liar, and con artist, all characteristics of APD.

Some people use the language of psychiatry to talk about mental health issues, which ends up pathologizing people with diagnosable terms. Another, more pervasive way that mental health enters the conversation is more psychological in nature. Most everyone assumes that part of good mental health is dealing with personal issues like addiction, anger, poor relationships, and trauma, and they frequently project those expectations onto lifers with the assumption that achieving those things are directly related to their suitability for reentering the community. While evidence of psychological progress is not required in the mental health criterion, it is one way that people can show evidence of insight and reform. Thus, mental health is embedded in parole law and decision making in a very insidious way. One of the main documents required for everyone coming up for parole and used in parole decisions is the previously described CRA.

This is an interview done by a psychologist that summarizes clinical diagnoses, evidence of insight, and other factors that leads to the psychologist ultimately making a judgment whether someone is at high, medium, or low risk to the community if they were to be released. The discrepancy here is that there is little to no access to any type of psychological help or counseling for people on the inside. The assumption that prisoners will 'talk it out' and deal with their character flaws does not reflect their realities both in service availability and in terms of safety in prison culture. Thus, lifers are expected to address mental health issues without access to treatment and in inherently traumatizing circumstances that likely are the cause of negative mental health outcomes themselves. Further, any type of official diagnosis or contact with psychiatry and psychology can come with negative consequences, including minimal access to services outside the mental health unit, labeling and potentially increased surveillance once marked with a diagnosis, and stigma when one rejoins the general prison population. Unofficial, more psychology-centered attempts to improve mental health (such as seeking out therapy or engaging in self-help) can be difficult to find and can mark someone as 'weak' within prison.

While board members have a whole list of factors they must weigh when making a decision and characterizing the risk a lifer presents if released, other parole actors are not required to consider all these factors and during my fieldwork, frequently chose to only focus on perceived mental health and personality issues when speaking on a given case. At the BPH monthly meetings there is always a docket of cases being considered that are open for public comment. A variety of circumstances can get a case on the docket, including petitions for commutation, parole board tie votes, and requests for review from the Governor's office. The board does not hear evidence or discuss the cases during the public session; instead, these cases were a rich source of comments from parole actors of many backgrounds. One consistent type of

actor during this docket was district attorneys (DAs) representing the prosecutor's office in the county where a respective prisoner's crime took place. Often the only speaker for a case was the district attorney, and during my fieldwork the district attorneys always opposed parole or commutation. This trend was confirmed by others I met in the field, with one advocate remarking that she had only heard of a DA 'not opposing' a case a couple of times and had never heard of a DA supporting release.

Representation of counties throughout California was consistent but not equitable. The DAs from Los Angeles and Ventura counties were always present when I attended and almost always had the same people representing their offices. There were often one or two DAs from other counties, but none were as consistent as these two Southern California counties. Of course, these counties are among the largest in the state and were vastly overrepresented in the dockets every month, but their consistent presence and opposition to the release of anyone who had been convicted in their county sent a clear message about their priorities and willingness to welcome parolees back into their communities.

During one commutation case on the docket in late 2018, the DAs took a different approach than what I had seen before. Both DAs speaking on the case described the decision in the original 1980 case to not pursue the death penalty as, "an act of compassion. He's already received compassion by not receiving the death penalty and he shouldn't have more given to him through commutation." During a later case, she made a similar argument by pointing out that the jury in this prisoner's case voted 11-1 in favor of death, meaning he already got his break at sentencing and should not be afforded another 'break' later. These arguments are symbolic of the reductive, extreme narratives that district attorneys often presented; these types of narratives were clearly not specific to each case that the DAs were speaking on, but instead revealed the

trend of DAs to hone in on a political or social assumption about lifers in general and cycle through these arguments when they seemingly got bored with other approaches. This tendency to rely on rhetoric rather than case-specific facts was mostly practiced by the regular DA attendees, and particularly by the DA from Los Angeles County. The LA county DA frequently used a different argument in her opposition that relates directly to a common argument *for* release – "He committed the crime at 32, so he was not influenced by an underdeveloped brain" and in the same day, "he was old enough to have a scientifically developed brain." This DA made many such assertive claims about lifers' mental states, among which included referring to lifers on the docket as 'manipulative' and claiming that one lifer only enrolled in programming to get out of prison.

This happened again at a BPH meeting I attended in February 2019 when a case was on the docket for someone who received a cell phone violation after they had been granted parole. The DA that spoke on the case said, "Cobb has proven to be totally incapable of integrating self-help" and that he "wouldn't be surprised if the phone in question was in his cell during the hearing when he was granted parole." His comments, while falling short of armchair diagnosis, do draw on the framework of mental health by proposing that Cobb is psychologically incapable of personal growth. This sentiment, couples with an unproven assumption about his manipulation of the board while having a phone in his cell, cement the DA's pathologizing narrative that renders Cobb unworthy of consideration for parole in his eyes. During the comment period on another similar case, an institutionally-identified severely mentally ill lifer living in the highest level of mental health care offered by the CDCR was having his parole grant reconsidered because he hit a nurse on his dementia ward during an outburst. The LA county DA in her statement mentioned the prisoner's dementia but immediately used it as evidence of risk, saying,

"those with dementia often strike out without warning" and that this incident, "represents a risk of current dangerousness." These types of comments characterize what I discussed earlier as a process of demonization that allows these parole actors to assume that any mental health issue makes a lifer uncontrollable and dangerous and thus justifies denial of their parole.

At times the DA's opinion conflicted with that of the victims'. During an en banc hearing for the Allen case, which the brand new governor had referred back to the parole board for review, the DA from San Diego county said that the prisoner was in denial and had minimized his crime, including the, "extent of the sexual violence, extent of the rage he exerted upon the victim. He is a young man. He is a young man who has issues with rage, and he violated someone that he, as her spouse, is bound to protect." She concluded that, "he does remain dangerous to the community until he can demonstrate insight." Interestingly, the next person to give a public comment on this case was Allen's ex-wife, the victim in his case. Contrary to the picture the DA had painted about a dangerous man in denial, the ex-wife described how she had spoken in support of him at his last two hearings. "It's been 24 years. We were kids then, now we're grown. We still remain friends and keep in touch about our son and granddaughter. I've moved on, and I'd like everyone else to move on." She went on to say that Allen was telling the truth about the context of the crime and that over the years he had changed and rehabilitated into a good friend and good father. Ultimately, she said, she had heard a lot of things said about her but she wanted her voice to be heard in that moment. While it was not typical for victims to present a different message than the district attorney in any case being heard by the board, this one was a clear example of how the tropes used over and over in DA narratives – that lifers were liars, manipulators, and out of control monsters who cannot be trusted – do not always match up

with the experiences of people who actually know the lifer and may be best positioned to understand their progress and mental state.

Conclusion

> *"Until we are all able to accept the interlocking, interdependent nature of systems of domination and recognize specific ways each system is maintained, we will continue to act in ways that undermine our individual quest for freedom and collective liberation struggle" (hooks, 2006; from Love as the practice of freedom in Outlaw Culture)*
>
> *"Once you do away with the idea of people as fixed, static entities, then you see that people can change, and there is hope" (hooks, 2006; from Outlaw Culture)*

Mental health is a core concept in not just the lifer parole process but the California prison system as a whole. Whether diagnosed, treated, discussed, or mobilized in arguments, it is a defining issue that frames how people think about criminality and punishment. In this chapter, I demonstrated how narrative strategies are used in parole law and practice to frame mental health issues as evidence of risk. This happens when mental health issues are individualized, internalized, and finally contribute to the demonization of the lifer, solidifying their position as irredeemable and unworthy of release. Parole law plays a part in these processes by instantiating mental health into suitability and unsuitability criteria. This happens explicitly through a specific criterion requiring the board to consider mental health issues that contributed to the life crime. It also happens implicitly in the way that narratives about mental health lend meaning to concepts like insight and reform that are key to gaining parole. This chapter showed how tools like the CRA lend legitimacy to the connection between mental health and risk. The CDCR claims that these tools help in predicting risk, but instead they tend to be unstandardized, ill-researched, and found to contain errors. Moreover, the board uses this information inconsistently in their decision-making, leading to their use as a narrative tool rather than a predictive one.

My findings reveal a significant mismatch between expectations for mental health treatment and resources and the reality of what is available in prison. Advocates and whistleblowers alike point out the dire situation of mental health service provision in California prisons and have worked to dispel the myth that lifers have access to things like individualized counseling or treatment that many parole actors expect as evidence of personal change and development of insight. Finally, my findings in this chapter reveal the myriad assumptions that parole actors have about lifers and about mental health, evidenced in particular by the types of arguments that district attorneys make when opposing release. For many of these people, their assumptions are based in an ideology that prioritizes punishment and demonizes mental illness, and those narratives take precedence over evidence in those arguments.

The key findings of this chapter point to a larger question about the implications of connecting mental health and risk: what happens after? If someone does individualize, internalize, and accept their demonization and is released, how do they progress from there? They have not been fully allowed to accept the social factors that impacted them and work to change those. They do not have increased access to support services and mental health treatment, and instead face surveillance with threat of punishment. Some may be lucky enough to enter housing or a community that does offer that support, but even advocates on the outside have bought in to this way of thinking and do not stray too far from institutional expectations of individualization, internalization, and demonization.

