COMMONWEALTH OF MASSACHSUETTS

PLYMOUTH, SS PETITION NO. 17-C-08

IN RE: WILLIAM ALLEN)
Inmate No. W63210)

SUPPLEMENTAL MEMORANDUM IN SUPPORT OF PETITION FOR COMMUTATION

Petitioner William J. Allen respectfully submits this supplemental memorandum in further support of his pending Petition for Commutation dated March 8, 2017 ("petition").

INTRODUCTION

Governor Charles D. Baker's Executive Clemency Guidelines dated February 21, 2020 ("2020 Guidelines"), reflect a fundamental tenet of American life: with hard work, self- reflection, and extraordinary effort, you can earn a second chance. William J. Allen, the Petitioner here, has put in the hard work, he has repented, and he has put in the effort necessary to earn a second chance to be a productive member of society outside of prison walls.

Allowing William a second chance now is perfectly consistent with the very goal of commutation: "to serve as a strong motivation for confined persons to utilize available resources for self-development and self-improvement and as an incentive for them to become law-abiding citizens and return to society." Clemency Guidelines, § 2.2. Further, commuting William's sentence will provide meaningful and strong inspiration for other prisoners to strive for something better, too, including and especially the many men William has mentored and taught by example over the past 26 years of his imprisonment.

RELIEF REQUESTED

In his petition, William asked that his life without parole sentence be commuted to a sentence of life to allow him the possibility of parole. Today, William asks that Governor Charles D. Baker consider the possibility of commuting his sentence to time served in light of the current COVID-19 pandemic, which is particularly dangerous to William given his serious underlying health conditions, including asthma, lupus (an autoimmune disease), hypertension, atrial fibrillation, and history of liver disease. Exhibit 33. With no vaccine on the horizon; no widely-available, effective treatments; a high statewide death rate;[1] and the expected return of the virus in the fall and winter of 2020, the threat to William's health is not likely to end any time soon.

REASONS TO GIVE WILLIAM A SECOND CHANCE

The nature and circumstances of William's conviction. In 1997, William was convicted of first-degree felony murder based on the jury's finding that he had been a joint venturer in an armed robbery of a reputed drug dealer. If he were prosecuted today, he could not be charged with first degree murder under *Commonwealth v. Brown*, 477 Mass. 805, 807-808 (2017)(holding that prospectively, felony-murder will no longer be an independent theory of liability for murder).

William's age at the time of his offense – twenty (20) years and one (1) month – is also important to understand William's journey of self-improvement. Our Supreme Judicial Court has recognized that scientific studies on brain development may lead to constitutional limitations on whether courts can impose mandatory life without parole sentences upon defendants like William who were 20 years old at the time of their crimes. *See* Commonwealth v. Garcia, 482 Mass. 408, 412-13 (2019); Commonwealth v. Okoro, 471 Mass. 51, 59-60 (2015). Recent studies show that,

[1]Massachusetts has the 4th highest death rate in the country. https://www.statista.com/statistics/1109011/coronavirus-covid19-death-rates-us-by-state/

as with younger people, someone of William's age has a diminished capacity to understand the consequences of his actions and to control his behavior.[2] This science is so compelling that at least two (2) Massachusetts District Attorneys urged the Supreme Judicial Court in a recent *amicus* filing to extend art. 26 of the Massachusetts Declaration of Rights to preclude the imposition of a mandatory sentence of life in prison without the possibility of parole for offenders who commit murder at 18, 19, or 20 years of age and, instead, to require trial judges to make case-by-case determinations as to the appropriate life sentence for each individual defendant. Exhibit 34.

Further, a motion to withdraw filed by William's first appointed counsel more than two (2) decades ago suggests that William had a diminished capacity to understand that, given his confession to the underlying robbery, he was likely to be convicted of first degree murder, with a mandatory life without parole sentence. As his then-counsel brought to the court's attention, William was unable to accept the concept of felony-murder, despite numerous discussions on the topic. Exhibit 35. Because William did not understand that going to trial would almost certainly result in a first degree murder conviction, he rejected the same plea offer -- second degree murder -- extended to and accepted by co-defendant Rolando Perry who, acting alone, killed the victim. After a hearing, the Parole Board paroled Mr. Perry approximately eleven (11) years ago. Exhibit 5 to March 8, 2017 Memorandum.

[2] See, e.g., Alexandra Cohen et al., When Does a Juvenile Become an Adult? Implications for Law and Policy, 88 TEMPLE L. REV. 769 (2016); Alexandra O. Cohen et al., When Is an Adolescent an Adult? Assessing Cognitive Control in Emotional and Non-Emotional Contexts, 27 PSYCHOL. SCI. 549 (2016); Marc D. Rudolph et al., At Risk of Being Risky: The Relationship between "Brain Age" under Emotional State and Risk Preference, 24 DEVELOPMENTAL COGNITIVE NEUROSCIENCE 93, 102 (2017); Laurence Steinberg et al., Around the World, Adolescence is a Time of Heightened Sensation Seeking and Immature Self-Regulation, 21(2) DEVELOPMENTAL SCIENCE 1, 2 (2017).

Strides in personal growth and development. Without repeating much of what was said in the petition, these are just some aspects of William's character and examples of his behavior which show that William has earned a second chance:

- In 2011, William readily put himself at risk to save a female correction officer from an attack by a mentally ill patient at Bridgewater State Hospital ("BSH").

- William did the hard work to earn trust necessary to become one of only fifty inmates selected for the BSH work cadre.

- William showed the high degree of empathy and responsibility necessary to earn a spot in the BSH Companion Program,[3] where, until the pandemic, he spent his days with a patient with severe mental illness, providing friendship, companionship, and assistance with meals, personal care, and hygiene.

- William grew in his religious life. He serves the Catholic community as a Eucharistic minister, altar server, and as an active volunteer.

- William earned his master barber's license, allowing him to earn an honest living if released.

- William successfully completed nearly every program available to him, including every available program on restorative justice.

- William leads by example and acts as a mentor to many other prisoners. As stated by former Chaplain Peg Newman in a recent letter of support, "Will was and is well-liked by patients, inmates, institutional staff and correction officers. CO's know he is honest and trustworthy. It is very unusual for an inmate to be respected by so many groups of people" Exhibit 36(a).

- William has earned the respect and support of multiple members of the community, including Catholic clergy, members of the social service and legal professions, retired court personnel, and retired DOC staff, as attested in their letters of support.

- The Department of Corrections determined that William is low risk for recidivism and violence.

[3] Due to the great success of the Companion Program at BSH, the program was expanded and is now offered at OCCC and MCI Shirley as well.

- In 2017, a neuropsychologist examined William and concluded that he is "very low risk" for both recidivism and violence.

Currently, William continues to serve in the Companion Program,[4] where his deep sense of empathy is put to good use. As stated in his 2018 Annual Evaluation and Companion Evaluation Integrative Report, William truly excels at improving the lives of others:

> Staff recognize Mr. Allen's positive leadership among the companions. He has also consistently demonstrated an attunement to persons served with serious mental illnesses and an ability to relate to persons served on a human level. Staff praise Mr. Allen's ability to empathize with persons served and to make them feel that they are not alone. Mr. Allen is known as having energy and charisma, both of which he employs in the service of supporting persons served and his fellow inmate companions. Mr. Allen's humor and compassion have also been recognized by staff.
>
> The persons served for whom Mr. Allen has served as companion have consistently affirmed his sensitivity, care, and trust. One of his companions during this past year wrote that what he likes most about the Companion Program is "the fact that [Mr. Allen] has a lot of Love for me." This person served also reported that Mr. Allen's consistent and reliable presence helped this person served learn that all people need some help.
>
> In his self-evaluation, Mr. Allen reported growing from his participation in the program. Specifically, he cited developing empathy and compassion. He also noted that his experiences as a companion have given rise to a desire to continue to help others throughout his life.

Exhibit 40.

Notably, the report offers no criticism, stating only that "[u]nit staff have not noted any areas of needed growth for Mr. Allen. This is a very minor point and should be understood as such: Mr. Allen's strength in caring for persons served would be supplemented by improving his documentation of his efforts in his weekly companion logs." *Id*.

[4] The Companion Program at OCCC is currently on hold because of the lockdown related to the COVID-19 pandemic.

Since he filed his petition in March 2017, William continues to achieve success and expand his skill and knowledge base. See Exhibits 38(a-f) and 39. As encouraged by the Guidelines, he has participated in restorative justice and related programming, including 70x7 and Beyond III (8/28/12), 70x7 A Journey Towards Forgiveness (10/23/16), and Restorative Justice Reading Group[5] (4/10/18 and 6/25/19). Exhibit 19 to March 8, 2017 Memorandum and Exhibits 38(a) and 38(e). He also successfully participated in training sessions designed to build his knowledge and skill bases, which help him to be an even better companion to patients with mental illness. In 2017, Companion Program staff acknowledged his growth and expressed their gratitude for William's "dedication and … important work …. during this time of transition" from BSH to OCCC. See Exhibit 39, June 21, 2017 letter of Companion Program staff. [6]

More recently, William had been an eager participant in an informal peer support specialist training program taught by his Companion Program leader until the pandemic struck. William and his fellow prisoner companions expressly requested the training because they recognized that the skills they would learn would allow them use their lived experiences for good by helping people whose lives have been upended by mental illness, substance abuse, or psychological trauma William hopes one day to put this training to good use in the community.

[5] Restorative Justice Reading Group is, "a reading program designed to introduce the participant to what it means to be accountable, responsible and to make amends. Massachusetts Department of Corrections Program Booklet, February 2019.

[6] "In 2017, when Correct Care Recovery Solutions began providing services in Bridgewater State Hospital and the new BSH State-Sentenced Units were established within the Old Colony Correctional Center facility, the Companions Program moved to OCCC. With the move the program has made some adjustments, but the purpose remains the same." Exhibit 40, Companion Evaluation Integrative Report, 2018 Annual Evaluation.

In these and other ways described in William's petition, William is an example of a true Department of Corrections' success story.[7] By all accounts, William took and continues to take advantage of every opportunity that the Department has afforded and, when opportunities were limited, he successfully advocated for greater programming opportunities to further his growth into the man he has become today. Exhibits 12, 14-19 to William's March 8, 2017 Memorandum and Exhibit 38 to this Supplemental Memorandum. If given the chance, William will show just how much his education, training, and experiences changed him from the young man he was 26 years ago into man who is determined to live an upright life in service of the community.

William's religious life. William's strong Catholic faith has sustained him through 26 years of incarceration and inspires his service to others, including and especially those who are vulnerable. By practicing his faith, William sought every opportunity to redeem himself -- not for extrinsic benefit but, rather, to become the good man that his faith calls him to be.

Behavior in correctional institutions. William continues to maintain a clean prison record, with no new disciplinary reports or issues since 2004.

Other litigation. In light of his serious underlying medical conditions and ongoing pandemic, William recently sought release from custody pursuant to Mass.R.Crim.P. 30(a). While that motion was denied,[8] the court (Squires-Lee, J.) made a point to comment on William's request for commutation, writing:

> Finally, I have reviewed the numerous letters submitted on behalf of [William] Allen advocating for compassionate release and describing both the circumstances that led to his conviction, his conduct while in prison, and the meaningful connections he has established with others. Giving those letters full credit**, it**

[7] "The Massachusetts Department of Correction's vision is to effect positive behavioral change in order to eliminate violence, victimization and recidivism." Massachusetts Department of Corrections Program Booklet, February, 2019.

[8] William's counsel filed a notice of appeal, which William has asked to be withdrawn.

> **appears that Allen may be a very good candidate for commutation of his sentence**. But that power is not mine.

Exhibit 42 at p. 9 (emphasis added).

William continues to garner community support. William continues to earn the support of many members of the community, many of whom have pledged to do all they can to ensure that William continues his growth and that he succeed in the outside world, including Peg Newman, retired DOC chaplain, Joseph Moore, licensed mental health counsellor, Sandra Wixted, LICSW, retired Director of Catholic Charities, Brockton, and Rev. Francis Cloherty, a long-time Catholic pastor in Brockton. As Peg Newman says in her recent letter, "Will is an extraordinary man – kind, sensitive, hard-working, competent, wise, and friendly with a great sense of humor. The community would be well served to have Will among their citizens… Will was so reliable and well-liked by patients that he was a much sought-after companion." Exhibit 36(a).

William will be an asset to the community. If William's sentence is commuted to time served, he will put good use to the training, education, and certifications he earned through D.O.C. programs while incarcerated. William dreams of a reunion with his family, including his father, grandfather, and nephews, all of whom are eager to welcome him back. Unfortunately, William recently lost his younger sister, Dionne, with whom he was particularly close. In 2016, Dionne wrote a heartfelt letter of support, describing William as her "rock" and the protective older brother who watched over her throughout their childhoods. She dreamed of reuniting with William but passed away on May 21, 2020 after suffering a heart attack. Exhibit 1(e). William intends to – and he will – mentor and support the young sons, aged 11 and 14, Dionne left behind. He hopes to be physically present as well, should Governor Baker decide to commute his sentence.

To make a living, William's goal is to become a certified peer support specialist so he can continue using his own life experience to help people struggling with mental illness, addiction,

trauma, and other vulnerabilities. He also plans to continue barbering – which he loves to do – by "renting" a chair at a local barbershop and to join a support group for men coming out of prison run by Chaplain Peg Newman at St. Cecilia Church in Boston. And, with William's commitment to God and his faith, he envisions himself as an active member and of a local Catholic parish and volunteer in his religious community.

