

Throwaway Kid: A Case of Responsibility of, and for, Juvenile Lifers *

Annette Hemmings and Jerry Lashuay

Several years ago, my husband, Bill, read a newspaper article about a young man named Jerry Lashuay who at age 15 had been convicted in a Michigan adult court of first-degree murder and sentenced to mandatory life in prison without parole (LWOP). He was appalled by the notion that a criminal justice system could do something like that to a boy so young. He began a relationship with Jerry that included letter exchanges, annual visits, weekly phone calls and tuition support for a correspondence college degree. Bill's unwavering support lasted until his death in October 2004.

Jerry and I became very close friends after Bill's death. Our relationship has deepened over the years partly because I am a university professor interested in the plight of adolescent working-class, low-income, racial and ethnic minority students who are not well served in public high schools (Hemmings, 2002, 2004). Jerry was a troubled boy who was not served well in the Michigan criminal justice system. He is now a man in his forties serving a LWOP sentence in a system that has not changed since his incarceration in the early 1980s. He and I decided to collaborate on this article to show how the criminal justice system in Michigan is indicative of a larger trend that has transformed the United States into a prison nation that, among other injustices, has inverted universal standards regarding the responsibilities of, and for, juveniles. We tell Jerry's story in this article as an example of how kids are being thrown away in a prison nation where states refuse to give them a second chance to experience good, productive lives. We agreed that I would write Jerry's story based on phone conversations, letters, autobiographical writings, newspaper stories and court documents. We also decided that I would include reviews of published research on the United States as a prison nation, universal standards of responsibility for children, Michigan law, and how the Michigan criminal justice system mistreats juveniles. We also felt it was important to include examples of other juveniles with LWOP sentences in Michigan.

Jerry read the drafts of this article and I made revisions based on his feedback. Our joint intent is to reveal the terrible injustices that he and other juveniles with LWOP sentences have endured. We also built a research-based case for criminal justice systems in the United States to adopt more responsible, and just, means to intervene on behalf of troubled youths so they do not become throwaway kids.

PRISON NATION

Since the early 1970s, there has been a 500 percent rise in the number of human beings incarcerated in the prisons and jails of the United States (Mauer, 1999). According to the 2003 semi-annual report on the prison population issued by the U.S. Department of Justice's Bureau of Justice Statistics (Harrison and Karberg, 2003), the nation's adult prisons and jails housed 2,019,234 prisoners in midyear 2002, and more than 100,000 minors under the age of 18 were being held in juvenile facilities and lockups. When these figures and the nearly 4.5 million individuals on probation and parole were added up, the Justice Department arrived at a grand total of 6,627,322 individuals under the supervision of the U.S. criminal justice system. Many of these individuals are young, poor, people of colour, and/or children who were victims of abuse and neglect.

The fiscal cost of this trend to local, state and federal governments has been astronomical. Just over \$49 billion was spent on the criminal justice system in 2002, an amount that exceeded the federal Department of Education budget by \$7 billion (Elsner, 2004). Budgets for prisons have doubled in the past two decades with an 823% increase in spending between 1988 and 1995 (Dohrn, 2000). The vast majority of states now spend at least one and a half times as much on prisons as they do on education, and the budgetary gap is growing (Ambosia and Schiraldi, 1997; Dohrn, 2000).

The transformation of the United States into a prison nation began decades ago when, as Elsner (2004) observes, the country became "transfixed" by what appeared to be a violent crime wave spurred on by illegal drug use and trafficking. A war on drugs was declared that generated a radical shift in the treatment of offenders from rehabilitation to incarceration which "moved so forcefully and seemingly inexorably... that it resembled nothing so much as a runaway punishment train, driven by political steam and fueled by media-induced fears of crime" (Elsner, 2004, p. 19). Politicians regardless of their party affiliations boarded the train with various tough-on-crime policies. These policies proliferated in the 1980s when Republicans aired a television advertisement portraying a Black convict, Willie Horton, who raped a White woman while on furlough from a Massachusetts prison. This ad, along with other media images and stories, inflamed White middle-class anxieties and racial prejudices and moved the issue of crime squarely into the forefront of political campaigns. Politicians simply could not afford to appear soft

on crime, and many of them sponsored and ultimately passed the hard-line, anti-crime legislation that turned the United States of America into the most punitive democratic nation on earth.

