

Young Killers: Incapacitate or Rehabilitate?

An Examination of Juvenile Life Without Parole in the United States

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Nancy Bishop Langert was five months pregnant when she and her husband Richard decided to spend an evening out to celebrate their soon-to-be new child. The date was April 7th, 1990. When they returned to their suburban Chicago home at the end of the night, they found their neighbor, clad entirely in black, sitting in their home waiting for them. He marched the couple down to the basement and after producing a .357 magnum handgun, shot Richard at point-blank range, exploding his head and disfiguring his body to the point that family members could not later identify him in the city morgue. After killing Richard, he walked over to Nancy and put the pistol against her pregnant abdomen while she begged for her child's life. He then pulled the trigger, obliterating the fetus. To complete his deadly work, he shot Nancy again, but she did not die immediately. In fact, she tried to summon help by knocking bookshelves down as she lay there, paralyzed. As her final living act, Nancy crawled over to her husband's body and using his blood, drew a heart and a "u" on the wall. Then, she died.¹

The neighbor was sixteen years old.

Children who cannot legally see an R-rated movie, drive a car or vote in an election now make headlines as perpetrators of some of our nation's most gruesome crimes. The Langerts' killer, David Biro, would most likely have been sentenced to death for mass murder if he was 18. However, Illinois along with tens of other states, had outlawed the execution of juveniles at the time of the murder. Fifteen years later, the United States Supreme Court ruled in the *Roper v. Simmons* decision that administering capital punishment to minors constituted cruel and unusual punishment. As such, the harshest punishment available to American juveniles fell to life without parole (LWOP). When a prisoner receives an LWOP sentence, he or she will remain in prison until death without the chance of ever going before a parole board. Proponents of juvenile

¹ Bishop-Jenkins Interview. 3 March 2008. 3pm, Chicago, IL.

LWOP argue from a societal and victim welfare perspective, contending that killers such as David Biro deserve an adult sentence for a crime of such appalling magnitude. Opponents of JLWOP tend to focus on the individual juvenile offender, who may be more vulnerable or susceptible to criminal tendencies because of their young age. On either side of the issue, juvenile LWOP raises legal, ethical, and public policy questions. This paper examines juvenile LWOP from a multitude of perspectives, argues that its application in the US is overbroad and attempts to articulate a workable solution to this important debate that may end up on the Supreme Court docket within the next generation.

Background: Juvenile LWOP in the United States

As of 2005, 42 states and the federal government reserve the right to incarcerate minors for the rest of their lives. In the United States, 2,225 minors are currently serving this sentence.² In 27 of the 42, an LWOP sentence is mandatory for those (juvenile or adult) found guilty of certain enumerated crimes.³ Israel is the only other country in the world that sentences minors to life without parole, but as of this paper, it only has seven youths in custody serving this sentence.⁴ Before the turn of the 20th century, children could be tried as adults in US criminal courts and routinely received adult sentences, such as death. However, in 1899, Illinois established the US' first juvenile court, and many other states immediately followed suit, building separate juvenile facilities as an alternative to committing them to state prison.⁵ This shift in the philosophy of punishment reflects a liberalizing societal attitude towards juveniles, as well as the belief that youths could be best dealt with in separate facilities. Juveniles stand a better chance of rehabilitation in reform houses, where they could take advantage of self-

² "The Rest of Their Lives."

< <http://www.hrw.org/reports/2005/us1005/TheRestofTheirLives.pdf>>.

³ "The Rest of Their Lives."

⁴ Kari Lydersen. "Illinois Weighs Second Chances."

⁵ "The Rest of Their Lives."

improvement programs while not surrounded by hardened adult criminals. This movement continued well into the 20th century, resulting in such Congressional legislation as the Juvenile Justice and Delinquency Prevention Act of 1974, which created a multitude of national organizations aimed at rehabilitating youth offenders—The Office of Juvenile Justice and Delinquency Prevention, The Runaway Youth Program, and The National Institute for Juvenile Justice and Delinquency Prevention.⁶ The Act also made additional funding available to states that removed juvenile convicts from the same detention facilities that housed adult prisoners, expressing the idea that youth offenders could be steered back into the bounds of civil society before they could be further corrupted by outside forces.