When back in the community, William will no doubt become a valued friend and neighbor to many. For many years, he has made a point to do at least one good deed a day -- he understands that it is the little things we do for each that make the biggest difference in our day-to-day lives. In his words, "the littlest things are the biggest things." This is why William goes out of his way to show a kindness to a prisoner who has been shunned by the others, why he serves as a prisoner companion to patients with mental illness, and why he has earned the support of so many. His supporters ***know*** that the world will be a better, kinder, more forgiving place if William is released because his good deeds, his friendly smile, and his willingness to go above and beyond to serve others made BSH and Old Colony Correctional Centers (OCCC) better places for the men who live there. He has certainly enriched the lives of those who know him best.

CONCLUSION

Governor Charles D. Baker's Executive Clemency Guidelines dated February 21, 2020 recognize that commutation is an "extraordinary remedy" with a purpose of "serv[ing] as a strong motivation for confined persons to utilize available resources for self-development and self-improvement and as an incentive for them to become law-abiding citizens and return to society." Guidelines, § 2.2. Granting William J. Allen's petition for commutation fulfills each of these goals.

As demonstrated above and in his March, 2017 petition, William is an extraordinary man who has made exceptional strides over the past twenty-six (26) years, changing from a young man foolish enough to participate in an armed robbery to an empathetic man of integrity and strong moral character whose first concern is serving others, especially those who need it most. Despite his life without parole sentence, William put in the hard work, he reflected, and he undertook extraordinary efforts to utilize every resource made available by the Department of Corrections. William did not undertake these steps toward rehabilitation and self-improvement for self-gain -- he did so because his faith inspires him to seek redemption by developing a strong moral character and commitment to serve others. Granting William to the opportunity to continue his journey of hard work, faith, and service to others outside of prison is consistent with the principals set forth in the Guidelines, our shared values as Americans and citizens of the Commonwealth, and the faith principals that have guided William for the past 26 years.

William has demonstrated consistently through his actions that he can and will serve as a benefit to society if given the opportunity. His case has the powerful potential to teach others similarly situated that redemption and honorable, law-abiding futures are realistic possibilities. With great respect, humility, a desire to continue to redeem himself, and fully cognizant of the magnitude of the mistake he made by participating in an armed robbery in which a life was lost, William respectfully and humbly asks for the opportunity to continue his lifelong journey towards self-improvement, service to others, repentance, and acceptance of responsibility. By looking to William's strong institutional record, the relationships he has nourished, his commitment to learning and improving, daily acts of kindness, and the many letters of support, Governor Baker can be assured that William earned the trust that comes with second chances. Simply put, the outside world will be a better, richer, kinder place if William's petition for commutation is allowed.

DATED: May 26, 2020

Respectfully submitted,

William Allen,
By his Attorneys,

/s/ *Robert J. Cordy*
Robert J. Cordy
BBO # 099720
McDERMOTT WILL & EMERY LLP
200 Clarendon Street
Floor 58
Boston, MA 02116-5021
(617) 535-4033
rdcordy@mwe.com

/s/ *Kristine A. McDonald*
Kristine A. McDonald, BBO # 561763
Allan H. Tufankjian, BBO # 504040
TUFANKJIAN, MCDONALD, DOTON & SACCHITELLA
25 Crescent Street
Brockton, MA 02301
(508)583-3939
kris@ahtlaw.net

/s/ *Patricia A. DeJuneas*
Patricia A. DeJuneas
BBO # 652997
Sibbison DeJuneas & Allen, LLP
One Commercial Wharf West
Boston, MA 02118
(617) 529-8300
dejuneas@sda-legal.com

SUPPLEMENTAL EXHIBIT LIST

33. Affidavit of Jonathan Ross, M.D.

34. Amicus Letter of District Attorneys of Northwestern and Berkshire Districts

35. Motion to Withdraw

36. Letters of Support:

    a. Letter of Peg Newman, M.Ed., BCC, April 1, 2020
    b. Letter of Joseph Moore, L.M.H.C., April 1, 2020
    c. Letter of Rev. Francis J. Cloherty, April 13, 2020
    d. Letter of William McAndrew, April 13, 2020
    e. Letter of Sandra A. Wixted, LICSW, April 13, 2020
    f. Marcia Orcutt, April 13, 2020
    g. Letter of Patricia Moore, April 9, 2020
    h. Letter of Richard Dieter, April 9, 2020
    i. Letter of Robert Loxley, April 9, 2020

37. Department of Corrections Personalized Program Plan, February 25, 2019

38. Certificates of Completion of D.O.C. programs – 2018/2019

    a. Winter, 2018 Certificate of Completion – Restorative Justice Reading Group
    b. August 2018 Certificate of Completion – Health Awareness Education Program
    c. 2/12/19 Certificate of Achievement – Emotional Awareness w/ Perfect Attendance
    d. 5/14/19 Certificate of Achievement – Advanced Emotional Awareness
    e. 6/25/19 Certificate of Completion – Restorative Justice Reading Group
    f. 7/30/19 Certificate of Achievement – Communication Skills

39. Letter of Companion Program staff, June 21, 2017

40. Companion Evaluation Integrative Report – 2018 Annual Evaluation

41. Letter of appreciation, Gerri Riley, Director of Treatment Old Colony Correctional Center, October 10, 2018

42. Memorandum of Decision and Order, May 1, 2020 (Squires-Lee, J.)

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COMMONWEALTH OF MASSACHUSETTS

PLYMOUTH, SS

SUPERIOR COURT DEPARTMENT
Docket No. 95578-79

COMMONWEALTH OF MASSACHUSETTS,
Plaintiff
v.
WILLIAM J. ALLEN,
Defendant

AFFIDAVIT OF JONATHAN M. ROSS, M.D.

The undersigned, Jonathan M. Ross, M.D., hereby deposes and states as follows:

1. My name is Jonathan M. Ross, M.D. I am a physician licensed to practice in the State of New Hampshire I have been on the faculty of the Geisel School of Medicine and the Dartmouth Hitchcock Medical Center since 1983, and Professor of Medicine and Professor of Community and Family Medicine at the Geisel School of Medicine, Dartmouth College, Hanover, New Hampshire since 2008. I am board certified in internal medicine and served as Vice Chair for Education in the Department of Medicine from 2005-2015, and as Director of the Morbidity and Mortality conference at the institution for 29 years. I served as Governor of the New Hampshire Chapter of the American College of Physicians. I have attached a true and accurate copy of my *curriculum vitae* to this affidavit.

2. I have reviewed the medical records of William J. Allen (d.o.b. 1/3/74) from the Lemuel Shattuck Hospital from January 1, 2010 – April 17, 2020.

3. Pertaining to Willian J. Allen's medical condition as related to risks for the development of COVID19 morbidity and/or mortality, the presence of the following factors significantly raise his risk: African American male, hypertension, asthma, heart disease (atrial fibrillation), and lupus syndrome (or possibly mixed connective tissue disease). To the extent that these risks are either summative (independent) or multiplicative (have interactions that magnify the independent risks) cannot be known in the early stages of the SARS-CoV 2 pandemic, but that there is a substantial excess of deaths in the African American population is clear and concerning. The immunologic abnormalities in patients with autoimmune disorders (e.g. lupus) and it's impact on the outcome of COVID19 infection is also concerning. The influence of the other cormorbidities (pre-existing conditions) has already been well documented.

4. Based upon my education, training, and experience as a physician board certified in internal medicine and my review of Mr. Allen's medical records, it my opinion to a

reasonable degree of medical certainty that Mr. Allen is at significantly increased risk of severe complications and death if he were to contract COVID-19.

Sworn and subscribed under the pains and penalties of perjury this 29th day of April, 2020,

/s/ Jonathan M. Ross, M.D.
Jonathan M. Ross, M.D.

CURRICULUM VITAE

Updated 3/2019

NAME: Jonathan M. Ross, M.D., F.A.C.P.
Professor of Medicine and of Family and Community Medicine
Almy Clinical Scholar
Geisel School of Medicine at Dartmouth & Dartmouth-Hitchcock Medical Center

ADDRESS:

Office:
Department of Medicine
Dartmouth Hitchcock Medical Center
1 Medical Center Drive
Lebanon, NH 03756-0001
Phone 603-650-5311
FAX 603-650-6122
Email: jonathan.m.ross@hitchcock.org or jonathan.m.ross@dartmouth.edu

Home:
172 Greensboro Road
Hanover, NH 03755
Phone 802-345-3597

EDUCATION:

DATE	INSTITUTION	DEGREE
1975	State University of New York, Downstate Medical Center, Brooklyn, N.Y.	M.D., cum laude
1966	Brooklyn College; New York, N.Y.	B.A.

POSTDOCTORAL TRAINING:

DATE	SPECIALTY	INSTITUTION
1978-1979	Internal Medicine, Chief Medical Resident	Department of Medicine, Kings County Medical Center and Downstate Medical Center; Brooklyn, NY
1976-1978	Internal Medicine, Resident Physician	New York University-Bellevue Medical Center, New York, NY
1975-76	Internal Medicine, Intern	New York University-Bellevue Medical Center, New York, NY

LICENSURE AND CERTIFICATION:

DATE	LICENSURE/CERTIFICATION
1976	National Board of Medical Examiners, #153084
1978	American Board of Internal Medicine, #67668
1983	State of New Hampshire
1990-2000	Geriatrics, - American Board of Internal Medicine, #67668

ACADEMIC APPOINTMENTS:

DATE	ACADEMIC TITLE	INSTITUTION
2008-present	Professor of Medicine and of Community and Family Medicine	Dartmouth Medical School
1993-present	Associate Professor of Community and Family Medicine	Dartmouth Medical School
1992-2010	Senior Investigator, Cancer Prevention Program and Clinical Therapeutics Program	Norris Cotton Cancer Center
1989-2008	Associate Professor of Medicine	Dartmouth Medical School
1983-1989	Assistant Professor of Medicine	Dartmouth Medical School
1979-1983	Assistant Professor of Medicine	Department of Medicine, SUNY Downstate Medical Center
1978-1979	Assistant Instructor	Department of Medicine, SUNY Downstate Medical Center
1975-1978	Assistant Instructor	Department of Medicine New York University School of Medicine

HOSPITAL APPOINTMENTS:

DATE	HOSPITAL TITLE	INSTITUTION
1983-present	Attending Physician	Mary Hitchcock Memorial Hospital
Feb. 1986	Attending Physician	White River Junction VA Hospital

1979-1983	Attending Physician	Department of Medicine, Kings County Hospital and State University Hospital, Downstate Medical Center, Brooklyn, NY
1977-1978	Attending Physician	Medical Walk-in Clinic, Bellevue Hospital Center, New York, NY

OTHER PROFESSIONAL POSITIONS:

DATE	**POSITION TITLE**	**INSTITUTION/ORGANIZATION**
2008-2015	Vice Chair for Education	Department of Medicine, Dartmouth Medical School
2005- 2008	Associate Chair for Education	Department of Medicine, Dartmouth Medical School
2002-2004	Team Practice Leader, Section General Internal Medicine	Department of Medicine, Dartmouth Medical School
1987-2015	Director, Department of Medicine Morbidity and Mortality Conference	Department of Medicine, Dartmouth Medical School
1996-7	Executive Committee, Board of Governors	American College of Physicians
1994-97	Governor	NH Chapter American College of Physicians
1993-94	Governor-Elect	NH Chapter American College of Physicians
1988-91	Program Director, Internal Medicine Residency Program	Department of Medicine, Dartmouth Medical School
1987-88	Acting Program Director, Internal Medicine Residency Program	Department of Medicine, Dartmouth Medical School
1986-89	Director, Medical Consultation Service	Kings County Hospital, Brooklyn, NY
1980-83	Director, Diabetes Clinic	Kings County Hospital, Brooklyn, NY

MAJOR COMMITTEE ASSIGNMENTS AND CONSULTATIONS:

National/International:

YEAR	COMMITTEE	ROLE	INSTITUTION
1990	Writing Committee	Member	Physicians for a National Health Program
1995-7	Scientific Program Subcommittee	Member	American College of Physicians
1997	Executive Committee	Member	Board of Governors, American College of Physicians
1997		Chair Elect	Board of Governors, American College of Physicians

Regional:

YEAR	COMMITTEE	ROLE	INSTITUTION
1981-1983	Clinic Advisory Committee	Member	New York Diabetes Association
1984	Board of Directors	Member	New Hampshire Diabetes Affiliate
1984	Committee on Scientific Affairs	Member	New Hampshire Medical Society
1993-4		Governor-Elect	American College of Physicians, New Hampshire Chapter
1994-7		Governor	American College of Physicians, New Hampshire Chapter
1995		Associate Editor	Time Life Medical- Patient Education Program

Institutional:

YEAR	COMMITTEE	ROLE	INSTITUTION
1980-1983	Medical Care Evaluation Committee	Member	Department of Medicine, SUNY-Downstate Medical Center
1980-1982	Medical Records Committee	Member	Department of Medicine, Kings County Medical Center
1980-1982	Outpatient Department Advisory Committee	Member	State University Hospital