More significant and incalculable than these figures is the human cost. Statistics do not reveal the sheer brutality of prison life characterized by widespread abuses and violations of human rights as hundreds of incarcerated men and women are harassed, raped, beaten, and stabbed by fellow prisoners. Thousands of mentally ill prisoners receive little or no treatment, and prisoners are routinely subjected to sensory deprivation and social isolation that can exacerbate or even cause mental illness (Grassian, 1983; Grassian and Friedman, 1986; Haney, 2003). Not only are prisoners subjected to inhumane conditions, but corrections officers risk daily assaults, poor health, broken marriages and premature deaths (Elsner, 2004). In terms of the cost to people living and working in prisons, the situation more often than not is one where human losses outweigh societal gains.

The most disconcerting consequence of the expansion of the prison nation has been its impact on children. There has been a steady criminalization of children's behaviours, especially those of adolescents. Adolescent acts such as fistfights, petty theft and vandalism, which used to be handled by parents, teachers and other adults, are now being prosecuted in courts with dire, long-term repercussions for many kids. The most troubled teenagers, many of whom are impoverished children of colour, are being demonized as predatory criminals beyond the reach of rehabilitation, intervention and education. The criminalization of youthful indiscretions has, as Polakow (2000, p. 2) points out, led to "grave violations of children's human rights in a juvenile justice system run amuck; rapidly eroding social-citizenship rights to a childhood free from poverty, destitution, hunger, and homelessness; [and]... deprivation of educational rights". Rather than protect children and their rights, states all over the country have lowered minimum ages at which youngsters may be tried as adults and have adopted 'zero tolerance' policies as they waive hundreds of children into adult courts where many of them end up being sentenced to adult prisons (Polakow, 2000). The increase in public and political pressure to criminalize, prosecute and incarcerate juvenile offenders as adults has been accompanied by a notable decrease in legislative support for funding juvenile crime prevention programs (Prothrow-Smith, 1991). This has not only contributed to the burgeoning costs of the criminal justice system, but, even more troubling, has eroded

the moral fabric of society. The trends in criminal justice have produced injustices which have greatly undermined universally understood standards regarding the most ethically responsible ways to take care of young people especially those who are prone to get into trouble with the law because of poverty, lack of good educational and economic opportunities, as well as problems at home and other life areas (Polakow, 2000).

RESPONSIBILITY OF, AND FOR, JUVENILES

No society anywhere on the globe holds juveniles to the same standards of responsibility as adults than the United States. While mature adults are held accountable for the choices they make, it is widely assumed that the choices of children and adolescents should be restricted and revocable because of the immaturity of their judgments. This certainly has been true in the United States where children under the age of sixteen are considered too young to live on their own, drive cars, forego formal education and make medical decisions, and where adolescents cannot legally use alcohol, serve on juries, negotiate contracts or be drafted into the military until they are eighteen (LaBelle *et al.*, 2004). Research on juveniles arrested for crimes indicates that children fifteen years and younger lack the cognitive capacities to stand trial, negotiate plea agreements, make informed, voluntary confessions, and otherwise be held fully responsible for their alleged offences (Cauffman and Steinberg, 2000; Fagen and Zimring, 2000; Grisso and Schwartz, 2000). Given the immaturity of their mental and emotional development, kids simply do not, nor should not, have the same level of culpability as adults.

All societies hold adults responsible for protecting and nurturing the young. This universally recognized obligation has not only been the basis for laws that carry severe penalties for child neglect and abuse, but is also affirmed in international human rights agreements. Among these agreements is the 1989 *United Nations Convention on the Rights of the Child* (CRC) which issued an instrument meant to protect and ensure children's rights and hold countries accountable for enforcing these rights (United Nations, 1989). Article 37(a) of this instrument expressly forbids life imprisonment for children under age 18. It states:

No child shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment. Neither capital punishment nor life imprisonment

without possibility of release shall be imposed for offences committed by persons below eighteen years of age.

There are also longstanding cultural understandings that recognize and address the developmental challenges associated with transitions from childhood to adulthood. Among these understandings is the widespread belief that young people, especially adolescents, need direct adult guidance in order to become productive, integrated members of their communities. Such guidance is becoming increasingly crucial in the United States, where teenagers are bombarded with conflicting cultural pressures and many are confronted with poverty, catastrophic events, abuse, and other challenging circumstances. Troubled youths with little or no adult guidance are more apt to get into trouble, sometimes to the point where they break the law.

