

October 5, 2005

## Serving Life, With No Chance of Redemption

By [ADAM LIPTAK](#)

LIVINGSTON, Tex. - Minutes after the United States Supreme Court threw out the juvenile death penalty in March, word reached death row here, setting off a pandemonium of banging, yelling and whoops of joy among many of the 28 men whose lives were spared by the decision.

But the news devastated Randy Arroyo, who had faced execution for helping kidnap and kill an Air Force officer while stealing his car for parts.

Mr. Arroyo realized he had just become a lifer, and that was the last thing he wanted. Lifers, he said, exist in a world without hope. "I wish I still had that death sentence," he said. "I believe my chances have gone down the drain. No one will ever look at my case."

Mr. Arroyo has a point. People on death row are provided with free lawyers to pursue their cases in federal court long after their convictions have been affirmed; lifers are not. The pro bono lawyers who work so aggressively to exonerate or spare the lives of death row inmates are not interested in the cases of people merely serving life terms. And appeals courts scrutinize death penalty cases much more closely than others.

Mr. Arroyo will become eligible for parole in 2037, when he is 57. But he doubts he will ever get out.

"This is hopeless," he said.

Scores of lifers, in interviews at 10 prisons in six states, echoed Mr. Arroyo's despondency. They have, they said, nothing to look forward to and no way to redeem themselves.

More than one in four lifers will never even see a parole board. The boards that the remaining lifers encounter have often been refashioned to include representatives of crime victims and elected officials not receptive to pleas for lenience.

And the nation's governors, concerned about the possibility of repeated offenses by paroled criminals and the public outcry that often follows, have all but stopped commuting life sentences.

In at least 22 states, lifers have virtually no way out. Fourteen states reported that they released fewer than 10 in 2001, the latest year for which national data is available, and the other eight states said fewer than two dozen each.

The number of lifers thus continues to swell in prisons across the nation, even as the number of new life sentences has dropped in recent years along with the crime rate.

According to a New York Times survey, the number of lifers has almost doubled in the last decade, to

132,000. Historical data on juvenile offenders is incomplete. But among the 18 states that can provide data from 1993, the juvenile lifer population rose 74 percent in the next decade.

Prosecutors and representatives of crime victims applaud the trend. The prisoners, they say, are paying the minimum fit punishment for their terrible crimes.

But even supporters of the death penalty wonder about this state of affairs.

"Life without parole is a very strange sentence when you think about it," said Robert Blecker, a professor at New York Law School. "The punishment seems either too much or too little. If a sadistic or extraordinarily cold, callous killer deserves to die, then why not kill him? But if we are going to keep the killer alive when we could otherwise execute him, why strip him of all hope?"

Burl Cain, the warden of the Louisiana State Penitentiary in [Angola](#), which houses thousands of lifers, said older prisoners who have served many years should be able to make their cases to a parole or pardon board that has an open mind. Because all life sentences in [Louisiana](#) are without the possibility of parole, only a governor's pardon can bring about a release.

The prospect of a meaningful hearing would, Mr. Cain said, provide lifers with a taste of hope.

"Prison should be a place for predators and not dying old men," Mr. Cain said. "Some people should die in prison, but everyone should get a hearing."

### **Television and Boredom**

In interviews, lifers said they tried to resign themselves to spending down their days entirely behind bars. But the prison programs that once kept them busy in an effort at training and rehabilitation have largely been dismantled, replaced by television and boredom.

The lot of the lifer may be said to be cruel or pampered, depending on one's perspective. "It's a bleak imprisonment," said W. Scott Thornsley, a former corrections official in [Pennsylvania](#). "When you take away someone's hope, you take away a lot."

It was not always that way, said Steven Benjamin, a 56-year-old [Michigan](#) lifer.

"The whole perception of incarceration changed in the 1970's," said Mr. Benjamin, who is serving a sentence of life without parole for participating in a robbery in 1973 in which an accomplice killed a man. "They're dismantling all meaningful programs. We just write people off without a second thought."

As the years pass and the lifers grow old, they sometimes tend to dying prisoners and then die themselves. Some are buried in cemeteries on prison grounds by other lifers, who will then go on to repeat the cycle.

"They're never going to leave here," said Mr. Cain, the warden at Angola, of inmates he looks after. "They're going to die here."