1980-1982	Inpatient Department Advisory Committee	Member	State University Hospital
1982	Diabetes Search Committee	Member	Department of Medicine, SUNY-Downstate Medical Center
1981-1982	Finance Committee	Member	Department of Medicine, SUNY-Downstate Medical Center
1980-1983	House Staff Evaluation Committee	Member	SUNY-Downstate Medical Center
1982-1983	Residency Training Program Committee	Member	SUNY-Downstate Medical Center
1980-1983	Intern Selection Committee	Member	Department of Medicine, SUNY-Downstate Medical Center
1980-1981	Outpatient Organization Committee	Member	Department of Medicine, SUNY-Downstate Medical Center
1982	Medical Service Evaluation Committee	Member	Department of Medicine, SUNY-Downstate Medical Center
1982	Advisor for Students	Member	Department of Medicine, SUNY-Downstate Medical Center
1982-1983	House Staff Education Committee	Member	Department of Medicine, SUNY-Downstate Medical Center
1983-	Internship Selection Committee	Member	Department of Medicine, Dartmouth Medical School
1983-1984	Search Committee, Section of Endocrinology	Member	Department of Medicine, Dartmouth Medical School
1985	Student Advisor	Member	Department of Medicine, Dartmouth Medical School
1986-1987	Nominating Committee	Member	Staff Board of Governors, , Dartmouth Medical School
1986-1987	Education Conference Subcommittee, Relocation Project	Member	Dartmouth Medical School
1986-1987	Subcommittee on Ambulatory Teaching	Member	Department of Medicine, Dartmouth Medical School
1986-1987	Physical Diagnosis Subcommittee, Curriculum	Chair	Department of Medicine, Dartmouth Medical School

1985-1992	Curriculum Committee	Member	Dartmouth Medical School
1987	Hospital Tower Planning, Relocation Project	Member	Dartmouth Medical School
1987-1988	Search Committee, Chairman of the Department of Medicine	Member	Dartmouth Medical School
1987-1989	Utilization Review Committee and Subcommittee for Patient Flow	Member	Dartmouth Medical School
1988	Medical Clerkship Review Committee	Member	Dartmouth Medical School
1988-1989	Medicine Residency Task Force	Chair	Dartmouth Medical School
1988	Search Committee, Director of Nursing Services	Member	Mary Hitchcock Memorial Hospital
1988	Buck Road Primary Care Committee	Member	Mary Hitchcock Memorial Hospital
1988	Intensive Care Unit Committee	Member	Dartmouth Medical School
1988-	Faculty Mentor	Member	Dartmouth Medical School
1989-1090	Search Committee, Chief of Section GIM	Member	Department of Medicine
1989-90	Education Committee	Chair	Department of Medicine, Dartmouth Medical School
1990-1	Augmented Finance Committee for Study of Graduate Education	Member	Dartmouth Medical School
1990-2	Ethics Committee	Member	Dartmouth-Hitchcock Medical Center
1990	L.C.M.E. Self Study Committee-Graduate Medical Education	Member	Dartmouth Medical School
1992-4	New Directions Committee-Curriculum Reform	Member	Dartmouth Medical School

1993-6	Curriculum Coordinating Committee	Member	Dartmouth Medical School
1993-5	DHMC Health Care Reform Committee	Member	Dartmouth-Hitchcock Medical Center
1994	Appointment Efficiency Project, Section of GIM	Member	Department of Medicine, Dartmouth Medical School
1994-5	Task Force on Promotions, Titles and Tenure	Member	Department of Medicine, Dartmouth Medical School
1996-7	Search Committee- GIM Faculty	Chair	Department of Medicine, Dartmouth Medical School
1996-7	ACI Projects- Diabetes, NP/PA Workgroup, Practice Closing Workgroup	Member	Department of Medicine, Dartmouth Medical School
1996-7	Dean's Strategic Planning Group	Member	Dartmouth Medical School
2000-3	Pharmacy and Therapeutics Subcommittee	Member	Dartmouth Medical School
2002-5	Helmut Schumann Lectureship Committee	Member	Department of Medicine, Dartmouth Medical School
2001-present	Department of Medicine Education Committee	Member	Department of Medicine, Dartmouth Medical School
2012-present	Department of Medicine Education Committee	Chair	Geisel School of Medicine at Dartmouth
2006-2015	Search Committee, GIM section	Member	Department of Medicine, Dartmouth Medical School
2011	Search Committee, Dermatology Chief	Member	Department of Surgery, Dartmouth Medical School, DHMC

MEMBERSHIP, OFFICE & COMMITTEE ASSIGNMENTS IN PROFESSIONAL SOCIETIES:

DATE	**SOCIETY**	**ROLE**
1980-	American College of Physicians	Member
1980-9	American Diabetes Association, Professional Section	Member

1980-9	American Association of Diabetes Educators	Member
1982-	Society of General Internal Medicine	Member
1982-	Physicians for Social Responsibility	Member
1990	Physicians for a National Health Program, Writing Committee	Member
1992-4	Robert Wood Johnson Generalist Physician Committee	Member
1991-6	Vermont Physicians for National Health Program	Member
1993-4	American College of Physicians, New Hampshire	Governor-Elect
1994-7	American College of Physicians, New Hampshire	Governor
1997	American College of Physicians	Executive Committee, Board of Governo
1997	American College of Physicians	Chair Elect, Board of Governors
2011-12	Curriculum Reform Task Force	Geisel School of Medicine at Dartmouth

EDITORIAL BOARDS:

DATE	**ROLE**	**BOARD NAME**
1986-7	Editor	*Health Newsletter*, Dartmouth Hitchcock Medical Center.
1989-90	Abstract Committee Member	Society for General Internal Medicine
1989-91	Abstract Committee Member	Association of Program Directors, Internal Medicine
1993-1998, 2005- 2010	Editorial Board Member	Dartmouth Magazine

AWARDS AND HONORS:

DATE	AWARD NAME
1961	New York State Regents Scholarship
1975	Alpha Omega Alpha
1975	Brooklyn Society of Internal Medicine
1985	Fellow, American College of Physicians
1995	Alma Hass Milham Award for Humane and Ethical Values
1997	Dartmouth AOA Distinguished Professor Award
2003-2014	Senior Resident Class Honoree
2005	Chair's Award for Excellence in Teaching
2013	Murray Korc Award for Excellence in Resident Teaching
2003-present	Almy Clinical Scholar
2005	Clinical Medicine Teaching Award, DMS Class of 2006
2005, 2008	Excellence in Teaching Award, Department of Medicine
2005	Excellence in Teaching Chairman's Award, Department of Medicine
2012	Excellence in Education Award Nominee in Small Group Leader and Distinguished Educator categories, Geisel Class of 2014

JOURNAL REFEREE ACTIVITIES:

DATE	JOURNAL NAME
1988-89	New York State Journal of Medicine
1989-93	Diabetes Care
1989-95	Norton Medical Books
1998-present	Journal of General Internal Medicine
1999- present	Annals of Internal Medicine
2001-02	PIER- Project ACP-ASIM

TEACHING EXPERIENCE/CURRENT TEACHING RESPONSIBILITIES:

SUNY-Downstate Medical Center

DATE	TEACHING
1980-1983	Lecturer in Endocrine Pancreas, Physiology Course, first-year medical students
1980-1983	Lecturer in Diabetes, Pathophysiology Course, second-year medical students
1979-1983	Preceptor, Physical Diagnosis, second-year medical students
1979-1983	Ward Attending Physician, Department of Medicine
1979-1983	Internal Medicine Attending Physician for Consultation

Dartmouth Medical School/Geisel School of Medicine:

DATE	TEACHING
1986-94	Course Director, Advanced Internal Medicine Elective, 10 medical students/yr, 10 hrs/week, 4 weeks/year
1991-3	Faculty Preceptor-DMS IV Course: Health, Society and the Physician, 10 medical students, 6 hrs/week; 10 weeks/year
1995-present	Faculty Preceptor- Problem Based Learning Course-DMS II. 8-10 medical students; 10 weeks/year, 4 hrs/week contact time; 2 hrs/week preparation time.
2000	The Physiology of Music- Co-curricular Dartmouth College Course with Professor Jon Appleton, Department of Music. 70 students; 6 hrs/week, 10 weeks /year.
2005-2006	Evidence Based Medicine; Elective course for 1st and 2nd Yr DMS Students; 4-8 medical student/year, 8 weeks/year, 2 hrs/week contact time; 2 hrs/week preparation time.
2007	Oupatient student preceptor, Year 3-4 DMS, 12 hours/week for 4 weeks
2007	Art of Writing Student Elective, Year 3 DMS, 2 week mentorship
2010-13	On Doctoring, Facilitator, Year 1-2 DMS, 2 year long course, 7 students
2003-current	Problem Based Learning, Year 2 DMS, ½ yr course, 8 students
2016-current	Course Director- Evidence Based Medicine, 4 week elective

Dartmouth-Hitchcock Medical Center:

1983-2010	Ward Attending Physician, Department of Medicine – 1-3 students for periods of 2-4 weeks; 4-12 weeks/year: this is a full time responsibility involving the clinical care of patients, supervision of resident staff and students
1983-1984	Intensive Care Unit Attending, Department of Medicine

1983- present	House Staff Conference Lecturer including topics in Medical Consultation, Diabetes, Ambulatory Care, Geriatrics
1983- 2009	Inpatient and Consultation Attending, Department of Medicine
1987-present	Morning Report, Department of Medicine, 4 hrs/week, 44-46 weeks/year
1987- 2015	Director, Morbidity and Mortality Conference, Department of Medicine, contact time 1 hr/week presentation, preparation time 4 hr/week, 44-46 weeks/year
1987-88	Acting Program Director, Internal Medicine Residency Program, Department of Medicine
1988-91	Program Director, Internal Medicine Residency Program. Department of Medicine
1988-present	Outpatient Attending-Department of Medicine
1988-present	Attending, Pathology Review, 1 hr/week
1989-1991	Coordinator, Indian Health Service Resident Rotation
1997-1999	The Art and Science of Medicine for Residents Seminar
2012-current	Learning and Teaching Evidence Based Medicine, 3-4 week elective

Regional:

3/8/2003	1st Internal Medicine Community Faculty Development Symposium Evidence Based Medicine
10/18/2003	2nd Internal Medicine Community Faculty Development Symposium, Hypertension- an evidence-based review
6/8/2004	3rd Internal Medicine Community Faculty Development Symposium, Accessing the Evidence- Diabetes Mellitus
6/8/2004	3rd Internal Medicine Community Faculty Development Symposium, Accessing the Evidence- The Dartmouth EBM Website
11/5/2004	4th Community Faculty Development Symposium- Putting Evidence into Practice
5/6/2005	5th Internal Medicine Community Faculty Development Symposium- Putting Evidence into Practice
5/24/2005	Dartmouth Community Medical School- Morbidity and Mortality Conference
10/7/2005	6th Internal Medicine Community Faculty Development Symposium: Mammography: Decisions and Communication
10/7/2005	6th Internal Medicine Community Faculty Development Symposium: Putting Evidence Based Medicine into Practice

10/14/2005	ACP New Hampshire Chapter Scientific Meeting, Morbidity and Mortality Conference
11/8/2005	Dartmouth Community Medical School- Morbidity and Mortality Conference
10/13/2006	ACP New Hampshire Chapter Scientific Meeting, Morbidity and Mortality Conference
10/12/2008	ACP New Hampshire Chapter Scientific Meeting, Morbidity and Mortality Conference
10/22/2010	ACP New Hampshire Chapter Scientific Meeting, Morbidity and Mortality Conference
4/16/13	Medical Grand Rounds: Primary Care, A Time to Reflect, New London Hospital, New London, NH
10/25/14	ACP New Hampshire Chapter Scientific Meeting, Morbidity, Mortality and Improvement Conference, Concord, NH

National:

1996-7	MKSAP XI Reviewer, American College of Physicians

INVITED PRESENTATIONS:

Regional:

DATE	TOPIC	ORGANIZATION	LOCATION
3/8/2003	1st Internal Medicine Community Faculty Development Symposium Evidence Based Medicine	DMS	DHMC
10/18/2003	2nd Internal Medicine Community Faculty Development Symposium, Hypertension- an evidence-based review	DMS	DHMC
6/8/2004	3rd Internal Medicine Community Faculty Development Symposium, Accessing the Evidence- Diabetes Mellitus	DMS	DHMC
6/8/2004	3rd Internal Medicine Community Faculty Development Symposium, Accessing the Evidence- The Dartmouth EBM Website	DMS	DHMC

8/19/2004	Medical Grand Rounds: Evidence Based Medicine, Numeracy, and Currency- It's Still about Individual Care	DMS	DHMC
11/5/2004	4th Community Faculty Development Symposium- Putting Evidence into Practice	DMS	Hanover, NH
11/11/2004	Numeracy, Medicine and Medical Decisions	ILEAD	Dartmouth College
5/6/2005	5th Internal Medicine Community Faculty Development Symposium- Putting Evidence into Practice	DMS	Hanover, NH
5/24/2005	Dartmouth Community Medical School- Morbidity and Mortality Conference	DMS	
10/7/2005	6th Internal Medicine Community Faculty Development Symposium: Mammography: Decisions and Communication	DMS	Hanover, NH
10/7/2005	6th Internal Medicine Community Faculty Development Symposium: Putting Evidence Based Medicine into Practice	DMS	Hanover, NH
10/14/2005	ACP New Hampshire Chapter Scientific Meeting, Morbidity and Mortality Conference	ACP	Concord, NH
11/8/2005	Dartmouth Community Medical School- Morbidity and Mortality Conference	DMS	Manchester, NH
10/13/2006	ACP New Hampshire Chapter Scientific Meeting, Morbidity and Mortality Conference	ACP	Concord, NH
10/4/2007	7th Dartmouth Conference on Liver, Pancreas and Biliary Disease, Multidisciplinary Symposium on Liver Disease.	DHMC	Lebanon, NH
11/1/2007	PPARs, TZDs, and perils in the bench to bedside imperative- GIM education conference	DHMC	Lebanon, NH
10/10/2008	ACP NH Chapter Scientific Meeting; Morbidity and Mortality	ACP	Concord, NH

2/17/10	Health Care in American Society: History and Current Issues- History 36 Allen Koop, Professor	Dartmouth College	Hanover, NH
4/30/10	Philosophy of Medicine- Doctor-Patient Relationship. Philosophy 25 Ann Bumpus, Professor	Dartmouth College	Hanover, NH
Fall/2011 Fall/2012	EBM Seminar Leader 8 hours- Physician Assistant Class Deanna Denault, Professor	Franklin Pierce College	Lebanon, NH
4/16/13	Medical Grand Rounds: Primary Care, A Time to Reflect	New London Hospital	New London, NH
1/28/14	Creating a safe learning environment- Lessons from MM&I conference	Geisel School of Medicine	Hanover, NH
10/24/14	ACP Regional Meeting, Morbidity Mortality and Improvement Conference	ACP	Concord, NH

MAJOR RESEARCH and EDUCATION INTERESTS:

Medical Education
Clinical Medicine
Geriatrics
Risk Assessment and Expression
Prevention
Breast Cancer Prevention
Evidence Based Medicine

RESEARCH and EDUCATION FUNDING:

1992-98 Principal Investigator, NSABP- Breast Cancer Prevention Trial-DHMC- total award during that period was $126,090, including direct and indirect costs

2003-06 Faculty Development Program- funded by HRSA-Bureau of Public Health – salary support for 13% for the 3 years of the grant then 8% for the no cost year's extension.