There was a time in the United States when adolescents who committed crimes were considered less blameworthy precisely because they lacked the self-control and social sensibilities expected of adults. The customary course of judicial action was to give errant youths a chance to reform themselves under the direction of adults. These were the customs that for decades guided a juvenile criminal justice system that was geared towards rehabilitation and reintegrating youthful offenders into the community rather than throwing them away.

But times have changed and so, too, have adult commitments to juvenile offenders. Inherent in universal standards is a moral commitment on the part of adults to take responsibility for the behavioural, emotional, and social growth of errant adolescents in ways intended to rehabilitate and reintegrate them into society. But this moral commitment has been inverted in ways that have released adults from this responsibility. Adolescents are now blamed and held primarily responsible for their actions with little or no recognition of adult responsibility.

The moral inversion of understandings that used to ensure the just treatment of kids arrested for crimes have taken their toll. Juvenile offenders across the United States are now being held to the same standards of responsibility as adults, and adults are abdicating or being excused from their responsibilities for the protection and nurturance of juveniles. The result is that literally hundreds of kids are now being tried, convicted and punished as if they really are adults with sole responsibility for their actions.

Legislatures have fuelled the inversion with the passage of bills that

have allowed states to waive more juveniles accused of homicide and other felony crimes into adult court. In 14 states, there is no minimum age limit for waiving children to adult courts. That means any child at any age can be convicted as adults and receive sentences that differ from juvenile court sentences in two critical ways: they are determinate and significantly longer (Dohrn, 2000). Such unforgiving sentences are banned in Canada, Austria, Ireland, Japan, Switzerland and the United Kingdom where “the importance of treating children like children is upheld” (LaBelle *et al.*, 2004, p. 21). But they are allowed, and indeed, encouraged in the United States by legislators catering to middle-class fears despite the alarming financial, human and moral costs of incarcerating kids. It is noteworthy that while 142 nations ratified the CRC instrument that protects, ensures and enforces children’s rights, the United States was one of only two nations that did not.

The inversion of universal standards of responsibility went largely unchecked until cases like that of Lionel Tate attracted media attention. Lionel was a 12 year old Black boy who received a LWOP sentence in the state of Florida for beating a 6 year old playmate to death. Everyone agreed he had committed a heinous crime. But there was public outrage that a boy so young had been given a sentence that used to be reserved for the most hardened or truly culpable adult offenders. Fortunately, the Florida judicial system revisited the Tate case and reduced the boy’s sentence. But other states have yet to rectify such injustices or provide effective intervention programs for juvenile offenders. This is the situation in the state of Michigan where Jerry Lashuay has been locked up in an adult prison since he was 15 years old.

MICHIGAN LAW AND JUVENILE LIFERS

In their compelling report, *Second Chances: Juveniles Serving Life without Parole in Michigan Prisons*, LaBelle *et al.* (2004) detail the facts and alarming outcomes of Michigan’s tough-on-crime stance on juvenile criminal justice. Michigan is one of the states with no set lower age limit for waiving juveniles to adult courts. In 2003, there were 307 juvenile lifers incarcerated in Michigan adult prisons, 45 of whom were 15 years old or younger at the time of their convictions. While all of these kids were convicted of offences involving homicide, a large proportion of them were not the ones who actually caused the death. About half of the juveniles given LWOP sentences were convicted of “aiding and abetting” a first-

degree murder which involved adult co-defendants. An example is the case of a 16 year old Black boy named Henry Hill. Henry and two of his friends were in a park one summer day where they got into an argument with an acquaintance. He left the park after which his 18 year old friend shot and killed the acquaintance. Despite the fact that Henry neither pulled the trigger nor was physically present when the crime was committed, he was arrested, waived to adult court, convicted of aiding and abetting the murder, and given the same LWOP sentence as the adult shooter. He has been in prison for over 25 years.

The *Second Chance* report also documents glaring racial, social class and gender inequities. Nearly 70 percent of juvenile lifers in Michigan are Black and almost all of them come from low-income families. As LaBelle *et al.* (2004, p. 6) explain:

In the juvenile justice system, minority youths are more likely to be arrested, detained, committed to residential placements, and waived to the adult criminal justice systems than their white peers. Class bias intersects with race and results in harsher treatment of children of single parents, low income and working families... Along with perceptions of African-American and Hispanic youth as 'dangerous' or 'gang-involved', the lack of resources and access to counsel all contribute to the resulting inequities in the treatment of juveniles.