Some defendants view the prospect of life in prison as so bleak and the possibility of exoneration for lifers as so remote that they are willing to roll the dice with death.

In [Alabama](#), six men convicted of capital crimes have asked their juries for death rather than life sentences,

said Bryan Stevenson, director of the Equal Justice Initiative of Alabama.

The idea seems to have its roots in the experience of Walter McMillian, who was convicted of capital murder by an Alabama jury in 1988. The jury recommended that he be sentenced to life without parole, but Judge Robert E. Lee Key Jr. overrode that recommendation and sentenced Mr. McMillian to death by electrocution.

Because of that death sentence, lawyers opposed to capital punishment took up Mr. McMillian's case. Through their efforts, Mr. McMillian was exonerated five years later after prosecutors conceded that they had relied on perjured testimony. "Had there not been that decision to override," said Mr. Stevenson, one of Mr. McMillian's lawyers, "he would be in prison today."

Other Alabama defendants have learned a lesson from Mr. McMillian.

"We have a lot of death penalty cases where, perversely, the client at the penalty phase asks to be sentenced to death," Mr. Stevenson said.

Judges and other legal experts say that risky decision could be a wise one for defendants who are innocent or who were convicted under flawed procedures. "Capital cases get an automatic royal treatment, whereas noncapital cases are fairly routine," said Alex Kozinski, a federal appeals court judge in [California](#).

David R. Dow, one of Mr. Arroyo's lawyers and the director of the [Texas](#) Innocence Network, said groups like his did not have the resources to represent lifers.

"If we got Arroyo's case as a non-death-penalty case," Mr. Dow said, "we would have terminated it in the very early stages of investigation."

Mr. Arroyo, who is 25 but still has something of the pimply, squirmy adolescent about him, said he already detected a certain quiet descending on his case.

"You don't hear too many religious groups or foreign governments or nonprofit organizations fighting for lifers," he said.

Gov. Rick Perry of Texas signed a bill in June adding life without parole as an option for juries to consider in capital cases. Opponents of the death penalty have embraced and promoted this alternative, pointing to studies that show that support for the death penalty dropped drastically among jurors and the public when life without parole, or LWOP, was an alternative.

"Life without parole has been absolutely crucial to whatever progress has been made against the death penalty," said James Liebman, a law professor at Columbia. "The drop in death sentences" - from 320 in 1996 to 125 last year - "would not have happened without LWOP."

But some questioned the strategy.

"I have a problem with death penalty abolitionists," said Paul Wright, the editor of Prison Legal News and a former lifer, released in [Washington State](#) in 2003 after serving 17 years for killing a man in a robbery attempt. "They're positing life without parole as an option, but it's a death sentence by incarceration. You're trading a slow form of death for a faster one."

Mr. Arroyo shares that view.

"I'd roll the dice with death and stay on death row," he said. "Really, death has never been my fear. What do people believe? That being alive in prison is a good life? This is slavery."

### **Murder Follows a Kidnapping**

Mr. Arroyo was convicted in 1998 for his role in the killing of Jose Cobo, 39, an Air Force captain and the chief of maintenance training at the Inter-American Air Forces Academy in Lackland, Tex. Mr. Arroyo, then 17, and an accomplice, Vincent Gutierrez, 18, wanted to steal Captain Cobo's red Mazda RX-7 for parts.

Captain Cobo tried to escape but became tangled in his seat belt. Mr. Gutierrez shot him twice in the back and shoved the dying man onto the shoulder of Interstate 410 during rush hour on a rainy Tuesday morning.

Although Mr. Arroyo did not pull the trigger, he was convicted of felony murder, or participation in a serious crime that led to a killing. He contends that he had no reason to think Mr. Gutierrez would kill Captain Cobo and therefore cannot be guilty of felony murder. "I don't mind taking responsibility for my actions, for my part in this crime," he said. "But don't act like I'm a murderer or violent or that this was premeditated."

That argument misunderstands the felony murder law, legal experts said. Mr. Arroyo's decision to participate in the carjacking is, they say, more than enough to support his murder conviction.

Captain Cobo left behind a 17-year-old daughter, Reena.

