

# The High Cost of Alabama's Habitual Felony Offender Act: A Preliminary Assessment\*

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*Abstract: A partial evaluation of Alabama's Habitual Felony Offender Act is conducted using case studies of inmates serving life without parole sentences. The centrality of the investigation focuses on the effect of the life without parole sentencing, a practice which is assumed by many to be based on sound political practice, but may also be viewed as a questionable social policy. The authors suggest that Alabama's get-tough policy dealing with habitual criminals has effectively increased the prison population, but the consequences of the Act appears to be very costly in terms of the increasing number of LWOP inmates and the potential life threat to communities.*

## INTRODUCTION

Landmark decisions of 1973 enacted through the efforts of federal judge Varner on behalf of inmate rights and inhuman conditions existing in the Alabama state prison wrought many changes throughout the remainder of the decade. By the mid-seventies the benevolent mood of the nation began to change—so did the prison officials charged with rehabilitation of criminal offenders (Cullen and Gilbert, 1982). Citing the research findings (Martinson, 1974), a shift in orientation toward punishment began. A new emphasis focused on the magnitude of the crime problem and victim oriented public lobby groups were successful in gaining the attention of the Alabama State Legislature. Within a milieu fostering “law and order,” Alabama’s Habitual Felony Offender Act of 1979 (No. 79-471) was passed.

The legislative purpose and intent “...in enacting the habitual offender statute were to prevent repetition and increase of crimes by imposing increased penalties upon repeat offenders” (Title 13A Criminal Code 1984 Edition, 13 A-5-9, p. 110). Alabamians were promised that habitual criminals would either cease their criminal behavior or the Act would encourage such persons to leave the state. However, neither of these promises seems to have been fulfilled.

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The first habitual offender convicted under Alabama's new public policy received a life without parole sentence (LWOP) in early 1981. By June, 1985, a total of 315 inmates, including 12 females, were serving LWOP sentences in four Alabama correctional facilities. Aside from the waste of inmate lives, the effect of the Habitual Felony Offender Act has the potential for placing Alabama society at risk. These risk factors include the heavy burden of cost to taxpayers and the potential risk for violence directed toward both correctional staff and private citizens.

Although the LWOP sentencing practice is being challenged in the Alabama State Appellate Court as a violation of the Eighth Amendment, in a recent court decision (*Robertson v. State*, 8 Div 834, 1984) the sentence was upheld as not constituting cruel and unusual punishment.<sup>1</sup> Yet in South Dakota a LWOP sentence given to a criminal convicted of forgery was overturned;<sup>2</sup> the basis for this decision was the nonviolent nature of the offense and the disproportionate sentence.

Legal challenges to the Habitual Offender Felony Act offer considerable hope to LWOP inmates. However, as the number of inmates continues to rise and legal appeals are denied, hope will undoubtedly give way to increasing levels of frustration. This frustration, in turn, may be conducive to the emergence of another risk factor—that of prison riots. State Department of Corrections officials are sensitive to this risk factor, and they have attempted to minimize the threat. The opening of the new St. Clair Correctional Facility near Birmingham during 1983, for example, provides greater security. At St. Clair inmates are housed in single and two-person cells rather than the open dormitories used at Holman prison where, until recently, most LWOP inmates have been sequestered.

The warehousing of LWOP inmates at the Holman facility has not yet resulted in a riot, but the potential for violence and death remains high. During the time that the author was engaged in the research investigation upon which this paper is based, many prisoners spoke of the similarities between their situation and the conditions which led to the New Mexico State prison riots described by Stone (1982) in *The Hate Factory*. Indeed, greater security does not guarantee prevention of the risk involved as was demonstrated by the April 15, 1985, riot at the St. Clair Correctional Institute. This riot resulted in several million dollars of damage to the facility, the rape of a female staff member, and violent physical harm perpetrated upon the deputy warden and other male correctional staff.