Girls given LWOP sentences in Michigan endure special hardships. Most were convicted of aiding and abetting homicides committed by their boyfriends or other men. One of them is Amy Black, a White girl, who was sexually abused when she was seven, repeatedly ran away from home as a young teenager and at age 16 got involved with an older man. She was present when her boyfriend got into a fight with another man and stabbed him to death. Amy helped to clean up the mess and agreed to take the blame after her boyfriend convinced her that she would not be charged as an adult. But rather than be tried in juvenile court, this abused and disturbed teenager was waived to adult court where she was sentenced to LWOP. After her sentencing, Amy was sent immediately to an adult women's facility. Not only are juvenile girls in adult prisons at much greater risk of harm from fellow prisoners, but they are also more vulnerable to sexual assault by custodial male guards (Moss, 2007; Buchanan, 2007).

Jerry's story is different in that he actually committed the homicide for which he was convicted. But the injustices he has experienced in the Michigan justice system are just as egregious.

JERRY'S STORY

Crimes of Abandonment

Jerry was by all accounts, especially his own, a deeply troubled youth. He was born in 1968 to teenage parents who were too young and immature to raise an infant son on their own. His father exuded an adolescent machismo that manifested itself in acts of domestic violence such as a beating incident during which Jerry was injured so badly there was blood in his urine. In 1979, he threatened to kill Jerry's mother, prompting her to flee with her two children in the middle of the night. Jerry, in an autobiographical account he sent to me, recalls that terrible night and his father's rage in vivid detail:

We had left home [and gone to my grandparents' house] without my father knowing about it. Dad [came that night] and I got up and went to the front porch and found my mother and grandparents already there. They faced my father on the lawn below. My father's manner was strange and I was puzzled by it. His words conveyed an intensity to my small ears which were finely attuned to my father's every word and action. While I sensed his anger, this was secondary to something greater, something I couldn't recognize in him. Here was something unknown about my dad. And so I watched my father and struggled to make sense of the words that buzzed above my head. He wanted my mother to come with him so they could go somewhere and talk. She refused, afraid of being beaten.

His parents got divorced and Jerry's father moved to another state where he met and married another woman. Despite the abuse he had suffered, Jerry remained attached to his father and wanted to have a relationship with him. But visitations did not go well and Jerry grew increasingly angry.

Jerry's mother, who was now a working, single parent with two children, relied on her oldest son to assume the role her ex-husband had vacated. The adult responsibilities were too much for Jerry and he lashed out by getting into trouble in school and eventually with the law. When he was 13, the police picked him up for breaking and entering into churches. He

became a temporary ward of the court and his probation included biweekly meetings with a probation officer who recognized Jerry's problems with role confusion. "In assuming an adult, parent-type role", the probation officer said, "Jerry became confused and when his mother did exercise parental control, Jerry resisted" (Schwinkendorf, 1984).

The probation officer recommended that Jerry be placed in a residential program but the request was not accepted by the court. The behavioural problems continued and in May 1983, when the presiding judge realized that Jerry was not going to get any local help, the case was sent to the state. Before a juvenile offender in Michigan can be placed in residential facilities, local jurisdiction of the child must be turned over to state jurisdiction, a psychological evaluation must be completed, applications sent to facilities, and final decisions made regarding the location and length of placements. It took the state several weeks to complete the approval process after which Jerry was finally accepted into a camp for juvenile delinquents. Unfortunately, the first opening in the camp was not until early fall which meant that a whole summer was to go by before Jerry would get the adult assistance he desperately needed.

It was during that summer that Jerry's pent-up rage came to a head. His father came to town but Jerry did not see him because of a dispute. Jerry turned fifteen in July and in August he got into an argument with his mother who evicted him from the house. He went to live with his paternal grandparents who had a 12 year old son (Jerry's uncle) named Nicholas. Jerry was quite fond of Nicholas and the two boys usually got along quite well. On the day he moved into his grandparents' home, he absolutely had no intention of hurting his uncle much less taking his life.

Then something went terribly wrong. The two boys were playing in the basement and got into a minor tiff. Jerry exploded. He hit Nicholas with a baseball bat then stabbed him several times with a knife. In less than a minute, Nicholas's life was lost in a fit of rage fuelled by the abandonment of an abusive father, an overwhelmed mother and a juvenile justice system that did not have the inclination or means to provide an obviously troubled kid with responsible adult intervention. A year later, another young life would be lost.