Before the 1980's, the imposition of LWOP upon a juvenile convict was extremely rare.⁷ However, the rehabilitation movement began to wane in the eighties as citizens began to demand tougher sentencing in response to a national crime wave. Violent juvenile crime rose with the national figures; from 1987 to 1994, the murder and aggravated assault rate perpetrated by a minor doubled.⁸ Consequently, on both a state and national level, not only did penalties increase, but the structure of juvenile justice began to procedurally resemble the adult criminal system. For example, Congress amended the Juvenile Justice and Delinquency Prevention Act to allow juveniles to be tried as legal adults when facing charges of aggravated violent crimes or weapons violations.⁹ During this historical period, youth could be transferred out of juvenile court, and once convicted in state court, receive any sentence up to and including the death penalty. The toughening of the public's views on crime resulted in three major trends in juvenile systems around the country: 1) the erosion of juvenile jurisdiction, 2) the discretion to file

⁶ "History of the Juvenile Justice System."

http://www.juvenilejusticefyi.com/history_of_juvenile_justice.html.

⁷ "The Rest of Their Lives."

⁸ "History of the Juvenile Justice System."

⁹ "History of the Juvenile Justice System."

charges in adult court, and 3) the lowering of the minimum age of adult criminal liability.¹⁰ The march toward punitive sentencing reform had begun.

Public Policy Hurdles to Eroding Juvenile LWOP

Alison Parker serves as the deputy director in the United States program for Human Rights Watch (HRW) in San Francisco. Human Rights Watch is an organization that works to document human rights abuses of those in the US who are in custody of the government. While she has a law degree, Parker explains that, “we don’t go to court, but we do advocate against violations, try to influence policymakers and file amicus briefs.”¹¹ HRW produced an in-depth report on juvenile LWOP in 2005 that drew on extensive historical research, sociological and scientific data as well as interviews with 50 youths spending the rest of their lives in state confinement. The organization made the report available to lawmakers at the local, state and federal levels in the hopes of loosening juvenile sentencing laws. When asked to summarize the argument for juvenile LWOP that her organization must confront, Parker posits that, “the argument basically boils down to the idea that if these are adult crimes, we should sentence juveniles to life.”¹² However, juvenile LWOP violates international law, explains Parker, because according to the UN’s Convention on the Rights of the Child, everyone below the age of 18 at the time of the crime has the right to go before a parole board. The United States, along with Somalia, is the only non-signatory to the treaty. Setting aside the international law argument, juvenile LWOP “sends the wrong message to child prisoners, because it is saying that society no longer deems you to be fit.” Furthermore, “it raises questions about racial justice, because of the severe disparities between racial groups.”¹³ In terms of statistics, black children are ten times more likely to receive LWOP than white children, with 6.6% of black prisoners serving the sentence as

¹⁰ “The Rest of Their Lives.”

¹¹ Parker Interview. 3 Mar 2008. 4pm, San Francisco, CA.

¹² Parker Interview.

¹³ Parker Interview.

opposed to .6% of whites.¹⁴ Lastly, it is also more costly to lock up juvenile offenders for the rest of their lives, because each offender will most likely live for many decades inside prison walls. Overall, Parker contends that JLWOP is out of touch with world norms, racist and costly.

HRW also puts pressure on another controversial facet of the issue—juvenile felony murder. The felony murder rule states that anyone who intends to commit a felony is guilty of murder if a killing occurs during the commission of that felony. For example, if a group conspires to rob someone at gunpoint, and the victim dies during the robbery, everyone ranging from the triggerman to the getaway driver will be charged with first-degree murder.

Approximately 27% of the youths serving LWOP in the United States received a felony-murder conviction.¹⁵ A name that one often hears when following this debate is that of Marshan Allen. As a 15 year-old, Allen stole a vehicle and waited outside while his two adult companions attempted to enter a residence to retrieve drugs and money supposedly stolen by the occupant. The men killed two individuals inside the house and Allen subsequently ran away. After he was arrested, he was charged with felony-murder and sentenced to LWOP.¹⁶ Allen’s conviction continues to spark heated debate for two reasons: 1) he did not participate in the murder, nor handle weapons or drugs, and 2) his crime mandatory triggered his LWOP sentence, tying the hands of the trial court judge, who reportedly disagreed with the punishment.¹⁷

Those are HRW’s arguments and evidence against juvenile LWOP. However, affecting the implementation of their recommendations represents a formidable obstacle. The resistance to change, explains Parker, is partly a result of our democratic political system: “I have

¹⁴ David Berger. “Ask Amnesty: Life without Parole for Child Offenders in the United States.”