Another unanticipated consequence of the Habitual Offender Act places the average citizen at risk to a loss of life. Whereas the purpose of the Habitual Felony Offender Act was and remains that of controlling violent persons, LWOP is a mandatory sentence for nonviolent repeat felony offenders as well. The potential that criminals may begin to think of eliminating witnesses to a crime portends a grievous consequence for

citizens who, by happenstance, will be in the wrong place at the wrong time. This theme emerged during interviews conducted with LWOP inmates, many of whom expressed what appeared to be a genuine concern for both prison staff and private citizens. In their view an increasing number of senseless homicides could be committed by criminals intent on avoiding the LWOP sentence. In the data section, this unanticipated cost factor will be explored from the perspective of law violators who have already been sentenced to life in prison without the possibility of parole. The question germane to this paper is not whether LWOP has a deterrent effect, but rather under what conditions and to what extent the purpose of the Habitual Felony Offender Act, and particularly LWOP, is effected.

### PROCEDURE

The data reported are gleaned from 97 tape recorded interviews conducted at Holman Correctional Center with life without parole inmates, 62 of whom are classified under the Habitual Felony Offender Act. The case studies are drawn from this latter group. An interview guide consisting of a series of structured, open-ended questions pertaining to the Habitual Felony Offender Act was used, but the discussions were not limited to this material.

It is noteworthy that the majority of inmates interviewed were in their mid-to-late twenties and many had an extensive history of drug use. Because of this fact and because various methods of classifying inmates are employed within the Alabama State Correctional system, the classifications of individuals discussed in this report are based on Yes/No responses to three questions: 1) has this inmate been classified as a sociopath or a psychopath?; 2) has this inmate been diagnosed psychologically as having schizophrenic characteristics?; and 3) has this inmate been diagnosed or classified as having alcohol and/or drug addition whether crime related or not?

The project took place at the Holman Correctional Center, a maximum security facility located near Atmore, Alabama. From early October, 1983, through late February, 1984, the tape recorded interviews were conducted in a small classroom within the prison. Because tape recorders and/or cameras are not allowed within Alabama's prisons, the fact that a tape recorder was present during this project caused a great deal of suspicion among inmates and lower echelon correctional staff members in particular. After approximately sixty interviews had been completed, the project was temporarily disrupted when a staff member initiated a complaint with the warden. The interviews were subsequently allowed to continue for three full days during which time high-ranking state and local correctional officials conferred with one another about the matter.

In the following section responses to two specific questions are used to evaluate the long-term effect of the Habitual Offender Act. Since brief inmate profiles are presented—to ensure anonymity for those who participated in the study—the first names of interviewees are changed.

## DATA AND DISCUSSION

Responses to two general questions provide some useful information regarding the effect of Habitual Felony Offender Act upon members of the criminal population. "What do you think can be accomplished by confining people in prison for life?" and "Do you think that the life without parole sentence is a deterrent to crime?" were two of the research questions posed to inmates. Although these data are based on a perspective differing from the "objective" reaction of people living in a free society, inmate responses to these questions nevertheless reflect a meaningful aspect of reality.

### *Lawrence*

Formerly a football player at a small black college and a site manager for a religious organization based in the Southeast, Lawrence began to use various kinds of drugs shortly after graduation from high school. Prior to his involvement with drugs Lawrence lived a normal childhood and even projected an all-American image. Perceived by others as being helpful and dependable, Lawrence's view of himself is that he was a selfish person; a motivation which led to this "predicament."

Lawrence is classified a drug addict, who, at age 32, had spent more than three years in prison, half of which was built on the LWOP sentence. Previously Lawrence served approximately eight months in jail on various drug charges. Each encounter with legal authorities, according to Lawrence, occurred while he was under the influence of drugs. With the exception of one Class A felony (armed robbery), the other two charges were Class C felonies (forgery of a prescription and burglary of a drugstore). Such experiences have left Lawrence "a man harder and more bitter." In his own words Lawrence has "learned from this LWOP. If I had paid attention when I had a two-year sentence, I would have avoided this."

Still, Lawrence believes that the crimes for which he was convicted do not merit the LWOP sentence. The issue is one of proportionate sentencing. Under the Habitual Offender Act second and third time felony offenders are treated similarly in the courts irrespective of whether they are being charged with Class A, B or C offenses. This application, according to Lawrence, is unfair! Concomitantly, Lawrence does not support the idea that the threat of LWOP is an effective deterrent because "most people [do] not think they would do something bad enough to receive a LWOP sentence."