The Waiver

Jerry left the scene of the crime on a bicycle and was arrested that night in the home of an acquaintance. Two months later, his case was waived to adult

circuit court where he was charged with first-degree murder, which carried a mandatory sentence of life in prison without parole. If Jerry's case had been adjudicated in juvenile court, the judge would have had more flexibility in sentencing. Depending on the seriousness of the crime, children convicted in juvenile court are sentenced to state juvenile facilities and released at 19 or given blended sentences that allow them to serve time in juvenile facilities first and then undergo re-evaluation at the age of 21 with the possibility of extended sentences in adult prisons. The problem in Michigan is that children over the age of 14 who commit serious offences can be waived to adult circuit court. When prosecutors in Jerry's case waived the 15 year old to adult court and charged him with first-degree murder, they were essentially guaranteeing that if convicted he would spend the rest of his life in prison.

There is an important distinction to be made between indeterminate and determinate sentencing in the state of Michigan. Guidelines for indeterminate sentences include minimum and maximum years judges can consider in their sentencing decisions, and those for determinate sentences have a set number of years. The legislature sets the maximum in both types of sentences. With indeterminate sentencing, judges make decisions partly on the basis of points assigned to defendants. The point system takes into account a variety of factors, such as prior criminal records, and ensures that everyone convicted of a given crime does not necessarily get the same sentence. Determinate sentences, in marked contrast, do not take defendants' age, criminal records or other factors into account. A first-degree murder conviction in Michigan carries a determinate sentence of LWOP. Nothing about an individual defendant matters in sentencing decisions, nor do specific facts about the case. There are no exceptions.

The local probate judge was troubled by the waiver of Jerry's case into adult court and felt the crime could have been prevented if she had the authority to place the boy in an out-of-home facility months earlier. "We as probate judges have the responsibility for all these children", she maintained, "but we're not given the authority to do what's necessary to help them. We could avoid waivers if we had the authority to sentence a child to [a residential facility] for as long as it takes to rehabilitate him" (Gray, 1984). She was adamant that the system should be changed so that probate judges who actually know juvenile offenders have more sentencing alternatives for those under the age of 18 including the ability to work

with kids who require assistance beyond a rigidly defined age. But such changes have yet to be made in Michigan where time-consuming placement procedures remain bogged down in a justice system that does not provide local officials with the flexibility they need to intervene on behalf of local kids. The only hope for kids like Jerry was a trial verdict that somehow recognized his youth and childhood circumstances. There was, as it turned out, no hope of that at all.

The Trial

Jerry was still only 15 years old when his trial began in May 1984. He looked even younger with his slender build and medium-length, parted blond hair. He exchanged a furtive smile and wave with his mother when he entered the courtroom then appeared to remove himself from a scene from which there was no escape. For most of the trial, he kept his eyes downcast with one hand propped up under his chin.

In order to convict Jerry of first-degree murder, the state had to prove he committed homicide with specific intent. His court assigned attorney could not legally address the issue of specific intent with an argument based on the fact that juveniles have immature cognitive capacities. So he used a diminished capacity defence included in the definitions and procedures of insanity defences. This rarely used defence claims that the accused, while not necessarily insane or mentally ill, lacks the capacity to have specific intent to commit a crime. This was his way of sneaking in an insanity (juvenile) defence without labelling it as such.

The prosecutor claimed the murder was premeditated because the victim's wounds were inflicted with at least two weapons. He argued that Jerry had time to think about what he was doing after the initial attack and therefore had specific intent to commit the murder.

Although neither side appealed to notions of juvenile and adult responsibilities during the trial, both eluded to them during closing arguments. The defence attorney maintained that the crime was committed in a 'frenzy' and could have been prevented if Jerry had gotten the help he needed. "We're all guilty... all of us who turned our backs and don't have a place for young Jerrys". The prosecutor countered with the inverted view that society cannot be held accountable for what juveniles do. "Society is society", he said. "We all have problems. We didn't all kill Nicholas" (Schwinkendorf, 1984).

The jury deliberated for slightly more than two hours and found Jerry guilty of first-degree murder mostly because there was no hard, legal evidence to support the diminished capacity defence. Jerry's mother cried when the verdict was read. The defence attorney took off his glasses and lowered his head into his hands. Jerry registered no emotion and stared blankly into space. Everything seemed unreal as police officers led him out of the courtroom, clamped handcuffs on his wrists and prepared him for transport to a prison facility where he would begin to serve his mandatory life sentence with no possibility of parole. Jerry wrote about his final encounter with the jury as he walked out of the room:

The courtroom had gone suddenly silent, but the silence lasted only a few seconds before the usual rustle of the courtroom began again, punctuated by the sobs of my mother. I stood as the jury filed out of the courtroom. They had to walk within three feet of me to reach the door, and only one of the 12 would look me in the eye. It was the jury foreman, a man I'd had heated words with the previous year during a baseball game at the high school. I didn't want him on my jury... but, hey, the attorney... knew more about these things than I did... and, unfortunately, my naivety and trust... landed me the life sentence.