2003-present Almy Clinical Scholar – ~ 25-30% salary support.

2014 Principal Investigator, Department of Medicine Education Grant- Phase II of MM&I Project. $10,000

BIBLIOGRAPHY:

Journal Articles:

Original Articles:

1. Schwartz JM, Ross JM, Paress PS, Fagelman K, Fogel J: Electrophoretic and kinetic characterization of a NADH diaphorase variant in a methemoglobinemic subject. **Clinical Disorders of Red Blood Cell Metabolism and Structure**. Ramot B (editor). 1971. New York and London: Academic Press.

2. Schwartz JM, Paress PS, Ross JM, DiPillo FW, Rizek R: Unstable variant of NADH methemoglobin reductase in Puerto Ricans with hereditary methemoglobinemia. **J Clin Invest** 1972; 51:1594-1601.

3. Levitz CS, Hirsch S, Ross JM, Butt KMH, Friedman EA: Lack of blood glucose control in hemodialyzed and renal transplantation diabetics. **Trans Am Soc Artif Intern Organs** 1980;26:362-365.

4. Levitz CS, Hirsch S, Ross JM, Butt KMH, Friedman EA: Toward achieving euglycemia in kidney transplanted and hemodialysis diabetics. **Proc Clin Dial Transplant Forum** 1980;10:248-252.

5. Ross JM, Murali M, DeLara T, Cheron RG: Anaphylaxis and immunologic insulin resistance in a diabetic woman with ketoacidosis-case report and review of the literature. **Diabetes Care** 1984;7:276-179.

6. Malenka, DJ and Ross, JM. Perforation by Central Venous Catheters. **Journals of Parenteral and Enteral Nutrition** 1989;13:309-311.

7. Ross JM, Walter JM, Malenka DJ, Reilly B, Moore-West M. A New Approach to Preparing Students for Academic Medicine. **Medical Education**. 1989;23:265-269.

8. Nierenberg D, Disch M, Manheimer E, Patterson J, Ross JM, Silvestri G, Summerhill E. Facilitating prompt diagnosis and treatment of the neuroleptic malignant syndrome. **Clinical Pharm and Therapeutics**. 1991;50 (5):580-586.

9. Malenka D, Baron J, Johansen, S, Wahrenberger, J, Ross JM. The framing effect of relative and absolute risk. **J Gen Intern Med** 1993, 8:543-548.

10. Krant J and Ross JM. Extracranial giant cell arteritis restricted to the small bowel. **Arth and Rheum** 1992;35(5):603-4.

11. Gerber, P, Smith, D, and Ross JM. Generalist care and the new health care system. **Am J Med**. 1994; 97:554-558.

12. Nease, R.F and Ross, J.M. The decision to enter a randomized trial of tamoxifen for the prevention of breast cancer: an analysis of the tradeoffs. **Am J Med** 1995; 99:180-189,1995

13. Ross, J.M. and Sox, H.C. If at first you don't succeed. **New Eng J Med**. 1995; 333:1557-1560.

14. Alexander, N.E., Ross, J.M., Sumner, W., Nease, R.F., Littenberg, B. The effect of an educational intervention on the perceived risk of breast cancer. **J Gen Intern Med.** 1996; 11:92-97.

15. Ross, J.M. Commentary in applying the results of trials and systematic reviews to individual patients. **ACP Journal Club**. 1998; 129(3):A-17.

16. Ross, J.M. Commentary in applying the results of trials and systematic reviews to individual patients. **Evidence-Based Medicine**. 1998; 3(6):167.

17. Pastel, L. and Ross, JM.. Too much of a good thing: Zinc toxicity caused by inappropriate supplement use. **American Journal of Medicine**, 2007, 120: 316-318.

18. Bakken, LL, Olson, CA, Ross, JM, and Turco, MG. Aligning Continuing Medical Education with Systems-based Quality Improvements: An Integrated Model for Studying the Contributions of a Morbidity, Mortality and Improvement Conference to Improved Clinical Practice and Patient Outcomes. Manuscript in preparation.

19. Ross J, Bakken L. Regularly Scheduled Series: Imbedded Education for Change. In: Rayburn, WF, Turco MG, Davis, DA, eds Continuing Professional Development in Medicine and Health Care. Wolters Kluwer; 2018. p. 17–32.

20. Ross, J., Gaviola, C., Friedman, H. Teaching Evidence Based Medicine to students and residents – a novel approach to a continued need. 2020, Manuscript in preparation.

Letters:

1. Ross, J.M. Strategies for elective red blood cell transfusion (ltr). **N Eng J Med**. 1992;117:441.

2. Ross, J.M. and Gerber, P.. The breast cancer screening controversy continues. (ltr.) **Ann Int Med**. 1993; 118(9):747.

Reviews:

1. Ross JM: Allergy to insulin--A review. **Ped Clin North Am.** 1984;31:675-687.

Teaching Materials:

1. Ross JM. The Preceptor's Teaching Manual-"The Physical Examination". Dartmouth Medical School.1993.

2. Ross JM. Advanced Internal Medicine- Fourth Year Elective.DMS.1993-6.

3. Ross, JM. Web-based Conferencing- M&M, 2002-2010

4. Ross, JM. and Friedman, H. Dartmouth EBM Website. http://harley.ninja.ebm

Abstracts:

Presented at National Meetings :

1. Schwartz JM, Ross JM, Paress PS, Fagelman K, Fogel L: Electrophoretic and functional characterization of a variant of NADH diaphorase in hereditary methemoglobinemia. Blood 34:859, 1969.

2. Schwartz JM, Paress PS, Ross JM, Fagelman K, DiPillo FW, Rizek R: A Puerto Rican variant of NADH methemoglobin reductase in hereditary methemoglobinemia. **Clin Res** 18:396, 1970.

3. Banerji MA, Ross JM, Potter J, Elahi D, Andersen DK: Peripheral insulin actionis altered by pancreatic resection in man. **Diabetes** 31 (Suppl 2):31A, 1982.

4. Ross JM, Andersen DK, Banerji MA: Improved plasma glucose after diet therapy of obese type II diabetics is not related to enhanced insulin sensitivity. **Diabetes** 31 (Suppl 2):15A, 1982.

5. Shane LL, Ross JM, Rothenberg RB, Curtis GB: A microcomputer system for clinic management and analysis. **Diabetes** 32 (Suppl 1):113A, 1983.

6. Shane LL, Ross JM, Rothenberg RB: Diabetes education program operation (DEPO): A system for management and analysis. Presented at Annual Meeting, Center for Disease Control, 1983.

7. Ross JM, Murali MR: Systemic allergy to beef and pork insulin cured by biosynthetic human insulin. **Diabetes**. 32(Suppl 1):103A, 1983.

8. Ross JM: Preparing Students for Roles in Academic Medicine. Presentation at Symposium on Teaching Internal Medicine, December 2, 1987, Philadelphia, Pennsylvania.

9. Krant JD and Ross JM. Extracranial giant cell arteritis restricted to the small bowel (Presentation, American College of Physicians New England Regional Meeting, 1991).

10. Siegel A, Bettmann M, Krone S, Brokaw F, Gerber P, Ross J: Interobserver variability in the clinical prediction of pulmonary embolus (abstract). Radiology 205P:528, 1997. Presented at the 83rd Scientific Assembly and Annual Meeting of the Radiological Society of North America, Chicago, IL, December 5, 1997.

11. Pastel, L. and Ross, JM. 10/14/2005. ACP Regional Meeting. Concord, NH. Clinical Case Vignette. A 46 yo man with neutropenia and anemia (Zinc toxicity).

12. Pastel, L. and Ross, JM. 2006. Annual ACP Meeting. Philadelphia, PA. Associates Poster Presentation. Take your vitamins?

13. Morano, J. and Ross, JM. 2007. Palpitations, DIC and translocation: Primary Cardiac Synovial Sarcoma. Poster presentation. SGIM Regional Meeting, Boston, MA. March 23, 2007.

14. Newell, J and Ross, JM, 2011. An unusual case of CLL presenting with pericardial effusion. Poster presentation. DHMC.

15. Ross, JM, Bakken, LL, Olson, CA, Turco, MG and Jackson, LM. 2014. Linking Education and Improvement in a Safe Learning Environment- Morbidity, Mortality and Improvement Conference. 2014 Annual Integrating Quality Meeting, AAMC, Chicago, June, 2014.

16. Bakken, LL, Olson, CA, Ross, JM. 2014. Using systems thinking and sequential mixed-methods to study a complex education program in a complex medical system dedicated to improving patient care. American Evaluation Association. Denver, Colo. October 11, 2014.

17. Ross, JM, Friedman, H, Klein, R. 2017. An Evidence Based Medicine (EBM) Resident Elective Rotation and Web Database to Increase EBM Numeracy. APDIM National Mtg.

Books, Chapters, Internet Resources:

1. Ross JM: Diabetes Mellitus. In Internal Medicine Review. Friedman E, Stillman R (editors). Appleton-Century-Crofts, 1982 pp. 145-166.

2. Ross, JM. Dartmouth EBM Website. http://dom.hitchcock.org/EBM/

3. Ross, Jonathan. Decade. Poems 1996-2006. Whitmann Communications Group. Lebanon, NH. ISBN 1424305217.

4. Ross, Jonathan, M. in The Still Puddle Poets New Poems. 2008. Anemone Publishing. ISBN-13 978-0975926420. pp. 99-107.

Media

1. New York Times Magazine. Lisa Sanders, M.D. Diagnosis: On Her Last Legs. February 26, 2006.

2. ABC News Medical Mysteries Show, featured physician. A case of scurvy. February 24, 2007.

3. New Hampshire Magazine. Top Doctors 2007. Medical Mysteries. Rick Broussard. April 2007. p. 71-75.

4. Vermont's Best Doctors. Vermont Magazine. 1996;8(5):57-67.

Literature in Medicine

1. Ross, J.M. 1992. Three true tales: Another alcoholic. Always my patient. A question of resource utilization. **Dartmouth Medicine**. 17:42-47.

2. Ross, J.M. 1993. The unknown intern. **Dartmouth Medicine.** 18:66.

3. Ross, J.M. 1994. Low and behold. **The Courtland Forum.** 7(5):44.

4. Ross, J.M. 1994. Prescription from the Doctor. **Vermont Health Reform News**. September, pp 2-3.

5.Ross, J.M. 1995. Lessons from the practice: Rounds. **Western Journal of Medicine** 163:490-91.

6.Ross, J.M. 1995. Anorexia and pain. **Dartmouth Medicine**. 19(3):38-9. (reprinted in **Operation Pride**. Winter 1996. P 22-25.)

7. Ross, J.M. 1995. The smoker. **Dartmouth Medicine**. 19(3):37.

8. Ross, J.M. 1995. A routine physical. **Dartmouth Medicine**. 19(3):36.

9. Ross, J.M. 1995. Nursing home visit. **Dartmouth Medicine.** 19(3):35-6.

10. Ross, J.M. 2004. Is this what we want? Grand Rounds. **Dartmouth Medicine.** 29(3):55.

11. Ross, J.M. 2005. My office door. **Dartmouth Medicine.** 30(2):

Narrative:

As much as the practice of internal medicine has allowed me to contribute to the care of people, so too has nurturing, and learning from, our students and residents over the years. I recently stopped my general internal medicine practice (except for consultation on 'difficult' patients) and now teach in On Doctoring (a first and second year longitudinal course focusing on the skills of history taking, physical examination, clinical reasoning, and a variety of important related topics) and the second year DMS course called PBL (Problem-Based Learning) which is a case-based year-long seminar focused on pathophysiology, ACGME competencies and clinical integration. I was director of the Department of Medicine Morbidity and Mortality Conference (29 years), attending morning report, and teaching evidence-based medicine. And I was Vice Chair for Education for 15 years. Currently, my role as the Almy Clinical Scholar enables me to teach Geisel medical students and internal medicine residents in various areas of medicine, including clinical reasoning, physical diagnosis, evidence-based medicine, and clinical decision-making.

My philosophy is centered around the observation that students learn progressively, must do so actively, and can be influenced greatly in their

attitudes, skills and knowledge acquisition by dedicated mentors and especially through longitudinal relationships with faculty. I believe that foundations must be built solidly: learning interviewing, cultural sensitivity, exceptional physical diagnosis skills, and clinical reasoning which employs the basic therapeutic and interventional sciences are fundamental to becoming a good clinician, scientist and innovator. Teachers have that rare opportunity to focus without inhibiting, to inspire without overwhelming, to stimulate without fatiguing. It is a shared mission- students who arrive at the door are almost universally able, willing and eager to be the best they can be- our job is to facilitate their goals. And those that struggle can frequently be helped.