Lawrence does not believe that he could make it in free society. Accustomed to life in Holman prison with its unique set of institutional rules, Lawrence views "...prison [as] a society which cannot be related to the outside world. ...the rules and regulations are not used outside." These statements offer further testimony that those sentenced to LWOP are throwaway adults, people without hope of redemption or rehabilitation.

### *Robert*

No [LWOP is not a deterrent to crime] because younger individuals go off to crime at an earlier age so if they rob someone they will make sure no witnesses are left. This law will help create hard core criminals.

At age forty, Robert is classified a sociopath and a drug addict. He was a shy youth, who, when only thirteen years old, discovered that wine helped to overcome this condition. Robert also found that alcohol gave him inspiration and motivation.

Raised in a single-parent household by his mother, Robert dropped out of school at age fifteen. The absence of an appropriate male role model at this early age created a substantial void in his life which, according to Robert, was responsible for a lack of interest in anything other than basketball. His greatest success occurred while Robert was living in New York City when, at thirty years of age, Robert entered a job training program. Overjoyed because he was accepted into the program, Robert displayed great pleasure when describing how he had received two advancements in that program.

Robert's criminal record is substantial, but it apparently includes only one prior violent felony offense (robbery) along with a series of charges involving obstructing the law and loitering to obtain narcotics. His record began at age fifteen when Robert was arrested for burglarizing a laundrette and was sentenced to the county jail. Robert's real problems began two years later when he started experimenting with street drugs. To support this habit he sold drugs and engaged in various other unlawful activities including shoplifting, burglary and grand larceny.

Confining people in prison using the LWOP sentence "...is just a way to keep people in jobs and it eats up the taxpayers' money," stated Robert. In his own words, "I am a victim of circumstances." Robert believes that he has been used as an example for others. Perhaps this statement is correct; at least this is one purpose fulfilled by the Habitual Felony Offender Act.

### *Andrew*

Criminality is a common factor in lifestyles which include the use of drugs. One thirty-two-year-old classified as a drug addict and previously confined in a juvenile reformatory prison for burglary and auto theft, was no exception. Andrew was sentenced to LWOP after being convicted of

murdering a friend during an argument. A heavy user of alcohol and various other drugs during an eleven-year period, he was under the influence at the time the homicide occurred and is unable to recall this event.

Andrew's youth was impoverished. Important factors in his background include an unemployed alcoholic father. The mother was employed as a mill worker, but was unable to earn enough money to meet the family's basic needs—a fact which resulted in many foodless days during Andrew's youth. To survive Andrew stated that he "...used to steal almost anything that was not tied down. I robbed and stole."

Rejected by other family members because of his criminal background, Andrew internalized a hate factor which, in turn, may cause him to devalue human life. Life, according to Andrew is "not (worth) too much." Andrew viewed the LWOP sentence as:

...a license to kill. I've got nothing to live for or look forward to. At least you can get out with a life sentence. They (LWOP inmates) will try to escape and people will be killed."

Brute strength, according to Andrew, is the essence of prison survival. This orientation is further supported by the perceived need to be physically strong and never to demonstrate weakness, (e.g., homosexuality).

Andrew's perception of LWOP is that the policy represents a harsh reaction to relatively minor criminal acts and, in particular, to individuals who have prior conviction records. Specifically, Andrew believes that those convicted of "...writing bad checks, then armed robbery, and then car theft" do not deserve LWOP. Exceptions would be repeat homicide offenders or when commutative legal action removes an inmate from death-row. Retaining the Habitual Offender Act, according to Andrew, would accomplish "nothing—making people hate more; make them turn against society."

### *James*

In the following example the severity of the LWOP sentence is contrasted with the criminal offenses involved. No stranger to the court, James, a thirty-one-year-old borderline mentally retarded, received two LWOP sentences in 1981 based on his conviction for first degree armed robbery. During 1974, according to James, he was accused of buying and receiving stolen property and robbery. Pleading guilty under a plea bargain, James received a ten-year prison sentence. However, in 1980, the 1974 case was broken down into separate offenses and James was labeled an habitual offender.

An army veteran, James served without distinction during 1969-1971 in Georgia, Texas, Washington State, Germany, and Belgium. It was during this period that James began to use drugs, such as LSD, cocaine

and heroin. In his own words "if (it is) mind expanding, give it to me." Despite a long history of drug abuse James is not classified; that is, he is neither a sociopath nor schizophrenic, and is not diagnosed as being addicted to drugs or alcohol.