<<http://www.amnestyusa.org/askamnesty/live/display.php?topic=49>>

¹⁵ Berger. “Life Without Parole.”

¹⁶ “From the Inside: Marshan Allen.”

<<http://www.ilcer.org/marshanallen.html>>.

¹⁷ “From the Inside: Marshan Allen.”

policymakers who come into my office and say ‘I see what you’re saying, but I don’t want to be seen as soft on crime’ ”.¹⁸ Many politicians will even try to time their pieces of legislation to not coincide with election season, which shows how powerful the tough-on-crime electorate is. Nevertheless, HRW recently helped repeal the JLWOP statute in Colorado and is now focusing on introducing legislation in California, Michigan and Nebraska, which boast large numbers of youth incarcerated for life. So is HRW’s strategy solely focused on attacking LWOP through the various state legislatures? Not entirely, says Parker. In *Roper v. Simmons*, the Supreme Court noted that 18 states barred executing juveniles, while 12 others had repealed their capital punishment statutes altogether.¹⁹ *Roper* also pointed out that in the past ten years, only three states have executed juveniles. As such, juvenile capital punishment occurs infrequently and in a minority of jurisdictions. Similarly, it appears that HRW hopes to legislatively roll back this punishment and then aim a killing blow using the judicial calculus of *Roper*.

LWOP: Unfair Punishment for Offender

Larry Marshall currently works as a Professor and Assistant Dean of clinical education at Stanford Law School, which is his latest position in a distinguished career as a criminal justice reform advocate. While much of his work has focused on the death penalty and California’s three-strikes law, Marshall recognizes juvenile LWOP as a leading issue in the American criminal justice system. “Off the cuff,” Marshall begins, “you need to dissect the question of what are the legitimate purposes of punishment. I think you will find that you can satisfy purposes with less onerous punishments.”²⁰ Assuming that the societal purposes of punishment represent four categories—deterrence, incapacitation, rehabilitation and retribution—Marshall argues that LWOP does not hold up as either an effective or just sentencing consequence. “From

¹⁸ Parker Interview.

¹⁹ *Roper v. Simmons* 15.

²⁰ Marshall Interview. 2 Feb. 2008. 2:00pm, Stanford, CA.

a deterrence standpoint, a juvenile does not make a distinction between 20-30 years or life,” says Marshall. “20-30 years feels exactly like life to a juvenile and if he or she is not deterred by 20-30 years, then they won’t be by LWOP.”²¹ Even though the *Roper* decision applies to capital cases, Justice Kennedy notes that capital punishment has not been proven to deter juveniles because of their lack of foresight as well as ability to perform cost-benefit analyses.²² If the same deterrent effect, whatever that is, can be achieved with 20-30 years, then why impose the longer sentence? In terms of retribution, Marshall argues, we as a society do not hold juveniles to the same degree of criminally responsible as adults due to their age and lack of development. As such, it is not just to impose the second-most severe punishment in the US. Moving on to incapacitation and rehabilitation, Marshall contends that it is “implausible to tell 16-17 year-olds that you’re incorrigible.”²³ When asked why we sometimes certify minors to make adult decisions but continue to have a problem with holding them fully responsible for committing adult crimes, Marshall replies that the eighteen year cutoff for adulthood is a bright-line distinction because we cannot trust science to certify when someone has reached the status of “adult.” Consequently, it does not make sense to argue that minors should be treated as adults because they exhibit adult-like tendencies or commit heinous crimes. In terms of retribution, there is a strong societal desire to punish juvenile perpetrators of aggravated homicides, but there are many mitigating factors that lessen the culpability of the juvenile. Many juvenile offenders have suffered from horrible abuse, as well as poor parenting. Juveniles are less capable of dealing with abuse in a constructive manner and are more likely to act violent towards others. Society, Marshall points out, has not helped them, but is quick to condemn them. Because the philosophical perspectives of punishment are not satisfied by JLWOP, the only argument that

²¹ Marshall Interview.

²² *Roper v. Simmons* 17

²³ Marshall Interview.

carries weight according to Marshall is from the perspective of victims' rights. However, Marshall did not elaborate on this point.