In light of the complicated and fraught nature of mental health in the California prison system that this chapter has revealed, I have five main critiques to unpack in order to understand both the short-term and long-term changes needed to account for the centrality of mental health in the lifer parole process.

1. *Maintains oppressive systems that rely on essentialism*

My first critique is that the way mental health is entwined in the parole process maintains social inequality. By essentializing aspects of a lifer's identity, whether that is their criminality, mental health status, or both, the parole process inherently reduces people's complex lives in a way that allows for the continued justification of their confinement. If lifers cannot conform to the narrow expectations of mental health that the board and the public expect, they remain in the category of risky and irredeemable. The criminal legal system is fundamental to maintaining existing social hierarchies in our society; one way this maintenance is exercised is through the continued creation and reification of the 'other' whose existence must be controlled and isolated. Pathologizing mental illness in a way that connects it to risk and using expertise to prevent challenges to that process is a mechanism, or technology, that carceral institutions rely on to convince the public that they are appropriate decision makers with the power to keep us safe. However, any critical analysis of social institutions must reveal the oppressive logic that underlies these assumptions and interrogate the implications of categorizing people in a way that marks them for punishment.

2. *Does not line up with contemporary, 'outside' understandings of mental health and change*

My second critique is the disjuncture between how mental health is understood and judged within the parole process and how it is understood and judged outside of prison in popular culture. While mental health stigma is present both inside and outside of prison, any passing glance at trends on social media indicate a movement toward acceptance and tolerance of people experience a variety of levels of mental health issues. Entire industries have built up around providing affordable and accessible counseling therapy and these services are advertised broadly

across multiple platforms. Mental health is becoming a part of our cultural language, and people discuss it as a lifelong process experienced universally. My findings show that some board members and other parole actors carry these popular understandings of mental health as a project of personal growth, and assume that lifers have some access to the tools that those on the outside use to develop good mental health. However, this grossly mismatches the reality of existing in prisons, which have absorbed much of the population that in previous times would have been confined to asylums and shunned from polite society. These institutions function more as population managers rather than treatment providers, and carry significant disadvantages for those caught up in formal psychiatric care. To access any sort of real treatment, prisoners must become patients of the MHDS, requiring increased contact with staff, surveillance to ensure compliance with treatment and medication plans, and sometimes extended confinement that removes prisoners from the few freedoms they are allowed in general population.

3. *Assumes people can deal with trauma while living trauma every day*

My third critique is that the way mental health is incorporated into parole law and practice fundamentally assumes that people can improve their mental health over years, decades even, of living in a traumatic environment. Popular understandings of trauma tell us that people need to achieve a sense of safety and security before they are able to do the deeper work of dealing with past trauma; how, then, can anyone expect that deep work to be done while people are stripped of their freedoms, institutionalized, and surveilled constantly? Prisoners may experience violence at the hands of staff or other prisoners, but they also experience violence simply by existing in a prison environment. Board members may earnestly hope that lifers achieve personal growth and move toward better mental health during the time they are incarcerated, but until the conditions of their confinement change to facilitate this hope, it is nearly impossible for significant change

to happen. My findings show that this leaves the board looking for surface-level demonstrations of change, such as providing book reports of self-help programs they have read or discussing how one of the 12 steps has taught them how to cope better. These indicators may represent some surface-level compliance with the board's expectations, but it is unlikely that they represent the development of healthy, lasting coping mechanisms.

4. *Imparts punishment for poor mental health in some cases*

My fourth critique concerns the way that current view of mental health in parole law and practice creates a system that directly and indirectly punishes people for having poor mental health. In parole law, this happens directly through the criterion that asks board members to consider life crime-related mental health issues as evidence of unsuitability for parole. Even though they are already experiencing punishment, denial of parole is a reinforcement or extension of punishment for those that legally are able to seek release at a particular moment in their incarceration. In parole practice, punishing poor mental health happens when parole actors critique and essentialize a lifer's mental state and use it as justification for their continued confinement. Asking for evidence of a lifer's personal growth and healthy coping skills is necessarily tying their fate to their mental health. This is problematic on many levels; the American criminal legal system specifically carves out alternative pathways for people who argue that their criminal behavior was due to diminished mental capacity. Why, then, is it allowable for proof of mental health to be weighed in the decision to grant them parole? Once convicted and incarcerated, lifers do not get to make a similar diminished capacity claim to justify differential treatment, even as age and trauma impact their functioning. These contradictory standards reveal underlying inconsistencies in what the legal system claims is fair and just.

5. *Lacks mechanism for reparative or supportive measures*

My fifth critique relates to the function of the parole system as an evaluator of risk and mental health that has virtually no capacity for providing reparative or supportive measures to ensure lifers are able to meet its standards. Ideally, this would mean that the parole board could facilitate lifers' access to counseling, provide resources specific to the lifer's needs, and promote trauma-informed care. Instead, lifers are told that they need to work on their insight and mental health without being given the resources to pursue those changes. Frequently, the programs suggested for them and available in prison do not even apply to that person's specific needs but are seen as appropriate anyway.

Each of these critiques exposes a fundamental flaw of the prison industrial complex and requires a transformative solution in order to break the cycle of harm that this system perpetuates. In the conclusion chapter of this dissertation, I discuss what a liberatory approach to addressing harm and mental health might look like within my larger critiques of the parole process. While this chapter has focused on mental health and risk as structuring narratives in the parole hearing process, in the next chapter I present a different narrative structure that overlays many parts of the parole process – time. Much like mental health, time structures the assumptions people make and the arguments they use when constructing a narrative about lifers' deservingness of release.

Chapter 4: Risk, Identity, and the Order of Time

"I am what time, circumstance, history, have made of me, certainly,
but I am also, much more than that. So are we all.
Baldwin, 1984 (from the preface to Notes of a Native Son)

In any study of punishment or carceral settings, time is inescapable. Temporality and historicity are inherent in the criminal record, the prison sentence, and the risk assessment. Time is granted or withheld as a dominant form of punishment. The advance of technology allows group data to be formulated into a prediction of the future and then applied to the individual in the present. Despite the underlying centrality of time to punishment, it is often taken for granted. Linearity is assumed; the constant of time is applied to everyone without regard for their individual circumstances or experiences.

In this chapter, I develop a theoretical idea of carceral time and its relationship to the legal concept of risk. First, I outline a few of the ways that scholars in various fields problematize the concept of time. Next, I establish the relevance of studying temporality in connection with identity in the criminal legal system and situate this discussion in the academic conversation about situated knowledge. Then, I develop the contours of what I call a temporal narrative toolkit and present examples of the ways parole actors use these tools to make arguments that elongate time, compress time, and negate time. Finally, I end with a discussion of my findings and what future directions in studying carceral time might look like.

The multiplicity of time

Time is an illusion.
Albert Einstein

In order to discuss temporality, we must first understand the many ways that time has been theorized. Not only is there a multiplicity of explanations or understandings of time, but

some theories argue that time is multiplicity itself. While commonly held perceptions of time are that it is uniform, measured, and linear, challenges to these assumptions describe time as something that is socially and culturally constructed.

According to the theory of relativity, time is not a discrete variable. Instead, it is made up of legions—many times that only exist inasmuch as they relate to others. Renowned theoretical physicist Carlo Rovelli (1995; 2011; 2018) has spent his career writing about the relational nature of time. In describing how time is discussed in physical and social ways he writes, "We do not describe how the world evolves in time: we describe how things evolve in local time, and how local times evolve *relative to each other.* The world is not like a platoon advancing at the pace of a single commander. It's a network of events affecting each other*"* (Rovelli, 2018, p. 16). Rovelli describes time as a complex fabric, one which requires us to abandon perceptions of 'cause' and 'effect' in favor of multiplicity. More than that, Rovelli argues that human perception of time is like seeing through a glass darkly:

> We see the world and we describe it: we give it an order. We know little of the actual relation between what we see of the world and the world itself… we see a coherent world that we extrapolate from our interaction with the universe, organized in simplistic terms that our devastatingly stupid brain is capable of handling (p. 210).

From this perspective, time is simply a heuristic that humankind uses to organize thoughts, memories, and events. It carries no inherent order, nor can it be forced to. While cultures may coopt the power of temporal ordering, any concept of time is as relative as time itself, and subject to changes in structure and perspective.

Of all the social sciences, organizational theory has probably conceptualized time the most extensively. Hassard (2002; 2016) summarizes the progression of thinking on time in organizational analyses, discussing the way that theorists have addressed the relationship

between time and labor, as well as how time is constructed, compressed, and organized within workplaces. This progression includes Taylorism, which focused on efficiency and productivity in the workplace; Fordism, which addressed worktime changes that came with industrialization and mass consumption; and post-Fordism, which addressed changes that came with technological innovations and the increase in white-collar jobs. Hochschild (1997) also discusses time and the workplace but added to the discussion by describing the ways that home and work times have started to spill over into each other.

Sociological and cultural theorists have also long contributed to understandings of time. Some of these developments include contrasting cyclic with linear time (Hassard, 2017) and recognizing how time is often connected through the use of metaphors. More recently, sociologists have expanded understandings of time by discussing the ways that it is gendered (Odih, 2003) and raced (Bhabha, 2005). Psychologists have also taken interest in the construction of time regarding the self. Through autobiographical memory, self-reflection and appraisal, and personal perceptions of time, people are able to continually (re)construct an identity for themselves (Wilson and Ross, 2003).