"I miss him so much it hurts when I think about it," she said of her father in a victim impact statement presented at trial. "I know he is in heaven with my grandmother and God is taking care of him. I want to see the murderers punished not necessarily by death. I feel sorry that they wasted theirs and my father's life."

Ms. Cobo declined to be interviewed.

Mr. Arroyo said he was not eager to leave death row, and not just because of dwindling interest in his case.

"All I know is death row," he said. "This is my life. This is where I grew up."

His lawyer sees reasons for him to be concerned about moving off death row.

"He's going to become someone's plaything in the general population," Mr. Dow said. "He's a small guy, and the first time someone tries to kill him they'll probably succeed."

That kind of violence is not the way most lifers die. At Angola, for instance, two prisoners were killed by fellow inmates in the five years ended in 2004. One committed suicide, and two were executed. The other 150 or so died in the usual ways.

The prison operates a hospice to tend to dying prisoners, and it has opened a second cemetery, Point Lookout Two, to accommodate the dead.

On a warm afternoon earlier this year, men in wheelchairs moved slowly around the main open area of the prison hospice. Others lounged in bed.

The private rooms, for terminal patients, are as pleasant as most hospital rooms, though the doors are sturdier. The inmates have televisions, video games, coffeepots and DVD players. One patient watched "Lara Croft:

Tomb Raider."

Robert Downs, a 69-year old career bank robber serving a 198-year term as a habitual felon, died in one of those rooms the day before. In his final days, other inmates tended to him, in four-hour shifts, around the clock. They held his hand and eased his passage. "Our responsibility," said Randolph Matthieu, 53, a hospice volunteer, "is so that he doesn't die there by himself. We wash him and clean him if he messes himself. It's a real humbling experience."

Mr. Matthieu is serving a life sentence for killing a man he met at the C'est La Guerre Lounge in Lafayette, La., in 1983.

At Point Lookout Two the next day, there were six mounds of fresh dirt and one deep hole, ready to receive Mr. Downs. Under the piles of dirt were other inmates who had recently died. They were awaiting simple white crosses like the 120 or so nearby. The crosses bear two pieces of information. One is the dead man's name, of course. Instead of the end points of his life, though, his six-digit prison number is stamped below.

The sun was hot, and the gravediggers paused for a rest after their toil.

"I'm hoping I don't come this way," said Charles Vassel, 66, who is serving a life sentence for killing a clerk while robbing a liquor store in Monroe, La., in 1972. "I want to be buried around my family."

The families of prisoners who die at Angola have 30 hours to claim their bodies, and about half do. The rest are buried at Point Lookout Two.

"It's pretty much the only way you leave," said Timothy Bray, 45, also in for life. Mr. Bray, who helped beat a man to death for falling behind in his debts, tends to the horses that pull the hearse on funeral days, placing white and red rosettes in their manes.

### **Wary of a Transformed World**

Not all older lifers are eager to leave prison. Many have grown used to the free food and medical care. They have no skills, they say, and they worry about living in a world that has been radically transformed by technology in the decades that they have been locked up.

Wardens like Mr. Cain say that lifers are docile, mature and helpful.

"Many of the lifers are not habitual felons," he added. "They committed a murder that was a crime of passion. That inmate is not necessarily hard to manage."

What is needed, he said, is hope, and that is in short supply. "I tell them, 'You never know when you might win the lottery,' " Mr. Cain said. "You never know when you might get a pardon. You never know when they might change the law."

Up the road from Point Lookout Two, near the main entrance, is the building that houses the state's death row. Lawyers for the 89 men there are hard at work, trying to overturn their clients' convictions or at least convert their death sentences into life terms. According to the Death Penalty Information Center, eight Louisiana death row inmates have been exonerated in the last three decades. More than 50, prison officials said, have had their sentences commuted to life.

But those hard-won life sentences, when they come, do not always please the prisoners.

"I have to put a lot of these guys on suicide watch when they get off death row," said Cathy Fontenot, an assistant warden, "because their chances have gone down to this."

She put her thumb and forefinger together, making a zero.

Janet Roberts contributed reporting for this series. Research was contributed by Jack Styczynski, Linda Amster, Donna Anderson, Jack Begg, Alain Delaquérière, Sandra Jamison, Toby Lyles and Carolyn Wilder.

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