Psychologist John Krumboltz agrees that child abuse strongly correlates with violent behavior in a youth's adolescent years. Krumboltz has been a psychologist for fifty-three years and now holds professorships at both Stanford's School of Education and psychology department. In addition to serving as a high school counselor, the majority of Krumboltz's work today focuses on adolescent development and counseling. Children in their young age, says Krumboltz, are especially vulnerable because of their limited experience and incapacity to question: "The issue that has not been dealt with is the following—most of our studies have been on kids after they've committed crimes, but what were their childhoods like?"²⁴ Krumboltz cites a study by two Connecticut psychologists that inquired into how juvenile offenders had been treated as children: "every single one had been physically punished (beaten, whipped, burned, wrapped in barb wire, etc). And the more brutal the punishment, the more brutal the later crime. Abuse at an early age condones violence as a method to solve disputes. These discipline methods cause the crimes that we're trying to prevent."²⁵ Professor Marshall agrees, pointing out that these individuals suffered from environmental factors: "it seems strange to me that now we're willing to say it's a product of you. We do it as an on/off switch," implying that we blame juveniles for the full weight of their actions while failing to examine the background of those actions.²⁶ Overall, Professor Marshall argues that JLWOP does not serve the purposes of punishment when applied to the juvenile offender.

LWOP: Victim-Centered Justice

²⁴ Krumboltz Interview. 28 Feb. 2008. 10am, Stanford, CA.

²⁵ Krumboltz Interview.

²⁶ Marshall Interview.

Jennifer Bishop-Jenkins is a remarkable woman with a long resume of human-rights credentials. She served on the board of the Illinois Coalition Against the Death Penalty, which helped affect Governor George Ryan's 2001 statewide moratorium and currently holds the position of field director for the Illinois and Minnesota offices of the Brady Campaign to Prevent Gun Violence. In her own words: "I'm a human rights advocate. I started a chapter of Amnesty International in high school. I believe in forgiveness; I've done victim remediation. I was a leading advocate of the moratorium on the death penalty in Illinois. I support crime prevention and have worked successfully to prevent juvenile crime. I believe in rehabilitation. I have very good credentials for human rights."²⁷

She is also the sister of Nancy Langert-Jenkins, who died in the 1990 shooting at the hands of 16 year-old David Biro. Few people have undergone an experience as traumatic as Bishop's, but the haunting memory continues to drive her work today: "Just because I'm against the death penalty doesn't mean that I'm against juvenile life without parole for murderers and dangerous killers."²⁸ Bishop argues for LWOP on two grounds: 1) it is fairer to the victim's family, and 2) LWOP is the only suitable punishment for uncorrectable juveniles. Firstly, there are many ways to calibrate human rights and the right of the offender to be free from cruel and unusual punishment represents only one way to argue the issue. Another way, posited by Bishop, is that the human rights of the victim and victim's family should be included in the equation. Any murder is devastating for the victim's family members. However, this slaying was particularly tortuous to Bishop and her family. There were two victims plus the unborn child. Perhaps most chilling of all: Biro and his parents attended the Langert's funeral, all the time above suspicion. Furthermore, these murders were unsolved until six months later, when Biro was caught after bragging about shooting Richard and Nancy to a school friend. In fact, Bishop

²⁷ Bishop-Jenkins Interview.

²⁸ Bishop-Jenkins Interview.

points out, he had also bragged about a prospective crime “the only way he was caught was when he talked about killing 20 people in a bank caper that he was planning.”²⁹ After Cook County detectives arrested Biro, he was sentenced to LWOP, which began the healing process for Bishop and her family:

“In 18 months, we went through a trial, one appeal and there was tremendous catharsis. We haven’t had to think about the killer. I now work to prevent gun violence and I do it because of what Nancy did. I do it because of love. I’ve publicly forgiven the killer. But the toll on my family has been staggering. I have a 78-year old mother who should not have to spend her declining years worrying that this guy will get out.”³⁰

If Biro hypothetically came up for parole, Bishop and her family would not only have to petition the parole board and appeal to the media for his continued incarceration, but this whole process would reopen their psychological scars.