While time has been theorized in other fields, the field of law has remained largely unconcerned with problematizing time and temporality (French, 2001; Mawani, 2014). This extends in particular to criminal law, punishment, and carcerality, which are all centered around the temporality of the *sentence*. Of the socio-legal scholars that have addressed the issue of temporality, Greenhouse (1989), Engel (1987) and Mawani (2014; 2015) stand out. Here I will focus on Greenhouse because of her development of a cultural argument of legal temporality that is relevant to this dissertation.

According to Greenhouse (1989), "Time has profound consequences in its capacity to encode and systematize otherwise disparate and unreferenced events and relationships… temporality and legality are conceptually fused in the West through their mutual implications of a total order in relation to which social life acquires meaning" (p. 1631). This is particularly true in the case of the parole hearing, where a prisoner's entire life is held up and measured against the constructs of 'risk' and 'rehabilitation.' But not actually their entire life; only selected events and behaviors throughout the lifespan are deemed relevant to the decision-making process of the parole board, already reconstructing a temporal order unique to this setting and defined by statutory criteria that selectively highlight and erase elements of time.

Greenhouse (1989) also makes an argument about the interconnectedness of 'redemption' and temporality in cultural conceptions of time. Linear time arose out of Christianity's spread throughout the Western world, then moved from the sacred to the secular. As it was mobilized by the state, linear time became a crucial mode of perpetuating public institutions (such as law) by situating them both within time (through individual commitment) and outside of time (by transcending individual lifetimes). For Greenhouse, "linear time is time with a purpose: a time-for-the-sake-of-God, -state, -shop, -self, among other possibilities." Because public institutions such as the law are able to capture linear time and imbue it with purpose, "the linearity of time reproduces both the cry for redemption and redemption's form in its fundamental proposition that the individual can find completion only by participating in a cosmic order—through social institutions that await the end of time" (p. 1631). I argue that the 'redemption' called for in parole law originates from this very proposition. During a parole hearing, an individual is called to account for their time in relation to a particular social institution. In this way, the prisoner is precluded from redeeming their time in the cosmic sense by demonstrating productive

participation in social institutions, and instead must show redemption in relation to their particular carceral setting. It is only after proving redemption *within* the setting of the prison that one can proceed to redemption *outside* of it.

Ultimately, Greenhouse's cultural analysis of law and time demonstrate the ways that linear conceptions of time can create a forced perspective that holds all times hostage inasmuch as they serve a particular purpose. When the state, or law, or any institution holds a monopoly on linear time, the individual stands little chance of making legible their own lived experience that may not conform to expected standards of linear time. "The difficulty of developing intellectual strategies for dismantling the privileges of linear time cross-culturally and, even more so, in the examination of more familiar cultural terrain, is compounded by such contemporary Western engagements with the idea of time" (Greenhouse, 1989, p. 1634). Perhaps some such intellectual strategy may emerge from my own analysis of temporality in parole law and administration.

Time and identity

Time present and time past
Are both perhaps present in time future
And time future contained in time past.
If all time is eternally present
All time is unredeemable.

T.S. Eliot, from "Burnt Norton"

In his essay "Hyperlegality," Hussain (2007) provides a reading of British antiterrorist laws that speaks directly to the practice of the law in categorizing and dividing its subjects. "All law is animated by certain distinct categories such as criminal, citizen, and immigrant," he argues, creating emergent subcategories that combine or conflate, "who people supposedly are with what they are likely to do" (p. 516). In addition, he says that this rationality is complicated

by an underlying 'race thinking' (p. 523) that directs the process of categorization by assuming that there is a 'type of people out there' that can be identified and addressed. Unfortunately, "this tendency to rely upon a legal subject's status rather than conduct… is rarely acknowledged by the legal actors who produce the formal doctrinal narratives of our legal interactions" (Barnes, 2006, p. 945). Instead, through the rationale of hyperlegality, which Hussain (2007) says consists of bureaucratic and administrative legalism used to deal with seemingly exceptional circumstances, law relies on "the use of classification and the combination of secrecy and expertise in determining who fills that classification" (Culbert, 2018; p. 11). In the setting of the parole hearing, mechanisms of expertise include psychological evaluations and risk assessments, which act to determine who fills the classifications of 'risky' or 'rehabilitated' that the parole procedure requires. I argue that time can also be viewed as a hyperlegal technology used in criminal legal settings to *encode* and *systematize* elements of a prisoner's lifetime. The temporal logic of parole law can act to compress or elongate time, prioritize or minimize certain temporal sequences in a person's life, or mark persistent identities as evidence of a 'risky' categorization.

Mawani (2014) discusses the role of law's temporality in racializing colonial subjects by creating its own time and absorbing other temporalities to maintain power. Thus, law is more than just a history of statutes and precedents; instead, it produces and organizes time in its own right, contributing to identity construction and group management by playing a role "in the production and organization of time" (p. 69). One way that this occurs is through the language of the law. According to critical and feminist scholar Angela Harris (2012), critical race theorists seek, "to understand how racism interlocks with other forms of oppression, including gender, class, and sexuality" (p. 9). Also known as 'intersectionality,' the concept of multiple intersecting identities has remained central to critical race and radical feminist theories

(Crenshaw, 1989; Delgado and Stefancic, 2017; Harris, 2012; Spade, 2013). Essentialism is another key theoretical concept for critical race scholars and can be used as a tool to identify the ways that legal logic requires actors to reduce people to certain immutable characteristics that are legible to law and legal procedure (Delgado and Stefancic, 2017). Consequently, critical race theorists call for a skeptical examination of the law, legal reasoning, and legal institutions in order to uncover the ways that their logic is in fact based in oppressive ideologies such as white, heteronormative, patriarchal norms rather than maintaining the neutrality and objectivity they purport to achieve (Crenshaw, 2018; Harris et al., 2012). The result of these deficiencies is that the stories of people belonging to multiply marginalized groups (based on race, class, gender, sexuality, etc.) are illegible in the legal setting and thus subordinated (Barnes, 2006; Bell, 2008; Hayman, 1998; Scheppele, 1989). The logic of the parole board in marking people as 'risky' or 'reformed' parallels other processes in the criminal legal system that legal actors consider to be fair and unbiased (Epp, Maynard-Moody, and Haider-Markel, 2017; Gutierrez-Jones, 2001; Haney Lopez, 1997; Lynch and Haney, 2000; Musheno and Maynard-Moody, 2015; Scheppele, 1994). Just as judges and lawyers can follow procedure in a criminal court without questioning whether identity is at play in their decisions, parole actors may do the same if they essentialize a lifer's criminal history and conflate identity with dangerousness rather than examining behavioral progress toward rehabilitation (Culbert, 2018; Hussain, 2007; Martel, 2017). In this way, examining the temporal logic of the parole process lends insight into the ways that discretion works at other moments in the criminal legal system.

Carrillo (1995) discussed the way that Indian tribal identities have been constructed and mobilized in the law over the last few centuries. In this case we see the law's reliance on a linear temporal order to determine tribal status according to the 'evolution' of these communities;

according to Carillo, “the assumption underlying the framework was that the movement from custom to law could only be explained as an evolutionary embrace of order, predictability, and process” (p. 524). This movement was situated between a beginning “primitivism” and contemporary “modernism” (p. 525) that signaled a shift in legal identity that corresponded with assimilation. However, Carrillo problematizes this correspondence between linearity and identity, pointing to the ways that “the law on tribal identity was one that created and enforced a system of biases” by excluding lived experience and only accepting certain colonial versions of history as the truth. This bias was extended by the very rules that governed the admittance of evidence of identity, such that they, “privileged both documentable histories over undocumentable, psychologically oriented ones, and histories that discounted or omitted internal, presumably ephemeral states of cultural consciousness over those that discussed them” (p. 529). This argument mirrors Harris’s (1990) discussion of the way legal language presents itself as impartial, saying that the legal voice “speaks from the position of “objectivity” rather than “subjectivity,” “neutrality” rather than “bias”” and ends up being, “ultimately authoritarian and coercive in its attempt to speak for everyone” (p. 583). While Carrillo’s discussion of tribal identities spans generations and deals with group and cultural identity, we can see a similar process happening when the law asks individuals to present evidence that helps in the determination of whether one has a ‘criminal’ or ‘rehabilitated’ individual identity. In these cases, such as a parole hearing, documentable histories are also privileged over undocumentable ones, and personal accounts of one’s own history are minimized while outside, ‘expert’ psychological evaluations are privileged.

Othering happens within the state through official labels such as the legal categories used in sentencing and hold cultural meaning far beyond that which the law gives them (Price, 2015).

The law is full of moments when people are called to account for themselves. This is part of a ritualistic ethical process that dates back long before the Inquisition. These moments have been codified, routinized, and proliferated throughout many legal institutions, including in legal text itself. These legal texts are often laden with cultural meaning and discourse (Beckett, Reosti, & Knaphus, 2016). Legal texts are written with the presumption that language has a singular meaning and will be accurately translated into practice wherever the law is applied. However, scholars have long shown that language is imbued with cultural meaning (Mertz, 2007), policy does not always translate into practice (Cheliotis, 2006; Lynch, 1998), and that these discrepancies can lead to significant disparities in how and to whom the law is applied (Galanter, 1974). Discretion is often written into the law itself, becoming a pathway for meaning to be read into it.