Teaching Medical Students

In the 1980's, it became clear that teaching interviewing and physical examination skills at DMS was in need of improvement. In addition, critical thinking and self-directed learning were becoming more valued as part of the curriculum. I devised an elective for fourth year medical students to address all of these areas. Ten senior students spent one month doing clinical problem solving exercises including problem formulation, reading and assessing the medical literature, and communicating with peers. Simultaneously, the students worked with 28 second year medical students who were taught interviewing and physical diagnosis skills. Techniques of teaching, reviewing pathophysiology, utilizing role playing, feedback, demonstration and role modeling were used. Thus, 1 or 2 faculty members were able to educate 10 senior and 28 sophomore students. Skills at the end of the course were comparable among the 28 students to those who had had traditional training, and skills in the senior students were enhanced (Medical Education. 1989;23:265-269). This very successful course was ended when larger curriculum changes were made that made a one month intensive training program impossible. Over the years, the course On Doctoring evolved-lasting 2 years, and using preceptors in the clinic or hospital and facilitators who conduct weekly seminars in small groups has allowed students to learn while having valued mentoring relationships with practicing and teaching faculty. As one student said to me this term: "Thank you for pushing us to be our best…." And another: "…coming to small group each week was like a breath of fresh air…" The students so value being *known*, as well as taught.

In the second year course Problem Based Learning (PBL), I have precepted for many years. In each of ~ 10 weeks the faculty preceptor meets for approximately 4 hours with 8 students. 2 hours per week are spent in preparation. The students work from a highly developed case-based curriculum, and the preceptor is encouraged to guide the students so that essential and salient points are well covered. Personal feedback at half-way and at the end of the course are very important. Small group learning also allows development of team skills, identifies outliers, and affords opportunities for students to be teachers.

Evidence-based medicine (EBM)- Over the years I have developed a curriculum of important clinical studies which both residents and students use as a resource for reading and learning how to read, analyze and contribute to the literature. It is currently web-based.

I have regularly precepted in a variety of other venues, including student supervision in the outpatient clinic, during the clinical clerkship in inpatient medicine, and in the required 4th year DMS course Health, Society and the Physician, another integrative course.

Morbidity and Mortality Conference

Since 1986 I have been the Director of the Department of Medicine Morbidity and Mortality Conference, recently renamed Morbidity Mortality and Improvement Conference (MM&I). Each week (40-46/year) I have met in preparation with the presenting resident and chief medical resident preparing the presentation, and then the following week conduct the departmental session. I have supervised and directed over 1000 such sessions. M&M is often touted as the best conference at Dartmouth, is broadcast to a number of remote sites and is a safe educational environment. It has been reviewed in Dartmouth Medicine Magazine, in New Hampshire Magazine, and demonstrated at regional American College of Physicians meetings. It is widely recognized as an excellent learning session. In my view it is successful due to 1) excellent case preparation, 2) the creation of a safe learning environment, where faculty are encouraged to model their approach to problem solving and clinical decision making, 3) the unique aspect of disparate members of a department sharing their skills in a collegial, positive way focused always on the care of the patient, self- and system-evaluation, and a lively and occasionally humorous discussion. I strive to illuminate learning, whether we touch upon differential diagnosis, pathophysiology, therapeutics, basic and clinical science, evidence based medicine, or psychosocial and economic dimensions. Most of the time all of these features are present. The second and third year residents learn a great deal about presenting a case and providing teaching points, and the chief resident begins to assume more programmatic responsibility. Medical students see faculty at work, modeling their skills, struggling with uncertainty, and interacting with each other. This is a rare treat and quite stimulating for them. Recently we have altered the focus to include Improvement (now MM&I) as a central focus of the session, and are utilizing cutting edge technology (audience response system) in the service of increasing participation. Second, third and fourth year students attend this conference, as well as ancillary staff and visitors. I take great pride in this conference. Perhaps because of this, I was invited to write a Clinical Problem Solving article for the New England Journal of Medicine (1995;333:557-1560).

Post-graduate training

In addition to the MM&I Conference, I have been fortunate to be able to attend morning report 3-4 days per week, the autopsy review once per week, and to be intimately involved with the residency training program, both as Program Director, and as Vice Chair. Morning report begins the day for the residents and clerkship students, and is often attended by the Chair of Medicine, and other faculty variably. The chief resident runs the session, and residents present cases, some new, some ‘old’, This has been an opportunity for me to regularly model the importance of attention to the whole person, to physical diagnosis, and to bring the wealth of my clinical experience to the residents. In addition, I often share the evidence-based medicine website with the students and residents, using that forum to review salient clinical studies.

Autopsy review is held for 1 hour per week. It is run by the Department of Pathology, and medical residents, students, and faculty are invited. Frequently I am the only medical attending present, and I use the material to stimulate discussion and encourage interaction between our colleagues. So, collegiality and working across departments has been very successful.

Attending on the inpatient wards, and in the ambulatory clinic are additional responsibilities that I have participated in over the years. During the former, the attending physician admits with a team of resident, intern and student(s), working full time in this venue for 2 week blocks. This is an intense experience for all, but its value for getting to know the learners and helping them to grow is unparalleled. I conduct formal and informal teaching sessions, physical diagnosis at the bedside, and career counseling. In the ambulatory clinic, I have spent 4-8 hours per week supervising 4 residents each week.

In 2006, I was asked to conduct teaching rounds, then known as Ross Rounds, every Monday on the inpatient general medicine wards. During this hour, 2-3 residents, 2 interns, and 4-6 medical students presented a case for discussion. We focused on differential diagnosis, problem formulation and went to the bedside to interview and examine the patient. These rounds were instituted because of the continuing recognition that faculty do not do sufficient bedside teaching, and the resultant loss of that expertise is troubling. Although the introduction of hospitalists interrupted this teaching program temporarily, we are creating a new structure for bedside teaching, and Hospital Medicine has now assumed this role.

Special career events

From 1993-1997 I was very involved as Governor of the New Hampshire Chapter of the American College of Physicians. During this time, our chapter developed and submitted the largest number of resolutions, most of them accepted, than any other state chapter. I made many contributions at the chapter and the national levels. I started and nourished the Internal Medicine Interest Group at Dartmouth, and had standing room only participation by second and third year students. I was gratified to be elected by my peers to be the Chair of the Board of Governors of the ACP.

In 1995 I received the Dartmouth Medical School’s Alma Hass Milham Award for Humane and Ethical Values. This award had a very special meaning for me, as it was bestowed by my friend and colleague, and first recipient, Paul Gerber. In 1997 I was nominated as the Dartmouth AOA Distinguished Professor.

In 2000 I spent a month teaching medicine at a municipal hospital in western Japan. It was a most invigorating and delightful experience; bedside teaching for 2 hours in the morning, a didactic lecture at noon, and rounds again in the afternoon.

Since 2003 I have been fortunate to be named the Almy Clinical Scholar and currently am the Almy Professor of Medicine. This honor and support

allowed me to spend time in direct teaching activities, setting the stage for my appointment as the Associate Chair and Vice Chair for Education. In keeping with my career-long goals of practicing and teaching, these positions have allowed me to invest all of my energy in the service of my two professional passions. In 2005, I received the Department of Medicine's Chairman's Award for Excellence in Teaching, its inaugural nominee.

In 2012-13, the faculty at our medical school, acting on the vision of a massive curriculum redesign by our Dean, spent a great deal of time and energy on reaching for the stars: a continuity longitudinal clinical experience, integration of basic and clinical science, an ethics and humanities curriculum, and a cocus on health care delivery science. I was involved in many of the working groups dedicated to bringing about this change. Much of what we explored is now part of a new curriculum.

My love for internal medicine, both the science and the art, the physiology and psychology, the meaningful experience between doctor and patient, is something that by my presence and enthusiasm in the classroom, on the wards, in the clinic, I intend to continue to share. I have been so fortunate to live in a time and place where clinical care and education are so prized.

The Books I Read
http://dartmed.dartmouth.edu/winter05/html/dancing_words.php

My office door is like the cover of a Book:
Open it, and anticipation yields
to the unexpected.
He, or she, or they, sit,
expectant, hopeful, and I
breathe in an expression, the clothes and odor, and
sense the fear, concerns, or anger.
Some are guarded and some smile broadly,
happy
to reconnect in trust.
Others appraise, ready to proclaim
my insensitivity,
steeling themselves for the disappointment
they have come to expect.
Often, as I listen,
an expression softens, I can almost hear a
breath escape,
so relieved to have a story aired.

They see a doctor and I see a patient,
and mostly the boundaries stay lucid.
I ask, they struggle to answer,
not knowing my language.
At times I don't speak theirs.
Tugging here or there,
the tale is enriched, the story blossoms.

I am blessed with their trust, and
invited into recesses where
no one has yet peered, and
I think nothing of the risks they take in telling me.
Yes, I think nothing of the risks they take in telling me.
My hands probe flesh and form and function.
Sometimes, I focus hard on the heart murmur,
or feel only the liver, pulse, breast or prostate, and
momentarily
lose connection with the person.
Sometimes, I think in the language of physiology,
linking that which lurks
beneath my fingertips with knowledge learned years ago,
or yesterday.

Sometimes, as I feel the nodule
that doesn't belong,
I know, in an instant,
a range of futures unfolding,
exposed, on the table.
We call them encounters,
extraordinary connections, miracles,
that allow us, clad in white,
to read
the stories in these Books.

34

COMMONWEALTH OF MASSACHUSETTS
SUPREME JUDICIAL COURT

No. SJC-11693

COMMONWEALTH

v.

NYASANI WATT and SHELDON MATTIS

MOTION BY AMICI DISTRICT ATTORNEYS FOR THE NORTHWESTERN AND BERKSHIRE DISTRICTS FOR LEAVE TO FILE LETTER IN LIEU OF BRIEF

Pursuant to Mass. R. App. P. 2 and 15, amici District Attorneys for the Northwestern and Berkshire Districts hereby move for leave to submit a short letter to the Court in lieu of a brief.

Amici respectfully submit that there is good cause to suspend the Rules of Appellate Procedure applicable to the filing of briefs with respect to the letter amici seek leave to submit. It is two pages in length and serves to inform the Court of the position of two District Attorneys rather than present extended legal argument. Amici submit that a short letter better serves the Court's interests in efficiency and brevity.

ANDREA HARRINGTON
Berkshire District Attorney

Jeanne M. Kempthorne
Assistant District Attorney
Chief, Appellate Division
7 North Street, P.O. Box 1969
Pittsfield, MA 01202
(413) 443-5951, ext. 104
BBO No. 267410

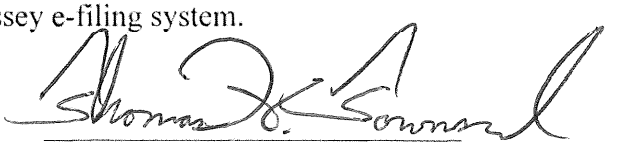
DAVID E. SULLIVAN
Northwestern District Attorney

Thomas H. Townsend
Assistant District Attorney
Chief, Appellate Division
One Gleason Plaza
Northampton, MA 01060
(413) 586-9225
BBO No. 636309

CERTIFICATE OF SERVICE

Northwestern, SS. November 15, 2019

I, Thomas H. Townsend, hereby certify that I have this day caused the foregoing motion for leave to file a letter in lieu of a brief, and the letter to the Supreme Judicial Court of even date, to all counsel of record via the Massachusetts Odyssey e-filing system.



Thomas H. Townsend

November 15, 2019

Supreme Judicial Court
John Adams Courthouse
1 Pemberton Square
Suite 2500
Boston, MA 02108

Re: *Commonwealth v. Nyasani Watt & Sheldon Mattis*, SJC-11693

Dear Chief Justice Gants and Associate Justices of the Supreme Judicial Court:

The District Attorneys for the Northwestern District (representing Franklin County, Hampshire County, and the Town of Athol) and the Berkshire District (representing Berkshire County) write in support of the position that art. 26 of the Massachusetts Declaration of Rights precludes the imposition of a mandatory sentence of life in prison without the possibility of parole for offenders who commit murder when they are age 18, 19, or 20. See Defendants' principal brief, pp.74-78; Defendants' reply brief, pp.6-9; Amicus brief, Commonwealth v. Garcia, SJC-11423, pp.39-42. Instead, such offenders should receive an individualized sentencing hearing consistent with Miller v. Alabama, 567 U.S. 460, 477-480 (2012).

Our views matter. The United States Supreme Court has repeatedly proclaimed that the views of "prosecutors weigh heavily in the balance" in determining the scope of the Eighth Amendment's prohibition of cruel and unusual punishments. Thompson v. Oklahoma, 487 U.S. 815, 833 (1988), quoting Edmund v. Florida, 458 U.S. 782, 797 (1982). See Spaziano v. Florida, 468 U.S. 447, 464 (1984). This Court should accord the views expressed in this letter comparable consideration in determining the scope of art. 26's prohibition of cruel or unusual punishments.