While the crime occurred 18 years ago, the fact that it still weighs heavily on Bishop permeates the interview. Her status as a mother, a sister and a daughter have all impacted her in profound ways relating to the crime: “I’ve given birth, held a child in my arms and there’s a bond so that you’ll know you’ll die if anything happened to them.”³¹ On the verge of tears, Bishop recounted the crime in graphic detail. She then confided that her sister’s last action, writing “love you” in blood on the wall motivates her to get up every day and pursue her work. In other words, Bishop argues that after perpetrating a horrendous crime, it is more equitable for the killer to bear the costs of lifelong incarceration than for the family to pay in terms of visceral fear. This fear cuts against theoretical discussions of the ideals of justice and how to infuse them into the criminal justice system. As such, no one will ever be able to convince Bishop that Biro should one day go free, even as an eighty year-old man. Few people are as tuned into the discussion of equity in the administration of criminal punishment than Jennifer Bishop-Jenkins.

²⁹ Bishop-Jenkins Interview.

³⁰ Bishop-Jenkins Interview.

³¹ Bishop-Jenkins Interview.

When a local politician offered to campaign for lowering the minimum age of Illinois' death penalty after the teenage Biro was caught, Bishop stated that she would publicly oppose him. She has worked in numerous youth crime prevention programs. She also supports liberal privileges for Biro while in prison in order to make his stay more comfortable.³² Yet despite her advocacy work for criminals and compassion for the man who devastated her life, Bishop acknowledges that she cannot compromise on this issue because of the cost to her and her family: "there are times when ideals we want in the world are just not based in reality." During the interview, Jenkins momentarily left the telephone to answer an urgent call. When she returned, she announced thankfully that it was a call announcing that a Illinois Coalition for the Fair Sentencing of Children-sponsored bill to reevaluate all 103 cases of JLWOP in Illinois had failed. Such an incident speaks to her devotion to this cause.

Moreover, Bishop states that uncorrectable individuals, no matter what age, pose too much of a risk to society to ever go free: "[They are] too dangerous to walk among us." And she is most likely right when referring to David Biro. Eight months before the murders, Biro was adjudicated as a dangerous sociopath and confined to a mental health facility, from which he was released two weeks before his crime.³³ Although the court did not find him mentally ill, Bishop holds that he clearly poses a danger to others: "Sociopaths are not treatable. They just have a piece missing out of them where most people have a conscience."³⁴ The premeditated murder plan, the brutal method of killing his victims and the glee with which he later recounted the homicides confirms the destructive magnitude of his mental disorder. So why should society ever let Biro roam its streets again?

Are Juveniles Uncorrectable?

³² Bishop-Jenkins Interview.

³³ "Treatment of Mental Health Issues Could Reduce Illinois Death Penalty Cases."
<<http://www.icadp.org/page299.html>>.

³⁴ Bishop-Jenkins Interview.

Once can raise several potential objections to Bishop's advocacy for permanent incapacitation of dangerous individuals. When asked how the court would determine whether or not a sixteen year-old had no redeeming potential, Bishop replied that she has "faith in the system to determine this" using the discovery methods of the court. The measure, according to Bishop, should be whether or not the individual is "likely to qualify under standards of parole."³⁵ However, psychologists acknowledge that there is no definite litmus test to measure capacity to be corrected. When asked how a court should try to measure this, Professor Krumboltz acknowledged that the psychological community does not know enough to make a definitive judgment: "they may or may not be set in their ways. They may or many not have rehabilitative potential. We just do not know."³⁶ Furthermore, Krumboltz explains that there is no way to psychologically categorize all children, because the development of each varies dramatically. As such, each child needs to be evaluated on case by case basis. Also, Bishop argues for using the fact-finding mechanisms of the criminal justice system to try to determine rehabilitative potential. However, 28 states feature mandatory sentencing laws which punish a minor with LWOP upon conviction of an enumerated offense. That is not individually tailored justice. All in all, while the American justice system makes use of psychology during a criminal trial, experts admit that it is not a perfect science. So are juveniles uncorrectable? We just cannot say for sure whether a juvenile can or cannot be rehabilitated. It seems ridiculous to tell an 8 year-old criminal that he will never be fit to reenter society again. Except for the death penalty, LWOP holds the title of harshest punishment that US courts may impose. If a supporter of LWOP bases his or her arguments on incapacity for rehabilitation, there is not much psychological evidence to support this conclusion.

³⁵ Bishop-Jenkins Interview.

³⁶ Krumboltz Interview.