Legal categories are a mechanism of identity formation. Identities are primarily socially and culturally constructed – the state does not own this idea, but instead utilizes it for its own benefit. Mamdani's (2001) study shows how race and ethnicity are political constructs created through state institutions of law that originated in the colonial, and continued into the post-colonial, state in Rwanda. Scott (2010) begins his work with the premise that "All identities, without exception, have been socially constructed" (p. xii), and cultural theorists such as Gupta (1995) would suggest that they are socially constructed both within and outside of state power. Individual state actors, especially when given the power of discretion for using these categories of exclusion, end up filling in the categories with cultural meaning based on their own positionality and experiences.

Constable (2009) cites the field of rhetoric as a key way to understand the relationship between legal language and behavior. While these two concepts are tightly linked in that the

language of the law implies action, they are often studied sociologically in light of the disjunctures between, "what law claims of itself and what it actually does" (p. 20). In this way the study of legal language is necessarily connected to (in)action by legal actors and contributes to understanding the lived experiences of people under the law. My analysis follows this pattern of studying disjunctures, but also contributes to the theorization of legal language as a form of action that enables the state to produce 'criminal' identities.

However, I do not seek to uncover any singular connection between language and action; instead, my analytic approach in this dissertation is rooted in anthropological critiques of epistemology that advocate for the researcher to hold space for multiple realities as well as the unknowable in their work. In her chapter "Phantom Epistemologies," Peterson (2009) deconstructs the very ideas of empiricism, epistemology, and knowledge. She discusses the inadequacy of empiricism in the face of the unknowable, calling for an approach to knowledge production that recognizes that, "a phantom can inhabit the data in ways that do not always desire the fullest of answers—one that allows the unknowable to remain as powerful an analytical figure as the known," and that, "phantom epistemologies do not seek out parts in order to fit into a whole that is imagined to exist out there somewhere" (p. 41). This standpoint of privileging multiple forms of knowledge (including the unknowable and elusive) and not assuming a singular, legible reality that all scientific knowledge can speak to has been helpful in understanding the many ways that parole actors engage with parole law and policy. Because law is represented by language, there cannot be a singular reality it speaks to; language must be interpreted by the individual, rendering its meaning like the 'ghosts' that Peterson describes in her essay. I have found that the logics, meanings, and arguments I describe in my findings throughout this dissertation are only a fraction of the ways that people engage with parole. They

are situated in political and cultural contexts and while the law can act to unify them on the surface, the very nature of law as language means there are many more ghosts that I have not encountered. Geertz (1973) similarly poses his own epistemological reality: "…it is in understanding what ethnography is, or more exactly *what doing ethnography is*, that a start can be made toward grasping what anthropological analysis amounts to as a form of knowledge" (p. 5-6). He said this in relation to his discussion of 'thick description' that is typically assigned to in-person fieldwork, but it applies equally to other methods of ethnography such as the textual and archival work that is part of my approach.

Parole law and temporality

In order to understand the temporal logic of parole, we must first turn to the legal concepts that underpin this process. Parole law in California is largely governed by (1) statutes and (2) case law. Unsurprisingly, the statutory requirements for the granting of parole are brief and broad, consisting of ill-defined indicators of suitability or unsuitability for release that a discretionary parole board then interprets in light of each individual case.

Here, I use the legal criteria that the California Board of Parole Hearings summarizes on their website, as these are the driving factors used in the determination of parole eligibility:

Legal criteria showing suitability	**Legal criteria showing unsuitability**
Lack of a juvenile record	Commitment offense
Stable social history	Previous record of violence
Signs of remorse	Unstable social history
Motivation for the crime	Prior sadistic sexual offenses

Lack of criminal history	Psychological factors, including prisoner's history of mental problems related to the crime
Age	Institutional misconduct in prison or jail
Understanding and plans for the future	Lack of insight
Institutional behavior	

Table 3

At least 12 of these factors invoke a sense of temporality, whether through a historical record or through an intrinsic understanding of how events of the past are connected with the future. Criteria like 'criminal history,' 'record,' and 'social history' all focus on the time before the prison sentence, automatically bisecting the prisoner's life into a time before the life crime and the time after. The time after the life crime is rendered less significant inasmuch as only two criteria apply to this time period. Whether the prisoner has served 15 or 35 years, their entire sentence is reduced to 'institutional behavior.' Development of parole plans contains a future focus, but based on my fieldwork and interviews, this requirement carries much less weight than the others. Transitional housing is provided for all released lifers, and there are several advocacy groups ready to help and support them, thus, most of the parole hearing acts to expand the time before the life crime through the criteria that are past-focused and compress the time afterward through the minimal criteria that are focused on time in the institution and the future.

Of particular interest are the requirements for 'insight' and 'remorse.' Inherent in these concepts is the necessity for the prisoner to connect the past with the present and think linearly into the future. Further, the requirement for remorse establishes the need for the prisoner to demonstrate how they have redeemed their time in the eyes of the state. The remorse requirement is not equivalent to, but closely parallels admission of guilt. Though no prisoner is required to admit their guilt, they are expected to have a narrative of insight and remorse with regard to their

crime. Admission of guilt plays an important role in providing a context in which a lifer can demonstrate that they understand the causes and motivations for their crime, and that they have progressed through a temporal process of reform. As mentioned in an earlier chapter, maintaining one's innocence can negatively affect the likelihood of gaining parole (Medwed, 2007; 2008). Part of demonstrating insight also has to do with empathizing with and understanding the position of the victim. Even though a lifer may display development of empathy, the feelings of the victim can also impact the hearing's outcome. Victim participation is expressly allowed at parole hearings and can have a significant impact on the board's decision of denial (Morgan and Smith, 2005), even though it is not supposed to.

While the statutorily defined criteria for parole suitability seem straightforward, elements of these criteria have been contested in major lawsuits that resulted in clarifications in language and application for the decision-makers following these laws. One particularly important legal decision regarding the commitment offense criteria was established in the 2008 case *In re: Lawrence*. In this case, the Supreme Court of California held that some evidence of an unsuitability factor, including the aggravated nature of the commitment offense, is not enough to deny parole—there must be evidence supporting a conclusion of *current dangerousness* to the public. This presents an interesting complication in the parole hearing, as the board needs to weigh the lifer's narrative of change that is inherently related to their commitment offense, while at the same time making sure that they are not simply denying parole because of the circumstances of that offense. The Lawrence case imparted a new layer of temporality into the discourse of the parole hearing because now lawyers, board members, and district attorneys were required to make a temporal argument in order to provide evidence of *current* dangerousness. This means that the life crime theoretically can no longer stay in the past, unchanged and

continually conferring a risky identity, but now must be carried forward into the present and the future. What this change looks like is unclear beyond the use of new temporal language, but it certainly worked to shift the evaluation of parole through a restructuring of understandings of temporal order.

The temporal narrative toolkit

Elongating time: Robert Brown

One of the main activities of the Executive Board at monthly meetings is to review cases. Often these are petitions for commutation, but a range of problems, disagreements, or legal appeals can bring a case before the Executive Board. During the public review of the case, the Board hears public comments on each case, often leading to impassioned arguments from attorneys, family members, prison program workers, victim advocates, and community members. These comments, limited to five minutes per speaker, frequently revolve around the amount of time a person has spent in prison and what they have done during that time. I encountered one such case during a 2019 Board meeting when Robert Brown's case was under review. Mr. Brown had been granted parole after 39 years in prison, but the Board was asked to review the decision by the Governor. Among the speakers were his wife, his brother, his attorney, and the District Attorney representing the county where Mr. Brown was convicted. Katrina Brown, his wife, spoke about the changed man she had married while he was still in prison: "He expresses remorse to me when we talk. He has grown into a god-fearing man and he has developed a close relationship with my children. He is the only father they have ever known." Mr. Brown's younger brother Matthew described the difficulties they experienced while growing up in Compton: "We had a difficult childhood. People didn't understand Robert's mental disability and he suffered for it." Both of these speakers mentioned the 39 years that Mr. Brown had

already served, elongating that portion of his life and citing it as a sign that he has spent enough time in prison and needs to be able to leave prison to be with the people who understand him and will care for him.

Robert Brown's attorney took these anecdotes and used her comment time to weave them into a linear narrative: "Robert Brown will be 60 this year. You heard about the troubles in his first 20 years from his brother. The next 20 that he spent in prison were rehabilitation. His wife is evidence of how productive he has been over the last 20 years." By dividing her client's life into three parts, his lawyer created a narrative of change for him—one that was supported by the anecdotal evidence of the family members who spoke on his behalf. Through this narrative she mobilized time in Mr. Brown's favor. The linear narrative, though simplistic, illustrated a sequence of reform that invoked the idea of redemption for this man. More than that, she depicted Mr. Brown's life in terms of relative time: of his entire life, only a fraction was spent out of prison, and those were his youngest years. As she put it, "at the time of the crime, he was 21 going on 16," and had mental and learning disabilities that further contextualized this portion of his life. In this case, the lawyer elongated time by forcing the perspective of Brown's life into equal thirds that could be thought of in proportion to each other rather than only highlighting what happened when he was very young. This sits in contrast to parole law (through the criteria discussed previously) and the narratives I observed in practice; typically the time spent in prison is collapsed into a single category and compressed in that time spent incarcerated is discussed as largely homogenous, with much more attention paid to the time in a person's life that led up to the life crime.