We submit that permitting 18-, 19-, and 20-year-olds to be sentenced, without an individualized inquiry, to life imprisonment without the possibility of parole, while constitutionally prohibiting as unusually harsh such a sentence for their 17-year-old counterparts, "shocks the conscience and offends fundamental notions of human dignity." Commonwealth v. Jackson, 369 Mass. 904, 910 (1976). Rather, we submit, consistent with research on adolescent-brain development, see, e.g., Icenogle, G., et al., *Adolescents' cognitive capacity reaches adult levels prior to their psychosocial maturity: Evidence for a "maturity gap" in a multinational sample*, Law and Human Behavior, 43 (1), 69-85 (2019), that art. 26 requires an individualized Miller hearing in such cases. At such a hearing, the sentencing judge would consider, in determining whether to sentence the offender to a term of life in prison without the possibility of parole, the following factors:

(1) the defendant's "chronological age and its hallmark features — among them, immaturity, impetuosity, and failure to appreciate risks and consequences";

(2) "the family and home environment that surrounds" the defendant;

(3) "the circumstances of the homicide offense, including the extent of [the defendant's] participation in the conduct and the way familial and peer pressures may have affected him" or her;

(4) whether the defendant "might have been charged and convicted of a lesser offense if not for incompetencies associated with youth — for example, [the defendant's] inability to deal with police officers or prosecutors (including on a plea agreement) or [the defendant's] incapacity to assist his [or her] own attorneys"; and

(5) "the possibility of rehabilitation."

Commonwealth v. Costa, 472 Mass. 139, 147 (2015), quoting Miller, supra. We foresee that, after such a hearing, there may be 18- to 20-year-olds who will be judged to deserve a life sentence without the possibility of parole. But the very fact of an individualized hearing ensures that such a sentence is consonant with justice and constitutional dictates.

Respectfully submitted,

David E. Sullivan
Northwestern District Attorney

Andrea Harrington
Berkshire District Attorney

Thomas H. Townsend
Assistant District Attorney
Chief, Appellate Division
One Gleason Plaza
Northampton, MA 01060
(413) 586-9225
thomas.townsend@state.ma.us
BBO# 636309

Jeanne M. Kempthorne
Assistant District Attorney
Chief, Appellate Division
P.O. Box 1969, 7 North Street
Pittsfield, MA 01202
(413) 443-5951
jeanne.kempthorne@state.ma.us
BBO# 267410

35

COMMONWEALTH OF MASSACHUSETTS

Plymouth, ss

Superior Court
No. 95578

COMMONWEALTH,
Plaintiff

v.

WILLIAM ALLEN,
Defendant

MOTION TO WITHDRAW AS COUNSEL

I, William M. Leonard, being Court-appointed attorney for the above party, hereby move to withdraw as his attorney in this matter. I have always found Mr. Allen to be a well-mannered, respectful young man. I have nothing personal against him. All of our conversations have been free of any hostility and I hasten to characterize him as a difficult client.

I explained the concepts of felony murder and joint venture to Mr. Allen on numerous occasions. He cannot accept these concepts. Even though the facts of his case, which include a confession, would appear to warrant a verdict of guilty of murder in the first degree on a joint venture felony murder theory, the District Attorney's office has offered to reduce the charge to second degree murder. Mr. Allen does not want to plead out to second degree murder but, given the fact that he confessed to his involvement in the homicide, I do not see that he has any other choice.

If I were to try this case, I would be arguing that the jury should ignore the judge's instructions on felony murder and joint venture and find Mr. Allen not guilty since he did not perform the actual killing, or in essence, jury nullification.

I would have no problem trying this case if there were no offer to plead to second degree murder on the table. I have had many conversations with Mr. Allen in this regard and he refuses to take my advice. As a result, there has been a complete communication breakdown and in the interest of all concerned, I ask to be released as counsel.

William M. Leonard
P.O. Box 474
368 Gannett Road
North Scituate, MA 02060
(617) 545-1700
B.B.O. #294140

36(a)

Peg Newman, M.Ed., BCC
9 Madrid Sq. #6
Brockton, MA 02301

April 1, 2020

To Whom It May Concern,

I am writing to support the request to immediately release William Allen from Old Colony Correctional Center. His medical condition, which others can document, make this a very dangerous time for him to be incarcerated. Will is an extraordinary man – kind, sensitive, hard-working, competent, wise, and friendly with a great sense of humor. The community would be well served to have Will among their citizens.

I am a board-certified chaplain with over 20 years of experience working in corrections. In addition to working with incarcerated men, ten years ago, I began at program for men coming out of prison which I continue to run at St. Cecilia Church in Boston. We run weekly support groups and serve dinner on Monday nights. Will would be very welcome to join this group.

I have known Will for at least seven or eight years. I was his chaplain at Bridgewater State Hospital where he was an inmate worker (not a patient) and I continued in that role when Will transferred to OCCC. I retired in 2019.

As Will's chaplain, I provided spiritual and emotional support and came to know him quite well. He was a leader in our church community and filled several roles. He was an altar server at masses; he co-led a weekly church service for older men on the assisted living unit; he consistently volunteered his time to set up the chapel for various events; and perhaps most significantly, he volunteered his time to work in our Companion Program.

The deputy superintendent, the director of social work and I established the Companion Program. Inmates who became companions, after extensive training, were assigned to work with one specific patient in a role that involved providing daily emotional support as well as practical assistance to men with serious mental illnesses that need a great deal of assistance. Will was so reliable and well liked by patients that he was a much sought-after companion. After changes at the State Hospital prompted changes which led all convicted patients to be moved to OCCC, Will followed these patients, moving there as they moved. At the same time, I began serving as a chaplain there. He continues to serve in the Companion Program which we set up at that institution.

Will was and is well-liked by patients, inmates, institutional staff and correction officers. CO's know he is honest and trustworthy. It is very unusual for an inmate to be respected by so many groups of people. There are not words to describe what a special individual Will is. Please help him to come safely home to his family.

Sincerely,

Chaplain Peg Newman

36(b)

April 1, 2020

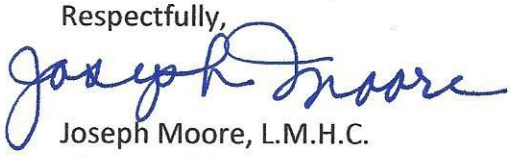
Your honor:

I write in support of the release of William Allen W-63210. I am a licensed mental health counselor and a licensed substance use counselor. I have worked in the field of offender re-entry since 1996; I met William more than twenty years ago and was immediately impressed with his transparency. I worked in the Plymouth County Correctional Center and met him in our education programs. Awaiting trial, he participated in all education programs in the jail and so staff became well acquainted with him as a young man. He continued to write to me after he was sentenced and I felt good about staying in touch with him as his basic goodness and remorse over past events was clearly evident. He also had been a parishioner of an associate of mine, Father Tom Clark S. J. who was then stationed in Boston. Father Tom knew William as a young person as his parish priest and I know from him that William was not involved in trouble as a young man.

But I did not visit William until years later when he was sent to Shirley Medium. I learned at that time that William has both asthma and Lupus which have been illnesses he has cheerfully borne. (We know that Lupus is a progressive disease and it has become more pronounced over the years). William has spent his entire bid trying to better himself by taking courses and being involved in programs for which he receives no good time. He has been a member of the Cadre caring for disabled inmates, II submit that if you survey the correctional staff of any institution where William has been housed you will hear nothing but reports of a very respectful and helpful inmate.

William will live in Brockton if he is released and we have a wide array of services there for re-entering citizens coming from penal institutions. As a social worker in this city I will pledge to hook him up with all of the services available. As for work, there is a sign in half a dozen barber shops in the city at any given time advertising for a barber. He will have no issues with employment. I have also discussed with him donating his mentoring to high risk youth once he becomes stabilized in the community. I know that this mentoring is something that he engages in behind the wall, working with young inmates to refocus their lives away from crime. Lastly, William has never had any substance abuse issues so that is one complication he will not have to deal with. He is an active Catholic and has assisted chaplains throughout his incarceration and we will connect him with a parish community.

In conclusion, I would implore you have some measure of mercy and return a man to the community who has paid for his crime and could be at serious risk if he remains in custody.
Respectfully,



Joseph Moore, L.M.H.C.
45 Central Street
South Easton MA

36(c)

Lynn Catholic Collaborative of St. Mary and Sacred Heart

Reawakening, Growing and celebrating our Catholic faith together – welcoming all

April 13, 2020

Dear Attorney McDonald,

I have been a priest of the Archdiocese of Boston for over fifty-eight years. My last twenty years of active ministry (1992-2011) were spent in two parishes in the city of Brockton. It was in my time in Brockton that I met Mr. William Allen when he was in inmate at Bridgewater State Hospital and later at Old Colony Correctional Center.

I know that Mr. Allen has used his time in prison well. He has been part of every educational and vocational program available to him. He has been, and still is, a mentor and companion to mentally ill patients at both institutions where he served time. About nine years ago, at a personal risk to himself, he saved a female corrections officer who was being attacked by a mentally ill patient.

William is a practicing Catholic Christian. He serves as a Eucharistic Minister and an altar server at Mass in his prison.

In a 2014 prison evaluation, it was determined that Mr. Allen's risk of violence and recidivism was low. In addition, it was concluded that he did not need further training in anger management or in avoiding criminal ideation.

If his sentence were to be commuted and if he was released, he would find his home with his father and his family. He has very strong support from some well-placed members of the Brockton community and others.

As documented elsewhere, Mr. Allen has a number of chronic health issues, for example, asthma, lupus, etc. If he suffers a Covid-19 infection, this would likely be fatal for him. If that virus were to be introduced in any population – given the realities of prison spaces – spread would be impossible to avoid. Evidence of that is appearing in our daily press reports.

Mr. Allen served twenty-six years of a life sentence. His co-defendant, Rolando Perry, who is acknowledged to have stabbed and killed the victim of the crime was granted parole after serving fifteen years. These facts and the fact that Mr. Allen was twenty years of age at the time of the crime raises a question for me.

Collaborative Office – 8 South Common Street
Lynn, Massachusetts 01902
Tel 781-598-4907 Fax 781-599-2088

Criminologists are now telling us that until about the age of twenty-four, the male brain is not fully developed in the areas that control decision-making and judgement. Given all this, where does justice lie in the case of Mr. William Allen?

It would seem to me that in view of the inability of the Department of Correction to protect Mr. Allen's health, commutation of his sentence and his return to the community would be the proper answer.

Respectfully yours,

Francis J Cloherty

(Rev.) Francis J. Cloherty

36(d)

April 12, 2020

To Whom It May Concern:

Thank you for your time in reading this brief letter in support of the release of William Allen. Fifty years ago next month I was appointed by the Superior Court Committee on Personnel to the position of probation officer for Bristol County. Thirty-six years later in 2006 I retired from the Taunton District Court where I served as Chief Probation Officer for twenty-six years. Throughout the course of my career I supervised a myriad of individuals on from and after state prison sentences.

While not privy to William Allen's complete file as an inmate, I am aware of his classification as a low risk individual and am cognizant of his participation in programming, vocational training and volunteer opportunities afforded to him. I am fully mindful of statutory sentencing the trial judge was compelled to adhere to.

Given that, I urge this Honorable Court to further the interests of justice and order the release of Mr. Allen forthwith with any requirements as the Court deems appropriate. I have spent my career as a witness to behavior change and the elements that assist in the furtherance of that process. William Allen's behavior as a resident of the correction system is indicative of his future behavior.

Respectfully I once again urge that you respond in the affirmative to his petition.

Very truly your,

William T. McAndrew
43 Francis Ln
Little Compton, RI 02837
508. 944-1406 cell
bill.mcandrew@cox.net

36(e)

Sandra A. Wixted, LICSW

323 Tappan Street, #2

Brookline, MA 02445

April 10, 2020

To Whom It May Concern:

I write in support of the immediate release of Mr. William Allen. He in the highest risk category of contracting COVID-19 and dying due to a chronic auto immune disease and other severe underlying conditions. Mr. Allen currently resides in the Old Colony Correctional Center. As of several days ago, eight inmates had died from COVID-19, and 24 other inmates and 8 staff are infected at the Center.

I am the former regional director of the Catholic Charities in Brockton where I led a range of services for offenders and prison inmates re-integrating into the community for over ten years. With additional decades of experience in this field, I can confidently state without reservation that Mr. Allen demonstrates all the qualities necessary to succeed in stabilizing outside prison without any threat to the safety of residents.

I have reviewed Mr. Allen's certificates from numerous educational, vocational, and self-development programs, his disciplinary record, his evaluations from the Companion Program where he compassionately assists mentally-ill inmates, and the report from 2011 where he put his own safety at risk to restrain a mentally-Ill patient who was attacking a female corrections officer. His record is truly exemplary.

It's important to know that upon release, Mr. Allen will have a safe and healthy home to live in with his Father. His Father lives in a single family home in Brockton, Mass. A stable permanent home in the community immediately upon release is an essential factor promising Mr. Allen's successful transition. If Mr. Allen becomes or is infected with the virus, there is a basement area of this home where he would be quarantined until no longer infected.

As the retired regional director of Catholic Charities of Brockton and a Licensed Independent Clinical Social Worker, I am very familiar with the support services necessary to assist Mr. Allen upon his release in the community. I pledge to support Mr. Allen's reentry by meeting with him upon his release and helping to connect him with services available to him through the network of services in Brockton and elsewhere. Mr. Allen already has a strong support of community members, faith-involved individuals, family and professionals which I will help strengthen and coordinate as appropriate and necessary.

Thank you for your compassionate consideration of Mr. Allen's health and welfare. He is a person who deserves to live and has the most likely opportunity to do so outside the prison.

Sincerely,

Sandra A. Wixted

Licensed Independent Clinical Social Worker, #104122

36(f)

Apr 13, 2020

Marcia Orcutt
434 Main St
Apt 2
Bridgewater, MA 02324

To Whom It May Concern,

I am writing on behalf of William Allen, in support with others, to request his immediate release from Old Colony Correctional Center due to his medical condition which makes him extremely vulnerable to the coronavirus to be incarcerated.