Neuroscience has also weighed in on the debate, suggesting that the criminal culpability of juveniles is less because of several factors. Magnetic Resonance Imaging (MRI) scans of children's brains have found that the prefrontal cortex, which is responsible for impulse control, rationality and long-term planning, is not fully developed until approximately age 20 or 21.³⁷ As such, teenagers run the risk of acting impulsively and irrationally, which sometimes yield deadly results. While the consequences are as severe as if an adult pulled the trigger, the teenager was less able to control his or herself, lessening the shooter's culpability. While one may object that neural scans of the brain are relatively new and do not conclusively link actions to brain matter, the US Supreme Court did receive a brief on this information while hearing the *Roper* case.

Overbroad Application of JLWOP

Even if Bishop concedes that the rehabilitative potential of youth cannot be ascertained to the degree of accuracy necessary to impose LWOP, the debate still rages between a family's right to live without fear and the offender's right to go before a parole board and demonstrate rehabilitation. In fact, Bishop read Human Right's Watch's 2005 report, used in this study and co-authored by Alison Parker, and criticized it vehemently for not including sufficient information on the impact of crime on victims' families. They sustained her complaint, and are releasing another study in the coming year that profiles victims' families and voices their opinions.³⁸ Before attempting to come to a resolution on the issue and address Bishop's concerns, it is important to consider the concerns of those interviewed in the hopes of paring down the issue of JLWOP. Alison Parker explained how felony murder places first-degree murder liability on anyone involved in a crime. The philosophy behind felony murder gestures towards positive goals- it may deter groups from planning crimes where it is likely that a victim will get hurt or

³⁷ "Teen Brains on Trial."
<<http://www.sciencenews.org/articles/20040508/bob9.asp>>.

³⁸ Bishop-Jenkins Interview.

individuals may reconsider their upcoming participation if they know they will face a capital murder charge. However, as the Supreme Court confirmed in *Roper*, juveniles are more susceptible to peer pressure. According to Human Rights Watch, the grand majority of felony murder convictions received by youth involved crimes perpetrated by adults (HRW).

Furthermore, ignorance of the killing, both before and during the actual commission does not preclude felony murder charges. As such, youth such as Marshan Allen may end up serving LWOP. If juvenile LWOP is automatically triggered by conviction of first-degree murder, then the judge's hands are tied.

When asked when she would impose LWOP upon juveniles if the decision were up to her, Bishop answered that she would not impose it for routine killings and she would not push felony murder LWOP. In response to questions about Marshan Allen and juveniles like him, Bishop exclaims, "give him clemency, but don't repeal juvenile life without parole! That's what we have clemency for."³⁹ The problem is that clemency can fall victim to the political system, especially when governors do not want to be seen as weak by a tough-on-crime electorate, such as the one referred to by Parker. At any rate, clemency is never guaranteed and rarely granted. In addition, while the public may think that prosecutors reserve JLWOP for repeat child felons who have demonstrated an inability to conform to normal behavior, 59% are serving for their first criminal offense.⁴⁰ On a cautionary note, the 59% statistic does not specify what types of offenses those first-time felons committed. David Biro, for example, had a clean criminal record.

Offender v. Victim: Whose Rights Prevail?

Even if we exclude felony murder offenders, that still leaves approximately 1,625 juveniles serving LWOP in the United States. Applying child psychology, the *Roper* decision and neuroscience weakens pro-LWOP arguments from a deterrence, incapacitation and rehabilitation

³⁹ Bishop-Jenkins Interview.

⁴⁰ David Berger. "Life Without Parole."

standpoint. From the perspective of retribution, this paper now turns to Bishop's argument that a victim's family's rights to be free from visceral fear deserve more weight than the perpetrator's right to go before a parole board. To be sure, Bishop's traumatic experience and its legacy deserve full empathy and respect. However, the debate does center on juveniles, who are less culpable, more vulnerable and require that their specific situations be taken into account when evaluating their guilt. As such, the victim's family's wishes do carry merit, but the fact that the killer is a juvenile may not matter to them because of their emotional attachment to the crime. The original judicial intent of juvenile proceedings is to take the defendant's special background into account with the purposes of punishing him effectively, but also placing an emphasis on rehabilitation. To be sure, David Biro presents a tough case because of his abnormal criminal characteristics. He was raised in a wealthy Chicago suburb by a stable family that did not abuse him. Furthermore, he is a sociopath. However, the grand majority of the 2000+ juveniles in American prisons are not. They also do not come from as privileged backgrounds that traditionally do not frequently give rise to criminals.