Interrupting time: Jesus Rodriguez

Another example of an attorney crafting a narrative of time comes from a transcript I analyzed in chapter 2. Mr. Rodriguez' hearing transcript presented a clear case of a lifer who was unable to address the institutional expectations of the board and is worth re-examining in this chapter because the things that made this narrative problematic are framed in a temporal argument. As a reminder, Jesus Rodriguez is in his 70's, requires an interpreter as a native Spanish speaker, and has advanced dementia. Not only does he live on a special unit for aging prisoners, he struggles to participate in daily activities and struggles to participate during his parole hearing. After an unproductive time trying to elicit coherent responses from his client, Rodriguez's attorney gives his last-ditch effort to reconceptualize the lifer's story:

> *…The question is whether or not there's a nexus between his mental state at that time and his current mental state, and whether or not he's made any character changes… If you look at what and who he was during his incarceration by his 115's [disciplinary reports], they're not violent 115s per se, they're attitude 115s, I would say, more than anything else. And the question is, is now that he has dementia, is his attitude sort of like erased? And that's a key question, I think, and I can't answer it… So it's almost as if who he was has been wiped clean.*

Unlike Robert Brown's attorney, who argued that the entire span of his life should be examined, Jesus Rodriguez's attorney suggests almost the opposite. He proposes that his client's dementia should take the place of the necessary reform narrative, rendering the time before he developed dementia moot. If he is "wiped clean", then there is no need for a progression from his past behavior to his reformed present self; since he cannot remember who and how he was 25 years ago, he should not be held accountable for a story of change and rehabilitation. In this way he deploys a narrative strategy of interrupting or cutting off the time prior to the onset of Rodriguez's dementia and asks the board to instead focus on his current state and future prospects as an invalid who does not want to die in prison.

Despite this argument, the parole board could not abandon their linear evaluation of Mr. Rodriguez's life. One board member even dismissed his age and current mental status, referring back in time to the beginning of the lifer's sentence:

> *Board: This panel is concerned about the fact that, you know, you've been in prison for 24 years, Mr. Rodriguez, and we know that recently in the last four to five years, you've been struggling with dementia, but for the first 20 years in prison, many of the benchmarks that we look for in terms of your participation and what's available for you here in prison, you also did not take advantage of. Didn't upgrade academically, you did not upgrade vocationally. You did not participate in meaningful self-help for any length of time.*

Ultimately, in the absence of a reform narrative from Mr. Rodriguez, the board dismissed the attorney's argument and made sense of his time in prison by looking to his past record to reconstruct a story of his behavioral patterns. Their story concluded that Mr. Rodriguez, despite his illiteracy, language barriers, and current state of dementia, had not taken enough initiative to bring about behavioral change, and was too much of a risk to gain his freedom.

Negating time: District attorney arguments

While lifer attorneys made temporal arguments in favor of their clients' parole suitability, district attorneys opposing release found ways to mobilize temporal arguments against it. While opposing a petition for clemency, one district attorney said that a cell phone violation from five years ago was "recent in prison terms." The concept of negated time or a unique time for the prison environment was common in my fieldwork. Because disciplinary infractions carry so much weight in each case as the main institutional evidence of behavior, the expectations for the period of time for which someone must remain infraction-free is enormous. Though under constant surveillance, subject to searches, and with limited opportunities, even several years of a clean institutional record is often not considered long enough to prove suitability for release.

Even one mistake after a long record without infractions can negate the previous period of time. This is evidenced in another case where a prisoner's parole grant was under review because of an alleged infraction after his hearing. In this case, the district attorney argued, "He went 15 years with no rules violation, then he was caught 2 months before release." The DA acknowledged the long period of time this lifer had spent without infractions, which is a difficult feat to accomplish in prison. Yet, here it was not the 15 years that mattered but instead that moment from two months ago; clearly, the value placed on the behavior was much higher to this DA than the value placed on 15 years demonstrating conforming behavior.

Compressing time: Rickie Blue-Sky

The connection between temporality and identity happens when a prisoner's identity is essentialized as an immutable characteristic contributing to their 'risky' status (Hussain, 2007). One such example can be seen in the case of Rickie Blue-Sky, a transgender man in a women's prison who was denied parole multiple times. In the transcript of his hearing from 2015, as the parole board members continually used incorrect gender pronouns to refer to Blue-Sky, a district attorney opposing Blue-Sky's parole used the lifer's trans identity as evidence of the legal category referring to 'current dangerousness:'

> *…Rickie Blue-Sky is dangerous because Rickie Blue-Sky refuses to acknowledge the truth, the truth that she committed a heinous crime, first-degree murder. It's much like the fact that Rickie Blue-Sky for whatever reason denies constantly that she is a woman or a female… It becomes an issue when the denial is so strong that a person doesn't want to be called a female at all because regardless, regardless of what you may represent to others, if you're a male or a female, that is what you are. Deny it or not. That is what you are. But that strong denial, that refusal to accept what she is, a female, is equivalent to the refusal to accept that she was guilty of a heinous crime.*

This is a clear example of how a legal actor can introduce their own biased idea about gender identity and connect it to a legal concept through the construction of a narrative based on temporal logic – in this case, the narrative was that the lifer persistently lacked insight into his own biological gender and thus must continue to lack insight into his commitment crime and pose a current threat to the community.

Blue-Sky's case demonstrates the power of a temporal argument in establishing dangerousness. The district attorney here implies that there are two things that make this prisoner too risky to release: (1) his lack of insight into both the crime and his gender identity, and (2) the fact that both of these 'denials' have persisted over a long period of time. By coupling the crime and Blue-Sky's gender identity, the district attorney is able to link a discrete event with a lifelong identity, mobilizing the law by essentializing those aspects of the prisoner's identity that are most legible to him (Harris, 1990). I refer to this as compressing time because of the way it requires one to understand time as almost secondary to identity. In Blue-Sky's case, the district attorney's argument forces the life crime to continually reappear in the present because of its link with his gender identity. Nothing that has happened between then and now can matter because these two essential facts-the crime and his gender identity-will never change.

Conclusion

Based on my analysis in this chapter, I have come to a few key conclusions. It is clear that there are some unique aspects of temporality in carceral settings and administration. This appears in the way that individual lifetimes are compressed, negated, and expanded as well as in the way that identity can be connected with risk in order to linearly narrate a 'current risk of dangerousness.' Time is linked with risk in both the law and practice and can be used as a tool by all parties. Lifer attorneys tend to draw out and highlight the time elapsed during the sentence,

while district attorneys and parole law tend to single out the time period before the crime, as well as set a unique standard of time for institutional behavior in which a clean record is required for many years. Overall, it is clear that there is a strong need in punishment and socio-legal studies to develop more theory about temporality in carceral settings. This knowledge is crucial in order to compare carceral time with concepts of time in other settings and to interrogate whether unique conceptions of time are applied to people who are incarcerated.

Further theory and research on carceral time is also needed in order to decenter the life crime when making judgments of temporality. While time is useful as a heuristic, Rovelli (1995) ultimately concludes that,

> What is entirely credible, in any case, is the general fact that the temporal structure of the world is different from the naïve image that we have of it. This naïve image is suitable for our daily life, but it's not suitable for understanding the world in its minute folds, or in its vastness. In all likelihood, it is not even sufficient for understanding our own nature, because the mystery of time intersects with the mystery of our personal identity, with the mystery of consciousness (p. 199).

In light of this mystery, we must take caution when structuring life-altering decisions around crude temporal reasoning. At the very least, we must recognize that in the pursuit of justice there can be no one temporal order. Particularly within carceral settings, temporal arguments must be seen as the heuristic they are and recognized for the power they hold when coupled with the law. In the next and final chapter of this dissertation, I put these findings in context with those from my other chapters and think ahead to broader implications my study of narrative in lifer parole hearings has revealed.

Chapter 5: Conclusion

As I outlined in the introduction to this dissertation, this project aimed to study narratives of risk and reform in lifer parole hearings. Based on my interest in legal categories and the construction of the category of prisoner considered the most dangerous and irredeemable, I pursued questions about how lifers' identities were narratively constructed through the parole process. While these goals shifted somewhat during my research to include outlining the contours of California's lifer parole system and understanding the centrality of mental health in the development of these narratives, the driving force of my research remained. My analyses revealed an interesting, unique setting where many types of people took interest in contributing to stories about lifers. These stories at times painted them as monsters who were mentally ill and incapable of change. At other times these stories argued that lifers had persisted in surviving despite restrictive circumstances and impossible expectations. Lifers themselves fell somewhere in the middle when it came to describing themselves; they were required to both acknowledge what others thought of them and provide a narrative that proved their change during the time of incarceration. These stories provided the data and guided the themes that filled out the rest of this dissertation. In this concluding chapter, I present an overview of these key themes and findings and discuss the implications I believe these key findings have on future policy, practice, and advocacy. I end with a brief discussion of the limitations of my research and where I hope to see related research go in the future.