When the trial was over, just about everyone involved in the case decried the outcome. The prosecutor who had eschewed societal responsibility during the trial told a newspaper reporter that the juvenile system is "ridiculous" and that state officials should never have tolerated the kind of behaviour Jerry displayed. "There's got to be some sort of interim way of dealing with young people", he insisted. "I don't like to see them thrown in jail" (Gray, 1984). The presiding judge concurred:

This [case] indicates we have a weakness in the system when we feel we can treat an individual of such tender years as if they were adults, when we don't treat them as adults in any other instance. It makes you wonder whether our system is sufficiently sensitive because here we are sentencing a 15 year old boy to life imprisonment. This is not a result a sophisticated society should be led to.

Several letters to the editor registered indignation towards the state justice system in general and support for Jerry in particular. One woman wrote, "To

place such children in prison is a crime in itself, as some of us realize that one of the largest crimes of society lies in our prison system” (Waterman, 1983). Another letter was written by a woman who actually knew Jerry. She wrote about how much he had helped her when she was pregnant with her third child. “Jerry volunteered to watch my two small sons and refused any payment. The boys adored him... and, thanks to Jerry, I now have a healthy two year old daughter”. She pleaded with the system:

Please search your hearts and if need be, place yourself and your families in this situation. Don't find child abuse, which prison is, as an answer, find love. If Jerry had found this, this might not have happened. Don't let this happen to any more children. Let's look for an alternative (Crawford, 1984).

But there were, and continue to be, no alternatives in the state of Michigan for children like Jerry sent to prison for the rest of their lives. Given this state of affairs, Jerry thinks judges should tell the full truth to juveniles sentenced to LWOP. They should stand up in court, look convicted juveniles in the eye and say:

I hereby sentence you to the rest of your natural life without the possibility of parole in prison, where your age, stature and immaturity will work to your detriment; where you'll be preyed upon physically, emotionally and sexually by the bigger, stronger, and more sophisticated adult prisoners, thereby stunting your emotional and intellectual development, thereby rendering you incapable of rehabilitation, thereby validating the effectiveness of our juvenile waiver system, thereby validating the need to imprison you for life.

Life in Prison

When Jerry entered prison, he was strip searched, given state-issued clothing and assigned a bed in a tiny cell. He quickly learned that his existence would be regulated from the moment he woke up in the morning to the time lights were turned out at night. Rules were stringent and even minor infractions could land him in ‘the hole’ – solitary confinement – for a couple of weeks. Maintaining contact with family members and

friends was going to be difficult because of visitation restrictions as well as extremely high charges for fifteen-minute, collect phone calls. Despite security procedures designed to control prisoner behaviour, Jerry knew he had to be tough and ever vigilant because of the real threat of sexual predation and other kinds of attacks. He described the first few years in prison this way:

My life was characterized by a feeling that I'd been tossed into a pit of madness, a cannibalistic den of animals with voracious appetites who fed upon human misery. Prison was a place where there were no comforting, motherly arms and no place to hide. It was a place where safety could only be had by breaking the very rules that were supposedly there for my protection.

More effective "rules of the game", according to Jerry, requires deceptive lying, intimidation, the ability to put on a tough public mask, effective seduction, sly talk, aggression, and, when all else fails, a willingness to fight. His "martial skills", Jerry explains, "improved quickly".

I took my lumps in the beginning. In addition to the expected black eyes, bruises and lacerations, I had a broken eye socket, a cracked sternum, and had my jaw broken twice in two places.

Despite his existence in a "pit of madness", Jerry gradually began to strive for a life he might have lived if he had been given another chance. It took awhile before the anger that consumed Jerry dissipated. He did a lot of soul searching as the rough edges of his adolescence smoothed out over time. When my husband Bill began to correspond with him in 1989, Jerry had earned his GED and was working on an associate degree in business. He was mistrustful at first because he could not understand why anyone would take an interest in him. I remember him asking Bill, "What's in it for you?" and Bill's efforts to convince him there actually are people in the world willing to reach out to others on the basis of principle including the universal principle of assuming responsibility for the young. Jerry thought Bill would eventually lose interest, but he never did. So the relationship deepened and proved invaluable as Jerry plunged ahead with his own remarkable self reformation.