Secondly, a victim-centered outlook on criminal justice runs the risk of arbitrariness. After all, Bishop declined to support a political bid to execute Biro. What if another family member supported it? By the same token, if a family were to go before the judge and say that their slain family member would have preferred that the perpetrator receive a chance to go before a parole board, must the judge grant parole? Should he? And if one family is more articulate, organized or politically-connected than another, then their voices will have more influence. In addition, there are many other victims of heinous crimes whose assailants do not receive a permanently incapacitating sentence, such as rape and sexual battery survivors. Granted, that person is still alive and the family members have not lost one of their kin, but the survivor will never be whole again and must one day reckon with her attacker's freedom. In addition, Bishop

states that she only wants to reserve LWOP for heinous crimes, and not “routine murders.” So, if a juvenile receives a 2nd degree murder conviction, why does that family member have to go through the nightmare of parole hearings? In routine killings and heinous killings, family members have equally lost loved ones.

Lastly, one must address the question of balancing the respective wishes of all the parties involved: would abolishing JLWOP 1) protect public safety, 2) address the convict’s interest in attempting to secure parole and 3) unduly burden the family members of the victims? In terms of protecting public safety, nobody is advocating that juveniles not serve time for crimes they have committed. Murderers would still serve decades in prison before receiving a chance to argue his case before a parole board. With the possibility of parole, the juvenile offender would get the chance to demonstrate healthy and productive societal behavior if he is able. Even then, no one guarantees him freedom. Turning to the victims’ families, they would still receive the benefits of a quick trial and one appeal that Bishop cited as being crucial to beginning the healing process. Also, a long confinement in state prison means that Bishop and other families do not have to worry about parole hearings for decades. Out of respect for the families, state legislatures could limit the number of parole hearings to a very small number, so the family does not have to relive the trauma every two years once the prisoner reaches eligibility. If a juvenile cannot demonstrate change forty years after the crime, his odds of rehabilitation every two years after that are a long shot. By Bishop’s own admission, the fact-finding mechanisms of the criminal justice system are adept at gauging psychological states and rehabilitative capacity. As such, a dangerous sociopath will remain in prison for the rest of his or her life.

Conclusions

While Juvenile LWOP remains distasteful to the international community, it is in wide use in the United States today. This may change. Proponents argue that JLWOP offers a humane method of

permanently incapacitating America's worst offenders. It also provides closure to families. Opponents reply that JLWOP does not take into account the lesser culpability of juvenile offenders and discounts the possibility of redemption for those who have great potential to change. To work out an adequate and informed solution to the deadlock, it is important to remember the tenets of juvenile justice and that its standards of deterrence, retribution, incapacitation and rehabilitation are different from those that prosecutors apply to adults. Consequently, this paper not only argues that JLWOP's is over-applied in courtrooms around the country, netting offenders who were in the wrong place at the wrong time, but also contrary to an effective and equitable application of juvenile punishment. They may commit adult crimes, but they are not adults. There will always be severely damaged individuals who pose a threat to society and they should be incarcerated. If they are in fact severely damaged, they will never qualify for parole and will end up serving life anyway. Those who committed a horrible crime at age 15 should have limited chances to prove to society that they can reenter.

Abolishing JLWOP does not imply softness. It implies attacking crime in an intelligent, just and effective fashion that fulfills the central tenets of juvenile justice in the United States.

Postscript:

* State Rep. Robert Molaro's (D-Chicago) House Bill 1695 failed in early March of 2008. If passed, the bill would allow anyone who committed his controlling offense under the age of 18 to petition the Illinois Prisoner Review Board for a parole hearing. As of mid-March, he is not sure whether or not he will try again to pass it, but he does acknowledge that he will support a hearing in which victims' families go before a prosecutorial board to tell their stories.

*Marshan Allen is now 31 and has been behind bars since he was 15. Even though HB 1695, failed in early March of 2008, his case and request for clemency have drawn widespread attention. There are many websites and campaigns devoted to his cause.

*David J. Biro is serving life without parole at Stateville Correctional Center located in Stateville, Illinois. He is thirty four years-old.

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Children, Youth and the Law: Professor Abrams

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