Key themes and findings

There are several key themes and findings that my work in this dissertation contributes to the literature on punishment, law and language, and identity formation in the criminal legal system. First, I established the uniqueness of the parole board as a semi-independent social field

closely connected to the CDCR. This was not something that I expected at the outset of my fieldwork, as I had no idea how large and organized this entity was. I assumed that it was the board and a few support staff operating under the purview of the CDCR, but what I found was a department with over 100 employees as well as its own policies, autonomy, and budget. My work outlines the way that parole law and practice structure the types of narratives that are presented by lifers and other parole actors. While there may be an expected narrative based on the criteria the board uses to make their judgment, the interaction between that institutional narrative and the lifer's story can take different forms that vary in their legibility to the board. The stories told by all parole actors are overlayed by some important narrative frameworks such as mental health and time. These frameworks shape the language, meaning, and expectations of all involved, and reveal assumptions about the fundamental humanity of lifers as well as their ability to change. Parole actors mobilize arguments from their shared narrative toolkit to make arguments about what constitutes risk, change, and personal redemption. They develop this toolkit from institutional practice, law, and policy, as well as popular narratives about time and incarceration, and deploy those tools in a way that is unique to this setting. Finally, my findings contribute to establishing the need for criminological research to further integrate literatures on identity formation and language, which are lacking in contemporary criminology. Though my work is situated more in the field of punishment and sociolegal studies, my teaching and professional identity overlap with criminology, and I believe there is a place for these critical orientations in a field with a traditionally positivist commitment.

Recommendations

Providing concrete recommendations based on my research is difficult for me; this is not because things should not change, but rather that my findings and ideological orientation

preclude simply adjusting current parole law and process as a solution. So, what should happen next? What could happen must unfold in two parts, following the critiques of reform discussed earlier in this dissertation. Following the arguments of Gorz (1967), any changes to parole law and process should work to fundamentally reject a reformist orientation. Transformative reform is necessary, and this involves imagining paths toward justice that do not involve the carceral state. Academic literature and the work of activists point toward several ways that these paths could be created, including increased representation and prioritizing transformative justice and community care as solutions to harm. Advocating for better representation involves shifting pop culture representations of those who are 'violent' and those who are or have been incarcerated. More nuanced stories told by people who have experienced these things for themselves may work to humanize the people easily dismissed as irredeemable. There are plenty of examples of this already happening, such as the San Quentin-based podcast Ear Hustle[21], indie films such as those featured in the annual Justice on Trial film festival[22], as well as the contributions of researchers who identify as convict criminologists[23]. Family and friends of incarcerated lifers would also benefit from more complex pop culture representations of their complicated and meaningful relationships with those so easily dismissed by the rest of society.

Investing in communities of care that are supportive of incarcerated and released lifers would also work toward liberatory reform. This investment would necessitate greater access to lifers for advocates and family who have a difficult time remaining significant in the lives of their incarcerated loved ones. Adopting models of care that implicate networks of people in taking accountability for their fellow community members is key in achieving liberation.

[21] https://www.earhustlesq.com/
[22] https://justiceontrialfilmfestival.net/
[23] https://concrim.org/

Liberatory politics require that the individual be located in relation to others and be held accountable in non-punitive ways, which would ultimately require a radical restructuring of the current system of criminal punishment. Community care also involves removing exclusion and stigma from those experiencing mental health issues, including narcissism, personality disorders, and reactive attachment. Seeing these people as complex and redeemable is essential to maintaining the belief that people are inherently changeable and deserving of having their humanity maintained in a society that has previously treated them as permanent outsiders. There are examples of this acceptance of people dealing with a range of mental health issues outside of prison that could act as models for broader integration of folks labeled criminal and mentally ill. One such example is through transformative justice approaches like the accountability mapping practiced by abolitionist activist Daria, whose practice is based on the assumption, "that each of us can learn to recognize, stop, and make amends for harm we cause[24]." Transformative justice rejects punishment as a solution to harm and follows the abolitionist goal of abolishing systems and structures in society that perpetuate violence and oppression, of which prison is one.

Abolitionists, however, do not ignore the immediate material needs of those who are incarcerated, and neither will I. Based on my findings, there are concrete changes that the California prison and parole systems could make to better meet the basic needs of people who are incarcerated now, particularly lifers. A massive increase in funding and resources is needed to improve mental health treatment and access to a range of counseling services for people who are incarcerated. The state should also put efforts into facilitating stronger relationships between incarcerated folks and their loved ones. California has very recently in September 2022 taken a few steps toward this with SB 1008, which makes all prisoner phone calls free, interrupting that

[24] https://accountabilitymapping.com/

state's portion of the 1.4 billion dollar prison communications industry (Asiedu, 2022). CDCR at the same time has partnered with TransMetro to provide greater free prison transportation access for family and friends wishing to visit their incarcerated loved ones[25]. While these efforts by no means end the barriers prisoners face in maintaining social support on the outside, they do ease some of the burdens. Focusing specifically on the inadequacies of the parole hearing process, my findings indicate that many more resources should be dedicated to legal representation and help for lifers preparing for a parole hearing. Right now the state appointed attorneys provide the bare minimum and better representation is prohibitively expensive. Equitable access to quality representation could improve many lifers' chances of succeeding in their parole hearings, or at least ensure that they are getting the advocacy they deserve during this complicated process. Finally, I would recommend empowering the parole board to facilitate access to specific, individualized treatment and programming for lifers that get denied parole. While I think this provision would need to be attempted cautiously so as not to create more burdens and higher expectations for lifers, it would connect the expectations of the board with the realities of what is achievable for the lifers they judge.

Future directions

There are, of course, limitations to my research, those limitations provide ample space for future research that expands on my findings. First, my data does not include observation of in-person parole hearings. As previously mentioned, Shammas (2019) has published findings on a small set of observations, but further research including this type of data is needed to better contextualize research based on transcript data. Second, while the advocates I worked with had

[25] https://www.cdcr.ca.gov/visitors/transmetro-bus-service/

access to many lifer CRAs, I did not feel comfortable asking for them without the consent of the lifers they belonged to. These CRAs would provide a rich set of data for researchers who want to further explore the role of mental health and evaluation in the parole process, and it would be possible to access these documents by contacting current and former lifers who could share their data with consent. Third, my research ended just as the Covid-19 pandemic was beginning. The pandemic had a significant impact on the parole process, with hearings halted for a short time and then moving to a remote video call format, which has been continued by executive order until at least the time of this writing in late 2022. Research should explore these changes, including how different actors such as advocates, attorneys, and lifers have adapted to and perceive the impact of them. The BPH has reported consistency in the grant rate throughout this transition, but future research should investigate these things further.

Future work might also further center the work and experiences of lifer advocates. They played a role in my data and findings, but my involvement with advocates was limited to those that were active in the Sacramento-based BPH proceedings. There are many other groups working in California focus on providing legal representation, transitional services for released lifers, and support for family of incarcerated lifers. In-depth research with these groups would likely generate a host of new questions and types of data, not to mention better understanding of the relationships between parole actors involved in different parts of the parole and release process.

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Appendix A

Structured Decision Making Framework Worksheet

For Parole Hearings Conducted by the California Board of Parole Hearings

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Derived in past collaboration with Renée Gobeil, Carleton University & Jean Sutton, Parole Board of Canada, 2007

This Framework guides an analysis of current risk and additional factors by Board panels in order to support a decision rationale that is consistent with the Board's governing statutes, regulations, and case law. This is a structured professional judgment model; factors are not used to provide a score. The panel retains its full discretion when determining an offender's suitability for release.

Comprehensive Risk Assessment	Low / Moderate / High

Risk Related Factors

Criminal & Parole History	Aggravating (-)	No Impact	Mitigating (+)

Rating Examples

- **Aggravating:** The extent to which an offender has an early onset of criminality (age 11 or younger), prior criminal history consisting of multiple crimes with short intervals between, crimes that escalated in seriousness, and multiple parole violations or revocations.
- **Mitigating:** No prior criminal history, or minor infractions with long intervals between crimes prior to the offender's current commitment offense(s).
- **Neutral:** If multiple crimes prior to the offender's current commitment offense(s), they are minor with no escalation of severity, long intervals between.

Long-Term Offender Considerations

Different types of long-term offenders may have different trajectories. Overall, they have lower rates of re-arrests than other violent offenders and rates of re-arrest for homicides are very low. Predictors of recidivism for long-term offenders are not markedly different than for offenders in general, despite having greater periods of incarceration.

Offender Self-Control	Aggravating (-)	No Impact	Mitigating (+)

Rating Examples

- **Aggravating:** The extent to which an offender reflected poor self-control at the time of the offender's crime(s) as indicated by one or more of the self-control factors (e.g., negative peer pressure, substance abuse, impulsivity, poor problem solving, sexual deviance, callousness, criminal attitudes, etc.).
- **Mitigating:** At the time of the crime(s) offender did not reflect poor self-control as indicated by one or more of the self-control factors (e.g., negative peer pressure, substance abuse, impulsivity, poor problem solving, sexual deviance, callousness, criminal attitudes, etc.).
- **Neutral:** Self-control factors present at the time of the crime(s) do not indicate either serious concern for offender lack of self-control or confidence in offender's ability to maintain self-control at the time of the crime(s).