Jerry became a “good man”, as my late husband liked to say, who is even tempered, thoughtful, considerate of others and at peace with himself. Now in his forties, he has amassed an impressive record of accomplishments. After finishing his associate degree, Jerry enrolled in a bachelor’s degree program offered by the Ohio University’s College Program for the Incarcerated. This program has been a major provider of opportunities for prison prisoners to earn college credits and degrees by correspondence. Jerry also has extensive vocational training and employment experience. He taught computer skills to prisoners scheduled for parole and worked as a clerk for the school in his facility. His supervisors have always given him high marks on their evaluations of his work performance. He has been actively involved with the Jaycees and has taken the lead in programs designed to help prisoners pass GED exams, adopt an anti-violence outlook, and participate in other self-help efforts. His most remarkable accomplishment is the development of his exceptional skills as a writer. Jerry has written several short stories, poems and a draft of a book that presents a fictional portrayal of a prisoner. Of all of the cards and letters I received after Bill’s death, the letter that Jerry sent was especially thoughtful. He explains in a powerful passage how he has had to “compartmentalize” our relationship and his roles.

[W]hile you and Bill have been my friends for a long time, you also have been far away, and our contact was limited to weekly phone calls, Bill’s frequent letters and mailings, and yearly visits. We didn’t have daily contact, so you weren’t a part of my daily life. This is both good and bad: it’s good because that kept you both separate from the garbage that I deal with everyday; it’s bad because, like everything else that I don’t deal with daily, I compartmentalized you, taking you down from your shelf when it was time for interaction, thus allowing me to switch my roles, putting away the convict and pulling on the cap of the student, friend, and young man in search of direction. And since I don’t wear that cap regularly, I feel Bill’s loss only a bit at a time. Perhaps it’s better that way, I don’t know. Conflicting roles is a way of life for me. It was a fact of life when I was an angry teenager and remains so as a convict. More than anything else I believe this is responsible for the emotional depth I’ve developed.

It struck me that each and every juvenile in our society ought to be a “student, friend, and young man [or woman] in search of direction”. But

when they are sentenced to LWOP, they become convicts, public enemies and kids who confront huge obstacles even if they are determined to turn around the direction of their lives. They become ‘garbage’ to be thrown away.

Nothing about this account is intended to suggest that Jerry should not take some responsibility for what happened. He certainly should and has. He feels genuine remorse for taking Nicholas’s life and agrees with the majority of people in this country that a high price ought to be paid for crimes like that. He also understands how important it is to consider the terrible loss suffered by the victim’s family. Acknowledging the impact a crime has on families and communities in sentencing decisions is a critical part of ensuring justice in justice systems.

But there is injustice in a criminal justice system that no longer adheres to universal standards that ensure juveniles are not held to the same kinds and levels of responsibility as adults, and where adults are held responsible for the protection and nurturance of juveniles. When these standards are inverted as they have been in the case of many juvenile offenders, then adult society is ultimately responsible for taking the lives of children and adolescents who are tried, convicted and sentenced as adults to LWOP. It is responsible for throwing away their lives even when young people try hard to take responsibility for turning them around.

REVERSING THE INVERSION

The inversion needs to be reversed and, fortunately, there has been some movement in the right direction at the federal level. In March 2005, the United States Supreme Court under the Eighth Amendment ruled in *Roper v. Simmons* that sentencing juveniles to death is unconstitutionally cruel. While the ruling does not include juveniles who have been sentenced to life in prison without parole – a virtual death sentence, it did acknowledge the fact that children and adolescents are not mature enough to be held fully accountable for homicides as well as other crimes. As Justice Anthony Kennedy wrote in the majority decision:

When a juvenile commits a heinous crime, the State can exact forfeiture of some of the most basic liberties, but the State cannot extinguish his life and his potential to attain a mature understanding of his own humanity.

While such rulings are a step in the right direction, much more needs to be done to rectify the injustices experienced by juveniles in the criminal justice system. The United States, like other democratic countries all over the world, should ban mandatory LWOP sentences for children under the age of eighteen. State legislators should implement judicial reforms that give local judges the authority to send juvenile offenders to residential facilities for as long as it takes to rehabilitate them. Such decisions should certainly be subject to review by state appeals courts in order to ensure local judges are not wildly inconsistent, unfair or unreasonable in their sentencing. But it makes much more sense for these decisions to be made by local officials who actually know the kids, their families, the families of victims, along with the sentiments of the community.