I worked as a volunteer for two years and was a part time assistant to Chaplain Peg Newman in 2019. With me and with the patients, Will was kind and considerate. He often volunteered with his time or to help assist with a task. He was respected by both patients and staff.

Will was a calm presence in the room during patient activities which speaks to his character.

Based on these experiences with Will, I request you to consider his release to his home at this time.

Thank you.

Sincerely yours,

Marcia Orcutt

Sincerely yours,

Urna Semper

36(g)

17 Nanumett Street

Buzzards Bay, MA 02532

April 9, 2020

To Whom It May Concern:

It is imperative that William Allen be released from prison before he contracts Covid-19. Mr. Allen suffers from both asthma and lupus putting him in a high-risk category for this illness. With prisons being virtual petri dishes for infectious diseases, I am afraid he wouldn't survive if he were to contract Covid.

I have written before in reference to commuting Mr. Allen's sentence. As a former principal of an alternative school, I have personally witnessed many young men and women make poor choices but with support and guidance have gone on to be contributing members of society. Mr. Allen has been a model inmate since his incarceration; he deserves to live.

Please release Mr. Allen and not have him be another Covid-19 prison statistic.

Thank you,

Kathleen Moore

Wareham Public Schools – Principal, retired

36(h)

RICHARD C. DIETER
12403 Denley Rd.
Silver Spring, MD 20906
(301) 943-1402
Rdieter004@gmail.com

April 9, 2020

Supreme Judicial Court
Commonwealth of Massachusetts

Re: Letter in support of Petition for the Release of William Allen

To Whom It May Concern:

I am writing to ask you to consider the compassionate release of the inmate William Allen, currently incarcerated at the Old Colony Correctional Center in Bridgewater, Massachusetts. Mr. Allen has already served 26 years of a life sentence, despite the fact that a culpable co-defendant was released 11 years ago. Mr. Allen has been an exemplary prisoner, and he is now suffering from a number of illnesses that would compromise his chances of survival in the event that he contracted the Covid-19 coronavirus.

In my own work and as an attorney, I have spent many years working with the families of those incarcerated, with those on death row, and with those who have been released from incarceration. One conclusion stands out most strongly: no person should be irrevocably judged by the actions he took as a young person many years ago. People change dramatically, particularly in prison, and are literally no longer the same person as they were at age 20. Mr. Allen still has time to contribute to society and to make amends for wrongs he has committed. Further incarceration runs the risk of endangering his life and cutting off all possibilities of restoration.

Please contact me if I can be of any assistance in your considerations.

Sincerely,

Richard C. Dieter

36(i)

Subject: William Allen
Date: Thursday, April 9, 2020 at 2:45:12 PM Eastern Daylight Time
From: ROBERT LOXLEY
To: Kristine McDonald

To Whom It May Concern:

I am writing to petition for the compassionate release of Willam Allen from incarceration.

While I have never met William and do not know him personally, I feel that it is appropriate for me to express my opinion, since I know several people who have been advocating for William for several years. I respect their judgments concerning William.

Given William's success in achieving the goals that society hopes an incarcerated man will attain, it seems appropriate that he be given the opportunity to contribute those positive qualities to his family, friends and society. His record shows that he is rehabilitated and can make positive, healthy contributions to those who would be part of his life and who would benefit from his life experiences.

Knowing the individuals, both professional and societal, that William has garnered over the years, I feel confident that he will have the support necessary to adjust to his new life. Those who have work with him feel very confident that he has the skills to be a positive contributor to society, and I know that they will continue to support him.

Please consider releasing William. He has done what was asked of him and deserves the chance to resume a normal and productive life.

Respectfully,

Robert R. Loxley
Retired Counselor
Latin American Health Institute and Catholic Charities Brockton

37

Commit #	Name	Institution	Commit Date		ERD
	Able Minds	20150206	Completed Program	20140918	20170407
	Law Library Clerk Training Program	20150206	Completed Program	20140702	20170407
	Cog. Skills- Setting Goals	20130204	Completed Program	20120514	20170407
	Cog. Skills- Using Self-Control	20120203	Completed Program	20120430	20170407
	Father's Group	20120203	Completed Program	20120203	20170407
	Cog. Skills- Asking	20120203	Completed Program	20120203	20170407
	Alternatives to Violence	20120203	Completed Program	20120203	20170407
	Menswork	20120203	Completed Program	20120203	20170407
	Book Discussion I	20120203	Completed Program	20120203	20170407
MA Sex Offender	Not Considered a need area for this offender, no recommendation required				20170407
Post-Secondary/Vocational Services	Computer Skills I	20120206	Completed Program	20150629	20170407
	Serv Safe	20141201	Completed Program	20150203	20170407
	OSHA	20130606	Completed Program	20141216	20170407
	Culinary Arts: Foundations I	20120206	Completed Program	20110103	20170407
	Serv Safe	20120206	Completed Program	20100203	20170407
	Barber Training	20120203	Completed Program	20021030	20170407
RH Tablet Program	Not Considered a need area for this offender, no recommendation required				20170407
Reentry Housing	Not Considered a need area for this offender, no recommendation required				20170407
Secure Adjustment Unit Program	Not Considered a need area for this offender, no recommendation required				20170407
Substance Abuse	TCUD Assessment	20160302	Completed Program	20151218	20170407
	Intro to 12 Step	20120203	Completed Program	20120203	20170407
	Relapse Prevention	20120203	Completed Program	20120203	20170407

This report printed on : 20190225 08:09:25

Inmate Signature ALLEN, WILLIAM J

Date

Staff Signature

Date

38(a)

Certificate of Completion

This award is presented to

William Allen

For his successful completion of the
Winter 2018 session of the

RESTORATIVE JUSTICE READING GROUP

Mr. Allen successfully completed the 8 - week Transformational Prison Project Reading Group at Old Colony Correctional Center. This group includes restorative justice readings, writing assignments, and discussions intended to deepen participants' knowledge of restorative practices.

Gerii Riley, Director of Treatment
Old Colony Correctional Center

Karen Lischinsky, Director
Transformational Prison Project

Elizabeth Wollheim, Facilitator
Transformational Prison Project

Elizabeth Case, Facilitator
Transformational Prison Project

38(b)

Certificate of Completion

Awarded to:

William Allen

For completing the 7 Week

Old Colony Correctional Center

Health Awareness Education Program

AUGUST 2018

HIV Counselor & Educator, Tracy Horton

HIV/HCV Admin. Manager, Claudia Gonzalez

38(c)

CERTIFICATE *of* ACHIEVEMENT

THIS ACKNOWLEDGES THAT

William Allen

HAS SUCCESSFULLY COMPLETED THE

Emotional Awareness with Perfect Attendance

FEBURARY 12,
2019

Diana O'Toole MS

SIGNED, *Signatory Name*, Signatory Title

38(d)

Certificate of Achievement

THIS ACKNOWLEDGES THAT

William Allen

COMPLETED

ADVANCED EMOTIONAL AWARENESS
(BUILDING ON FOUNDATIONS)

Diana O Teale MS

NAME/TITLE OF PRESENTER

MAY 14, 2019

38(e)

Certificate of Completion

This circle keeper's certificate
is awarded to

William Allen

This 25 day of June
In recognition of Leadership in the

Restorative Justice Reading Group

This group includes restorative justice readings, writing assignments and discussions intended to deepen participants' knowledge of restorative practices.

Geralyn Riley, Director of Treatment
Old Colony Correctional Center

Rebecca Schachter, Facilitator
Transformational Prison Project

Karen Lischinsky, Director
Transformational Prison Project

Annie Shah-Solle, Facilitator
Transformational Prison Project

38(f)

Certificate of Achievement

WILLIAM ALLEN

Has Successfully Completed

Communication Skills

PRESENTED BY
DIANA O'TOOLE
MHP

JULY 30, 2019

39

Bridgewater State Hospital
CCRS Recovery Unit at
Old Colony Correctional Center
2 Administration Road
Bridgewater, MA 02324

William Allen
W63210
BSH RU at OCCC

June 21, 2017

Dear Will,

The Companion Program staff are writing to acknowledge your participation in several training sessions that were offered to you to increase your considerable knowledge and expertise as a companion.

We thank you not just for your participation in the training program, but also for your dedication and the important work you have been doing during this time of transition for you and many of the persons served transferred at the BSH Recovery Unit at Old Colony Correctional Center. Companion Program staff as well as staff working on the unit appreciate your hard work.

Sincerely,

Denise McDonough, Deputy Superintendent
Allison Howland, LMHC, PPC
Peggy Newman, BCC, M.Ed.

40

Companion Evaluation Integrative Report

2018 Annual Evaluation

Companion name: William Allen

Person served companions: Jahvon Goodwin, James Rutherford

Other responsibilities: Bingo, haircuts, Art Group, other groups

Program description:

The Bridgewater State Hospital - OCCC Companions Program originated in 2010. Inmate Companions were selected from among the existing Inmate Worker ("Cadre") Program. In 2017, when Correct Care Recovery Solutions began providing services in Bridgewater State Hospital and the new BSH State-Sentenced Units were established within the Old Colony Correctional Center facility, the Companions Program moved to OCCC. With the move, the program has made some adjustments, but the purpose remains the same.

From the program's launch to the present day, the Companions have fulfilled a vital function: helping persons served feel supported, accomplish daily tasks, pursue their goals, and live fulfilling lives during their hospitalization/incarceration. Inmate companions each work with two individual person served companions. The inmate companion engages with the person served, building a trusting and supportive relationship that provides comfort and encouragement and allows the person served to access group programming, develop healthy habits, and pursue goals.

Companion areas of strength:

Staff recognize Mr. Allen's positive leadership among the companions. He has also consistently demonstrated an attunement to persons served with serious mental illnesses and an ability to relate to persons served on a human level. Staff praise Mr. Allen's ability to empathize with persons served and to make them feel that they are not alone. Mr. Allen is known as having energy and charisma, both of which he employs in the service of supporting persons served and his fellow inmate companions. Mr. Allen's humor and compassion have also been recognized by staff.

The persons served for whom Mr. Allen has served as companion have consistently affirmed his sensitivity, care, and trust. One of his companions during this past year wrote that what he likes most about the Companion Program is "the fact that [Mr. Allen] has a lot of Love for me." This person served also reported that Mr. Allen's consistent and reliable presence helped this person served learn that all people need some help.

In his self-evaluation, Mr. Allen reported growing from his participation in the program. Specifically, he cited developing empathy and compassion. He also noted that his experiences as a companion have given rise to a desire to continue to help others throughout his life.

Companion areas of possible growth:

Unit staff have not noted any areas of needed growth for Mr. Allen.

This is a very minor point and should be understood as such: Mr. Allen's strength in caring for persons served would be supplemented by improving his documentation of his efforts in his weekly companion logs.

Summary:

William Allen has successfully completed a year of participation in the Companions Program. His work in this role continues to enrich the lives of his person served companions and to support the work of his fellow inmate companions.

Benjamin Cooley Hall, PsyD
Clinical Supervisor of the Companions Program
Director of Intensive Treatment Planning
CCRS - Bridgewater State Hospital

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The Commonwealth of Massachusetts
Executive Office of Public Safety and Security
Department of Correction
Old Colony Correctional Center
One Administration Road
Bridgewater, Massachusetts 02324
Telephone (508)279-6000
www.mass.gov/doc

TO: William Allen W63210
Attucks III

FR: Gerri Riley, Director of Treatment

RE: Letter of Appreciation

DT: October 10, 2018

Dear Mr. Allen:

I am writing this letter to let you know how much we appreciated your involvement and participation in the Education Awareness Day. You were instrumental in the success of the event which resulted in an increased in enrollment for our school programs. We were pleased to see OCCC come together as a community to help promote program participation in such appositive way.

Thank you for being a positive role model and help lead the way for others.

We very much appreciate all that you do.

Cc: Superintendent
Deputy Superintendent of Reentry
Director of Minimum Unit/Classification
Jenn Mendicino, Head Teacher
File

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COMMONWEALTH OF MASSACHUSETTS

PLYMOUTH, ss.

SUPERIOR COURT
NO. 95578-79

COMMONWEALTH

vs.

WILLIAM ALLEN

MEMORANDUM OF DECISION AND ORDER ON DEFENDANT'S MOTION TO CORRECT ILLEGAL SENTENCE PURSUANT TO MASS. R. CRIM. P. 30(a)

William Allen (Allen) seeks release from prison due to the COVID-19 pandemic, asserting that his continued confinement violates his rights under the Eighth Amendment to the United States Constitution (Eighth Amendment), and Article 26 of the Massachusetts Declaration of Rights (Art. 26). After a non-evidentiary hearing, and consideration of the pleadings, including supplemental pleadings and affidavits filed on behalf of Allen and the Commonwealth, the motion is **DENIED**.

DISCUSSION

The Court incorporates the discussion of the Supreme Judicial Court (SJC) in Committee for Public Counsel Services v. Chief Justice of the Trial Court, 484 Mass. 431 (April 3, 2020) at 433-434 and 436-440, aff'd as modified, No. SJC-12926, 2020 WL 2027846 (Mass. Apr. 28, 2020) (hereinafter CPCS), and Christie v. Commonwealth, 484 Mass. 397 (April 1, 2020) at 398-400, with respect to the serious and widespread threat posed by COVID-19 in general, and in correctional institutions in particular.