Long-Term Offender Considerations

There are no unique aspects of self-control based on type of offender or sentence length.

Programming	Aggravating (-)	No Impact	Mitigating (+)

Rating Examples

- **Aggravating:** The CRA identifies risk factors that remain currently relevant. The offender has not completed correctional programs based on that risk. (Offender was not afforded the opportunity to complete such programming or offender was assigned to such programming but did not actively participate and complete assignments.)
- **Mitigating:** The CRA does not identify risk factors that remain currently relevant or the factors identified have been addressed by the offender through active participation and completion of required assignments for assigned programming; programming was based on risks/needs/responsivity.
- **Neutral:** The CRA identifies risk factors that remain currently relevant and the offender has

completed some correctional programs to address those factors, but one or more elements of the offender's risks/needs/responsivity have not been adequately addressed.

Long-Term Offender Considerations

Contrary to risks/needs/responsivity principles, for low-risk offenders with serious commitment offenses, the intent of programming is to improve the offender's suitability for parole; programming upon release would also be preferred. Specific responsivity factors (e.g., motivation, language ability, cultural context) are relevant in that they impact offenders' participation in programming. For moderate and high-risk offenders, appropriate programming of sufficient dosage should be required absent overriding mitigating circumstances.

Institutional Behavior	Aggravating (-)	No Impact	Mitigating (+)

Rating Examples

- **Aggravating:** Serious misconduct at any point during the current period of incarceration or recent misconduct, regardless of severity.
- **Mitigating:** Absence of misconduct plus behavior that goes above and beyond rule compliance (i.e., meritorious behavior).
- **Neutral:** Absence of misconduct alone is not a predictor of release outcome; no misconduct plus basic rule compliance.

Long-Term Offender Considerations

Long-term offenders typically have low rates of misconduct (lower than other offenders), especially after the first 18 months of adjustment. Those long-term offenders with a pattern of serious misconduct over time or recent misconduct would be an anomaly and viewed to be higher risk. A pattern of frequent minor misconduct throughout the sentence would also be a concern, if this reflects ongoing problems with self-control. An apparent relationship or pattern consistent with the dynamics of the commitment offense would also be of concern. Recent (within past year) minor misconduct, depending on context, would not necessarily warrant an assessment of aggravating.

Offender Change	Aggravating (-)	No Impact	Mitigating (+)

Rating Examples

- **Aggravating:** Offender rejects the need for change, has refused programs or been kicked out due to noncompliance, or despite programming continues to express views that demonstrate lack of change.
- **Mitigating:** Clear demonstration of change, regardless of whether the offender completed programs or not.
- **Neutral:** Some evidence offender is different since commission of crime but change is not substantial, clear, or consistent over time.

Long-Term Offender Considerations

Meritorious reports from staff or volunteers might be a good source for indications of change. The CRA might also provide some insights regarding change over time. The panel hearing is an opportunity for panels to examine this more closely.

Release Plan	Aggravating (-)	No Impact	Mitigating (+)

Is the release plan realistic for *this* offender? Does the offender have protective factors in place in case of lapses, such as pro-social friends, employment? If the offender fails on release, what is the likely impact on the community?

Rating Examples

- **Aggravating:** The offender lacks a concrete, realistic parole plan and there is a nexus between the lack of a parole plan and current dangerousness.
- **Mitigating:** The offender has concrete, realistic parole plans addressing *most* of the community stability factors (e.g., stable housing, prospective employment, pro-social supports, realistic plans to manage risk factors).
- **Neutral:** The offender has concrete, realistic parole plans addressing *some* of the community

stability factors (e.g., stable housing, prospective employment, pro-social supports, realistic plans to manage risk factors) with several factors not adequately addressed. (**Long-Term Offender Considerations**

The initial transition to assisted living is challenging as offenders decompress from long imprisonment. This initial supportive environment may buffer risk such that the increased risk of initial release (first six months) may be delayed. Protective factors change over time and must be considered.

Case-Specific Factors	Aggravating (-)	No Impact	Mitigating (+)

Is there anything that seems salient for this particular offender that may influence/affect risk, change, release planning or risk management that has not been considered?

Rating Examples

- **Aggravating:** There is a unique case-specific factor that increases the offender's current dangerousness.
- **Mitigating:** There is a unique case-specific factor that decreases the offender's current dangerousness.
- **Neutral:** There are no unique case-specific factors that affect the offender's current dangerousness or the unique case-specific factors that exist do not affect the offender's current dangerousness.

Additional Factors

Victim/DA Considerations	Aggravating (-)	No Impact	Mitigating (+)

Did the victim, victim's next of kin, or prosecutor provide information or argument relevant to the express issue of safety or current dangerousness and thus, the offender's suitability for parole? (*In re Vicks*)

Rating Examples:

- **Aggravating:** The victim, victim's next of kin, or the prosecutor provided reliable information relevant to the express issue of safety or current dangerousness.
- **Mitigating:** The victim, victim's next of kin, or the prosecutor provided reliable information indicating the offender does not pose a current risk of dangerousness.
- **Neutral:** The victim, victim's next-of-kin, or the prosecutor did not provide information relevant to the express issue of safety or current dangerousness and thus, the offender's suitability for parole.

Youth Offender Factors	Great Weight Applied:	Yes/No

A hearing panel shall find a youth offender suitable for parole unless the panel determines, even after giving great weight to the youth offender factors, that the youth offender remains a current, unreasonable risk to public safety. If a hearing panel finds a youth offender unsuitable for parole, the hearing panel shall articulate in its decision the youth offender factors present and how such factors are outweighed by relevant and reliable evidence that the youth offender remains a current, unreasonable risk to public safety. The panel shall give great weight to the youth offender factors: Diminished culpability of youths as compared to adults, the hallmark features of youth, and subsequent growth and increased maturity while incarcerated.

Elderly Parole Considerations	Consideration Given:	Yes/No

The panel shall give special consideration to the offender's advanced age, long-term confinement, and diminished physical condition, if any, when determining the offender's suitability for parole.

Intimate Partner Battering Considerations	Great Weight Applied:	Yes/No

The panel shall give great weight to any information or evidence that, at the time of the commission of the crime, the offender had experienced intimate partner battering, but was convicted of an offense that occurred prior to August 29, 1996; the panel shall state on the record the information or evidence that it considered and the reason for the parole decision; the fact that an offender presented evidence of intimate partner battering cannot be used to support a finding that the offender lacks insight into his or her crime and its causes.

Discordant Information			
Is there any discordant or incongruent information that must be considered prior to making a release decision?			
Final Analysis	**Aggravating (-)**	**No Impact**	**Mitigating (+)**
Recommendation	**Grant/Deny**		

Appendix B

THE BIG 5: WHAT THE PAROLE BOARD NEEDS TO SEE

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INSIGHT

Evidence that the prisoner has looked into his life history to discover how it got to be okay to commit his/her crime. Often this progression begins in childhood or adolescence, some event or series of events that cause the individual to become distrustful of authority and develop the feeling that he/she has to do everything to protect themselves. Figuring out what caused this mind shift and how it affected your outlook and actions leads to understanding of the causative factors of crime, which is the key to the next step, insight.

UNDERSTANDING

Having pondered the far-reaching effects the crime has had on the victims/victim family; own family; neighborhood; community; society at large. Actions taken do not only affect the persons involved but ripple throughout a community, a family. When you recognize the changes your actions have brought on many levels you can begin to have understanding of the impact you had and the damage done.

RESPONSIBILITY/REMORSE

Taking full responsibility for and expressing genuine deep sorrow for the damage created as evidenced in the hearing as well as other actions which were previously taken. Even if the victim was in some way involved in the events that led up to the crime, you can never blame anyone else. Remorse means you must acknowledge that even if you did not intend to kill someone, the actions you undertook and the bad decisions you made led to that event. Whatever else happened, whoever else was involved, your participation helped create the event and the damage, and you are therefore responsible.

CHANGE

What have you put in place, in your life, to make sure something like this will never happen again? This is where you talk about the things you've learned in self-help. How will you deal with anger in the free world? It does no good to say you will never let yourself become angry—everyone gets angry but it's how you deal with it that matters. How will you deal with frustration? With hurt? With disrespect and fear? You must be able to articulate to the board the emotional tools you have learned to maintain a peaceful existence

PAROLE/RELAPSE PREVENTION PLANS

This is where you talk about your support network, churches and A.A. groups, community and family connections. This is where family and friend can be so important—the parolee doesn't have to have a firm promise of a job, but he does need people, organizations and groups he can turn to for emotional support and help. Financial plans are important, but knowing where and how to get counseling, help, assistance is what the board looks for. Do you know where and when the AA groups in the area meet? Are you connected with community sponsors or family who will help out? Where do you plan to live and do you have a skill or trade that will enable you to financially support yourself, and/or do you have friends and family who will help with that support until you can find a job.

KNOWING YOUR TRIGGERS

Among the questions often asked by commissioners at hearings is "What are your triggers?" But they don't stop there. They want to know what are your internal and external triggers, do you know the difference and do you know how to deal with them.