There also needs to be a more widely-supported understanding that preventing juvenile crime very much depends on the availability of effective intervention programs. Unfortunately, tough-on-crime politics have incited many legislators and politicians to attack or vote against crime prevention programs for youths. Such programs, they claim, were implemented in the 1960s and generally failed. In point of fact, however, as Currie (1998) explains, most of the measures criminologists, child-development specialists and others called for were never launched. They were stymied by widespread scepticism, political paralysis, and, most notably, by the voracious fiscal demands of the Vietnam War. In the few instances where innovative youth crime prevention programs were implemented, results indicated that they worked more often than not. Unfortunately, the same scepticism and budget priorities that prevailed in the 1960s exist today. This is true even though we know that crime prevention programs for young people can work in ways that are, in every sense, less costly than the continued reliance on incarceration as the first defence against violent crime.

Implementing crime prevention programs is a crucial part of efforts to help juvenile offenders. Currie (1998) identifies four priorities for such programs: 1) preventing child abuse and neglect; 2) enhancing children's intellectual and social development; 3) providing support and guidance to vulnerable adolescents; and 4) working intensively with juvenile offenders. All of these priorities boil down to adults taking responsibility for the protection and nurturance of juveniles. Funding for programs should be a high priority for legislators not only because they save money, but, more importantly, because they save the lives of children and adolescents.

Even if changes are made, juvenile lifers like Jerry will remain incarcerated unless retroactive measures are enacted. An effort to legislate such measures in the state of Michigan is being spearheaded by the Juvenile Life without Parole Initiative – an organization working with state legislators willing to sponsor bills that contain retroactive clauses that would give juvenile lifers the ability or option to petition for sentencing changes. The organization is also compiling a list of juvenile lifers whose appeals have been rejected. This list will be included in a petition that will be sent to the InterAmerican Commission on Human Rights (IACHR) established several years ago to promote and protect human rights in North and South America.²

While there are no guarantees that any of these efforts will lead to reform or rectify injustices in the near future, they do provide some hope that justice for juvenile lifers will be served. Until justice is restored in the criminal justice system, there will be nothing but hopelessness for juveniles like Jerry who wrote in 1996 about prison as a place where...

...someone tells me when I can eat and what I can eat, when I can use the bathroom, when I have to go to sleep and when I have to get up. I can only see my mom when someone else says it's okay. I can't have a puppy or a bike and there are a lot of people here who would like to hurt me or steal things from me. I'll never be able to get married and have children of my own. [Where] I have to spend the rest of my life in a dark place.

Where, in other words, throwaway kids given LWOP sentences are sent to die.

ENDNOTES

- * We would like to thank Barbara Levine, Executive Director of the Citizens Alliance on Prisons & Public Spending (CAPPs), for the valuable help and information she provided on the finer details of Michigan law and the state judicial system.
- ¹ The *Second Chance* report was made possible with the support of the Justice, Equality, Human Dignity, and Tolerance Foundation (JEHT), ACLU of Michigan, Open Society Institute, and a Senior Soros Justice Fellowship. It can be obtained in its entirety by logging on to <http://www.aclumich.org/pubs/juvenilelifers.pdf>.
- ² The Inter-American Commission on Human Rights (IACHR) is an autonomous organ of the Organization of American States (OAS) that was established in 1948 after the adoption of the American Declaration of the Rights and Duties of Man. One of the principal functions of the IACHR is to promote the observance and defence

of human rights. The Commission carries out this mandate by receiving, analyzing and investigating individual petitions which allege human rights violations including violations of children's rights.

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ABOUT THE AUTHORS

Annette Hemmings holds a PhD in Educational Policy Studies from the University of Wisconsin – Madison. She is a Professor in Educational Studies at the University of Cincinnati where she teaches courses on qualitative research methods, social theories in education and cultural differences. As a researcher, she has conducted several studies on African American student achievers, student youth culture, adolescent coming of age processes and other topics.

Jerry Lashuay holds an Associates Degree and is completing a Baccalaureate Degree correspondence program at Ohio University. He has taught computer skills and writing classes, served as a GED tutor, developed anti-violence initiatives for youth and has been actively involved in Jaycees and other community clubs. He currently resides in Saginaw Correctional Facility in Michigan.