In 1997, Allen was convicted of first degree felony murder as a joint venturer and armed robbery while masked and was sentenced to life in prison without parole. The SJC affirmed his conviction and denied subsequent petitions for review pursuant to

G.L. c. 211, § 3 and G.L. c. 278, § 33E, and the Superior Court denied Allen's three subsequent motions for a new trial.[1]

Allen resides at the Old Colony Correctional Center (OCCC) and suffers from chronic conditions including lupus, asthma, hypertension and liver disease. The Center for Disease Control (CDC) recognizes that autoimmune disorders such as lupus increase a person's risk for serious complications should he contract COVID-19, up to and including death. I fully credit the medical evidence from physicians Allen presented which show that his underlying health conditions increase the risk of serious complications or death were he to contract COVID-19. However, none of those physicians are able to quantify Allen's risk, either of contracting COVID-19 or of the risk of death were he to do so.

Although it is difficult to discern the true COVID-19 infection rate at OCCC unless all inmates are tested, as of April 20, 2020, the Special Master appointed by the SJC in CPCS indicated that no inmates and no staff at OCCC had tested positive for COVID-19. In the weekly report for the period ending April 26, 2020, the Special Master indicated that from April 13, 2020 to April 26, 2020, no inmates at OCCC tested positive for COVID-19 and one staff member tested positive.[2]

According to the Commonwealth, to combat the spread of the virus, the Department of Correction (DOC) is employing protocols recommended by state and national public health and inmate advocacy organizations, including but not limited to: making soap and hot water available at no charge to inmates in their cells and hand sanitizer available outside the cells; feeding inmates in their cells on disposable paper

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[1] It is not entirely clear whether there was an additional motion for new trial acted upon by the Superior Court.

[2] I take judicial notice of the Special Master's Weekly filings made in the CPCS case. See https://www.mass.gov/doc/sjc-12926-special-masters-weekly-report-42720/download (last visited April 29, 2020).

products; providing medication to inmates in their cells; spraying showers with cleaner between users and after the last shower of the day; screening staff upon entering facilities; and instructing staff to wear personal protective equipment. Since the hearing on this matter on April 24, 2020, Allen indicates that he has been provided with a mask.

DISCUSSION

A. Motion Pursuant to Mass. R. Crim. P. 30(a)

Allen moves pursuant to Mass. Rule Crim. P. 30(a) (Rule 30(a)). He argues that his sentence of life in prison without parole is illegal because he faces a substantial risk of death if kept confined during the COVID-19 pandemic and the death penalty is unconstitutional in the Commonwealth.

Rule 30(a) provides that "[a]ny person who is imprisoned or whose liberty is restrained pursuant to a criminal conviction may at any time, as of right, file a written motion requesting the trial judge to release him or her or to correct the sentence then being served upon the ground that the confinement or restraint was imposed in violation of the Constitution or laws of the United States or of the Commonwealth of Massachusetts." Rule 30(a) has no time limit and "permits a defendant to seek the correction, at any time, of an illegal sentence." Commonwealth v. Layne, 21 Mass. App. Ct. 17, 19, rev. den., 396 Mass. 1104 (1985). The SJC has defined an illegal sentence as one that "is in excess of the punishment prescribed by the relevant statutory provision or in some way contrary to the applicable statute, or is premised on a major misunderstanding by the sentencing judge as to the legal bounds of his authority." Commonwealth v. Walters, 479 Mass. 277, 280 (2018) (quotation and citation omitted).

The Commonwealth argues that Allen's motion really amounts to an untimely Rule 29 motion. Massachusetts Rule of Criminal Procedure 29 provides that "the trial judge, upon the . . . written motion of the defendant, filed within sixty days after the imposition of a sentence or within sixty days after issuance of a rescript by an appellate court on direct review, may, upon such terms and conditions as the judge shall order,

revise or revoke such sentence if it appears that justice may not have been done." Mass. R. Crim. P. 29(a)(2). The time limits are strictly construed, and the SJC in CPCS held that the courts do not have the power to consider an untimely motion brought pursuant to Rule 29 even in the context of the COVID-19 pandemic. See CPCS, 484 Mass. at 436 ("Where there is no constitutional violation . . . art. 30 of the Massachusetts Declaration of Rights precludes the judiciary from using its authority under Rule 29 to revise and revoke sentences in a manner that would usurp the authority of the executive branch. Removing any limitation on the time in which a motion to revise and revoke a sentence may be brought, however, would do precisely that.").

Even if I construe the motion not as a time barred motion under Rule 29, but as properly brought pursuant to Rule 30(a), however, Allen does not really challenge his sentence as "illegal." A sentence of life without parole was and remains an appropriate sentence for the crimes for which Allen was convicted. Thus, the motion does not really present a challenge to the legality of Allen's sentence. Rather, Allen argues that the conditions of his confinement now present a grave risk of death. Therefore, his motion properly is considered as raising constitutional concerns with the conditions of his confinement.[3]

B. Constitutional Challenge to Continued Confinement

I assume for present purposes that I have the authority to consider the instant motion based on claims that the conditions of Allen's continued confinement violate provisions of the United States Constitution and the Massachusetts Declaration of Rights. See CPCS, 484 Mass. at 453 (declining to consider constitutional claims as not

[3] Because I consider the motion as brought pursuant to the Eight Amendment and Article 26 and not, strictly, pursuant to Rule 29 or 30 of the Rules of Criminal Procedure, I conclude that I may decide the motion notwithstanding that I was not the trial judge.

argued). The issue, then, is whether the conditions of Allen's confinement violation the Eight Amendment and / or Article 26 and, if so, the appropriate remedy.[4]

The touchstone of both the Eighth Amendment and Article 26's proscription against cruel and unusual punishment is proportionality: the punishment for a crime should be graduated and proportionate to both the offender and the offense. Commonwealth v. Perez, 477 Mass. 677, 683 (2017). Both provisions also prohibit inhumane conditions of confinement. "To succeed on an Eighth Amendment claim, [an inmate] must demonstrate that (1) a prison's conditions of confinement present 'a substantial risk of serious harm'; and (2) prison officials acted with 'deliberate indifference' to inmate health or safety." Torres v. Commissioner of Correction, 427 Mass. 611, 613–614, cert. den., 525 U.S. 1017 (1998). See also Butler v. Turco, 93 Mass. App. Ct. at 87. Whether prison conditions are sufficiently harmful to establish an Eighth Amendment violation or violation of Article 26 is a purely legal determination for the court to make. Torres v. Commissioner of Corr., 427 Mass. at 614; Bryant v. Silva, 2019 WL 2359545 at *1 (Mass. App. Ct. Rule 1:28) (summary judgment context). To prove a violation, an inmate must meet a demanding standard. Butler v. Turco, 93 Mass. App. Ct. at 88.

Allen argues that the spread of COVID-19 and related deaths satisfies the first prong of the Eighth Amendment / Article 26 analysis and that the DOC's inadequate safeguards for his and other prisoners' health and safety satisfy the second. After review of all of the materials before me, I conclude that Allen has not established that his continued confinement would violate the Eighth Amendment or Article 26.

First, Allen has not demonstrated that his continued confinement presents a substantial risk of harm. As noted, the DOC has taken steps to slow the spread of

[4] The rights guaranteed under Article 26 may be broader than those guaranteed under the Eighth Amendment. Commonwealth v. Okoro, 471 Mass. 51, 61 (2015).

COVID-19 which, while not perfect, conform generally with guidance from state and federal departments of public health. The DOC also employs protocols drawn from national and state public health and inmate advocacy organizations to combat the spread of the virus. Those measures are designed to and, according to health experts, should assist in preventing or curtailing the spread of COVID-19. It is not substantially likely, then, that Allen will contract the virus.

Allen is correct that he need not show that he currently suffers adverse medical effects from COVID-19, and may establish a Constitutional violation if he can show "a substantial risk that [he] will suffer serious harm as a result of the conditions of his confinement." Good v. Comm'r of Corrections, 417 Mass. 329, 336 (1994). But, while Allen may have shown an increased risk of serious harm were he to become infected with COVID-19, that is not the same as establishing that he has a substantial risk of suffering serious harm *as a result of the conditions of his confinement*. Put elsewise, although the risk of spread of COVID-19 may be higher in carceral settings, as it is in nursing homes and assisted living facilities, Allen has not established that it is so high or so substantial that he must be released from prison notwithstanding his sentence of life in prison without parole. That is particularly true where no inmate at OCCC has, to date, tested positive for COVID-19.[5]

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[5] Allen's argument that his sentence of life in prison without parole is now "illegal" because the COVID-19 pandemic has converted that sentence to one of death must fail. Although the Court recognizes the fear, worry, and concern facing all inmates, Allen has not established that he is substantially likely to contract COVID-19 if he remains incarcerated. In addition, although the physician affidavits establish that he has a greater risk of death from COVID-19 than a person without his co-morbidities, he has not demonstrated that he is substantially likely to die from the virus. See Commonwealth v. Robinson, 444 Mass. 102, 106 (2005); Commonwealth v. Ryan, 93 Mass. App. Ct. 486, 489 (2018) ("substantial" means considerable in amount or significantly great).

Further, Allen's argument would undercut CPCS entirely because, if accepted, all prisoners with pre-existing health conditions that exacerbate their risks from COVID-19 would be entitled to release. And the SJC recently reaffirmed that it is for the executive branch to "commute sentences, issue furloughs, and allow early parole" for convicted prisoners serving valid legal sentences. Comm. for Pub. Counsel Servs. v. Chief Justice of Trial Court, No. SJC-12926, 2020 WL 2027846, at *1 (Mass. Apr. 28, 2020) (CPCS II). At oral argument, Allen's counsel argued that such a conclusion is not warranted, because each case would have to be considered and decided individually. But, other than his co-morbidities, the evidence Allen has presented is not individual to him – it is general evidence about the risks of COVID-19 to people with pre-existing conditions, general evidence about the need for social distancing and increased hygiene to stop the spread of COVID-19, and evidence about the conditions of confinement at OCCC which apply equally to all prisoners.

Nor has Allen established that the DOC is deliberately indifferent to his health and safety. Deliberate indifference is actual knowledge of impending harm, easily preventable, coupled with a failure to take the steps that would easily have prevented the harm. Baptiste v. Executive Office of Health and Human Serv., 97 Mass. App. Ct. 110, 116 (2020). Thus, to be found to have violated the Eighth Amendment and Article 26 for denying an inmate humane conditions of confinement, prison officials must know and disregard an excessive risk to inmate health or safety by failing to take reasonable measures to abate it. Torres v. Commissioner of Corr., 427 Mass. at 616; Abdullah v. Secretary of Pub. Safety, 42 Mass. App. Ct. 387, 394, rev. den., 425 Mass. 1101 (1997). The DOC has not disregarded an excessive risk and has taken reasonable steps to alleviate the spread of COVID-19. Although those steps are imperfect,

perfection is not required to avoid a constitutional violation. Accordingly, Allen has not established that the DOC is violating his Eighth Amendment and Article 26 rights.[6]

Further, I agree with the Commonwealth that, with respect to a prisoner convicted of felony murder and sentenced to life in prison without parole, release is not the appropriate remedy for the alleged lack of social distancing and sanitation of which Allen complains. See, e.g., Glaus v. Anderson, 408 F.3d 382, 387 (7th Cir. 2005) ("If an inmate established that his medical treatment amounts to cruel and unusual punishment, the appropriate remedy would be to call for proper treatment, or to award him damages; release from custody is not an option."). To the contrary, the proper remedy would be an order to the DOC to implement the appropriate hygiene protocols currently lacking at OCCC.

As discussed at oral argument, a class action lawsuit is pending before the SJC seeking injunctive relief on precisely the issue of the steps being taken in prisons and jails to protect inmates. See Stephen Foster & Others v. Carol Mici, Commissioner of the Massachusetts Department of Correction & others, SJC-12935. The Superior Court (Ullman, J.), pursuant to an order of designation, has begun taking evidence in connection with a pending emergency motion for injunctive relief in that case. The relief sought by the plaintiffs in that case includes, among other things, an order certifying a class of prisoners with underlying health conditions such as Allen, and enjoining the DOC from requiring any such prisoner to eat, sleep or recreate within six feet of another prisoner. Thus, the SJC has before it a class action case and a pending emergency motion for preliminary relief, the resolution of which would moot this case. Judicial economy requires that the SJC decide the issues which affect all prisoners in DOC custody who are similarly situated to Allen.

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[6] For the same reasons, I conclude that continued confinement does not violate Allen's rights to substantive Due Process. For the reasons stated above, continued confinement does not "shock the conscience." Rochin v. California, 342 U.S. 165, 172 (1952).

Also, where I have fully credited the medical records and affidavits of physicians submitted by Allen, an evidentiary hearing is not necessary. See, e.g., Commonwealth v. Matthews, 406 Mass. 380, 396 (1990) (whether to hold an evidentiary hearing on a motion for post-conviction relief under Rule 30(a) lies in the discretion of the motion judge).

Finally, I have reviewed the numerous letters submitted on behalf of Allen advocating for compassionate release and describing both the circumstances that led to his conviction, his conduct while in prison, and the meaningful connections he has established with others. Giving those letters full credit, it appears that Allen may be a very good candidate for commutation of his sentence. But that power is not mine. It is exclusively the power of the executive branch and the SJC has already urged the executive branch to "contemplate how it best might exercise those constitutional powers to mitigate the spread of COVID-19 in the Commonwealth's prison system." CPCS II, at *1.

ORDER

WHEREFORE, William Allen's Motion to Correct Illegal Sentence is **DENIED**.

May 1, 2020

/s/ Debra A. Squires-Lee
Debra A. Squires-Lee
Justice of the Superior Court