How do you decide what's an internal trigger and what qualifies as an external provocation, because that's what triggers are; things that provoke you to act or react in some manner. The easy answer is in the words internal and external; in and out.

Internal triggers are those things that come from within you, typically feelings or emotions. Some internal triggers are stress, loneliness, fear, insecurity, embarrassment, even happiness and surprise. In the past, if you've dealt with these emotions by striking out, say, even committing a crime, the board is going to want to know that you recognize that when you feel stressed or embarrassed, you can react in an anti-social way. And that you know how to recognize not only that feeling, but what it can lead to and how to head off those events.

External emotions can be things in your surroundings; the smell of certain substances, being in some surroundings or places. And while external triggers may seem easier to identify and control (don't go to a bar if you get stupid when you drink, don't hang around smokers if you're trying to stop, don't go back to the old neighborhood if you're trying to break from the gang), those same external triggers can, in turn, set in motion some of your internal triggers.

Being in a bar can make you miss the camaraderie of your old drinking buddies (happiness), being in unfamiliar surroundings can make you feel alone and insecure (fear). Sounds like and can be a vicious circle, which makes it more important that you can identify, discuss and deal with both your internal and external triggers.

In addition to being able to identify and discuss your triggers, you'll have to know your coping mechanisms and strategies as well. How will you deal with anger, when it arises (and it will)? What do you do to relieve stress brought on by events, even good events? How can you get yourself away from an external trigger and at the same time deal with any internal emotions and urges it might cause?

As complicated as it sounds, it just means knowing who you are now, what your vulnerabilities and how to deal with them. It's part of your change, growth and rehabilitation, and part of you're going home.

A LITTLE INSIGHT INTO INSIGHT

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Among the most often cited reasons for denial of parole is a "lack of insight' into the causative factors of the crime, the impact of the crime and often, it seems, into life and behavior in general. Just what is insight? We've speculated, not entirely in jest, that it falls somewhere between hindsight and second sight. There is little dispute, however, that the accomplishment of insight is a highly subjective measure of suitability.

By simple definition insight is: "the true virtue of a thing especially through intuitive understanding; penetrating mental vision or discernment, facility of seeing into inner character or underlying truth." It is perhaps that last definition that is most applicable to parole...recognizing the underlying truth and inner character of who you were and why you did what you did at the time of your crime.

Psychologists, who rarely speak in a direct manner, define insight as "the recognition of sources of emotional difficulty" and "an understanding of the motivational factors behind one's actions, thoughts or behavior." In short, what caused you to believe your best option was to commit a crime; what happened in your life that changed your thought process to believe breaking the law was the right path.

And perhaps more telling, psychologists equate insight with self-knowledge, and an understanding of cause and effect based on identifying relationships and behaviors in any given situation. Understanding those relationships sheds light on, and helps solve, problems.

So if you have insight, you've been able to identify events in your life that caused you to be who you were when you committed a crime. That isn't as simple as losing a job and needing money. When you have insight you have a feeling, an emotion or a thought that helps you know and understand something essential about yourself.

It may come gradually, as the result of a long period of thought and reflection or in a flash, as an epiphany or sudden understanding. But once you've achieved insight, you'll understand the reasons, the motivations behind your behaviors and, with understanding, comes the ability to change those attitudes and actions.

TIPS FROM A HEARING

Don't let the little things trip you up. Every parole hearing is a stressful event and you're bound to be nervous. But there are some basic strategies you can use to help calm those nerves and assist you in making your best presentation possible to the parole panel. Here's a baker's dozen of small things you can do to help yourself.

1. Read the transcript of your last hearing; note what the commissioners told you to work on and be sure you can show progress in those areas.
2. Be sure to speak when answering questions; the transcriber can't hear a nod of the head.
3. Don't interrupt the panel members; they'll let you know when they've finished their questions and want your response.
4. Don't use 'bad decisions' as the reason for your crime; bad decisions lead to wearing brown socks with a black suit, not committing a crime
5. If AA is a part of your recovery, know the 12 steps. If you can't memorize all of them, know which one is the most important to you and why.
6. Ask your attorney what questions he's likely to ask you—you don't want any surprises there.
7. Don't say you'll deal with anger and stress by never getting mad or letting yourself get stressed. Reality check—it will happen, but it's how you deal with it that matters.
8. If you have victims at hour hearing, keep your eye focused on the panel during their statements. The commissioners understand this and the better ones will tell you to do so.
9. Wait for the commissioner to paraphrase or repeat clarifying questions from the DA and then answer the commissioner. The DAs are not to question you directly and the commissioners sometimes decide some questions are irrelevant and don't require you to answer.
10. If you start to feel stressed and overcome, don't be afraid to ask for a short break. Chances are the panel members could use one, too.
11. Don't try to impress anyone with your vocabulary. Even if you know what that 11-letter word means and when it use it (and chances are pretty good you only think you know) this is the place to keep it humble and simple
12. If you are denied, don't become angry. Look at it as a temporary setback and read your transcript for what areas you need to work on and improve. Showing your anger at a disappointment is proof to the panel that you might be dangerous.
13. Be honest. Don't take the blame for something you did not do and don't try to make yourself look good. Honest works, and it's much easier to deal with in the long run.

LIFE SUPPORT ALLIANCE
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IDENTIFYING AND CONNECTING YOUR DOTS

Inmates appearing before the BPH in suitability hearings are expected to know, understand and be able to discuss certain aspects of their past lives and behaviors, both in relation to their actions at the time of the crime and what their actions might be in similar circumstances now. It's important to not only understand, but be able to explain, or articulate, how those factors contributed to the criminal act.

You can't begin to understand the "causative factors of your crime" until you go back to what caused your thinking, your feelings, to be outside lines of society. Because the events of your life caused your feelings, which led to your thinking, which developed your belief system, which rationalized your actions as the best course you could take in any given situation. What you think you believe, and what you believe, you act on.

Knowing how the dots connect and knowing how that pattern of dots connected to create such an ugly picture will help you re-draw those connections into a picture of someone able to cope with emotions we all feel; stress, anger, fear, without resorting to violence. Someone who is no longer an unreasonable risk of danger to society. Someone suitable for parole.

Take a hard and realistic look at your childhood, adolescence, even young adult years. No one has a perfect upbringing, but some families have more issues than others. Were your parents abusive? Did that abuse lead to a distrust of authority, a feeling of not fitting in, of being inferior, humiliation and never being able to do anything right?

Those childhood feelings can translate into anger that is sometimes transferred to authority figures other than parents, leading some youths to act out in school, in the community and often in crime, defying that ultimate authority figure, police. Some often 'live up to expectations,' allowing themselves to prove to society that they're just as bad, or worse, than society seems to think they are.

Was a parent absent from your life? Abandonment issues are prevalent, even in children who were adopted into loving families. Youngsters often interpret a parent's absence as meaning they (the child) were not worth staying around for, leading to feeling of inferiority and resultant actions in trying to prove their importance, to 'be somebody.'

Was there violence in your household growing up? Early and frequent exposure to violent surrounding often fosters the belief that violence is normal, so that it becomes an acceptable part of behavior.

If stability was lacking, either through frequent moves, repeated relocations, or never knowing where or with whom you would be living, perhaps you failed to make or stopped making friends and connections, so that you wouldn't have to leave them again and again. Those with such 'loner' tendencies often think they must solve every problem themselves, by whatever means available, even violence.

Gangs can often become a substitute for family, appearing to provide a way to 'belong' and find acceptance. Until those involved ultimately realize, often too late, that gangs are not family and don't have any one individual's best interests at heart.

If substance abuse was commonplace in your family or friends, that, too can become normalized and just what 'everyone' is doing. Allowing your thinking to become clouded and your behavior uncontrolled through substances, while a causative factor, is not an excuse for criminal behavior. It may help explain why you did what you did, but it doesn't give you pass. Substances often remove any remaining inhibitions on behavior and, while they may expedite extreme actions, they aren't the root cause.

And these are just some of the events that can impact decision making, especially in the young years of development. Beliefs, those life-standards, often created at a young age and without proper understanding, can become firmly rooted into maturity, still affecting actions. It takes intensive and through reflection and self-examination to identify and understand these, and other, 'causative factors' in any individual's life and work through the changes necessary to understand that these sorts of beliefs, and the actions they can encourage, are misguided.

Whatever 'dots' caused your thinking, your value system to become distorted and outside the norm, once you identify them you can study and understand their effects on your actions. More importantly, you can develop tools to help you deal with the feelings that first caused these faulty beliefs, so that you don't resort to the sort of anti-social, criminal activities that once appeared to provide at least temporary solace for those uneasy, unpleasant feelings.

Finding, understanding and knowing how to use those tools will enable you to relieve your 'criminogenic needs,' the latest pseudo-term dreamed up by CDCR. Knowing how to deal with those criminogenic needs means you no longer engage in 'criminogenic thinking,' another step in the right direction.

A cautionary word; just because you can identify the root causes of your anti-social actions doesn't mean you get the brass ring in the form of a parole grant. You still must understand and explain how those factors affected you and shaped your beliefs, how those distorted beliefs lead to your actions and how you've changed those beliefs, and through your new mindset and rehabilitation tools, changed your behaviors.

The work has just begun.