In reviewing James' record several features stand out. A high school graduate, James accumulated 96 college credit hours while serving a sentence at the Draper correctional facility and subsequently earned an orthopedic technician certificate. Not lacking in self-confidence, James spoke during the interview of what he believed to be an unlimited potential, and even suggested that he could have been a physician had it not been for the 1980 robbery conviction. James' confidence is intriguing, if only because this inmate had been free a total of 16 months since 1974.

Although James believes that many victims of crime support LWOP, he personally expressed a strong opinion against this sentencing practice stating:

There is no hope. What are you going to get a man to do when he has LWOP, if there is no viable alternative?...It is cruel and unusual punishment.

When questioned as to what can be accomplished by confining people in prison for life, James responded: "Nothing—you don't give them a chance. Sometimes just one day in jail would deter." As for the deterrent effect of the LWOP sentence James' reaction was equally emphatic: "It proves itself not to be (a deterrent)—now they (street criminals) kill more people and police rather than give up and place themselves before the mercy of the court." Thus, the harshness of the punishment codified within the Habitual Offender Felony Act may be responsible for a high albeit unanticipated cost factor.

### *Joseph*

Joseph's mother died when he was eleven years of age, and along with two sisters he was raised by an older, unmarried sister with six children. After graduation from high school, he joined the army—later married—and has three children. Joseph had aspirations of becoming a law enforcement officer. While in the military this dream was shattered when he was charged with first degree murder and robbery. These charges were later reduced to kidnapping and deviant sex for which Joseph served nearly seven years in a Colorado State penitentiary.

Joseph received a LWOP sentence in 1982 after being convicted of armed robbery. He is neither pathologic, schizophrenic, or drug dependent. A non-violent person, Joseph must nevertheless spend the remainder of his life living amongst violent individuals. Joseph accepts the LWOP sentence as a viable means to control violent offenders. This view tempered when less heinous crimes were considered. Confining people in

prison for life, according to Joseph, will not accomplish very much because

This is a wrong move. Only animals deserve this. You will only keep them off the street and that is not an accomplishment. You place more financial burdens on people, create the need for more prisons, and require more taxes.

Joseph further stated that the law "...will cause people to be more cautious criminals and keep them from being careless." Although intended to deter crime the law may actually have the unintended consequence of increasing the professional expertise of persons whose lives are dedicated to committing crime.

### *William*

Not all inmates participating in this study were hardened, dedicated criminals when they arrived at the Holman Correctional facility. William diagnosed as a sociopath, is representative of individuals described by Richett (1969) in the book appropriately entitled *The Throwaway Children*. Barely 24 years old at the time of the interview, William already had spent nine years in prison. Only fifteen years of age when he arrived at Holman, William had already been confined in an Alabama reformatory and a Texas Boy's Ranch for exceptional children.

William stated that he is not a true habitual criminal because the charges filed against him in 1975 involved only one person, whereas three separate criminal offenses were initially recorded. He later was sentenced to LWOP for the following: robbery, kidnapping, assault, sodomy and escape.

William offered two succinct answers in response to the first question:

It (LWOP) is a waste of money and space. If you take a man's life away, you should just shoot him.

As to the deterrent effect of the law, William simply stated "people will probably kill all the witnesses."

Hardened by his prison experience, William, nevertheless, believes he will eventually be released. Whether this belief is realistic or is based on false hope, William's court appointed lawyer advised him that the three crimes for which he was tried separately in 1975 should have been combined and, therefore, he is not an habitual criminal.

William is a perfect example of a throwaway child. Although William lived his early years in California as part of a military family, he was raised by the State of Alabama in "the bottom"—Holman prison. At Holman, William learned to be a survivor in an environment where, in his own words, "the strong survive and the weak don't."



### John

One reason people respond appropriately to the intent of the law is a fear of being placed in detention with all of its perverted elements. Adjustment to life in prison does occur, however, and inmates do purposefully return to prison. John, age 30, appears to be one such individual. A bright, articulate person, wise in the methods of manipulation, John is a drug dependent sociopath who has adjusted to prison life after seven and a half years there. In response to the question "Were you ever afraid to try to do anything?," John responded "No, but the greatest fear I had was incarceration. I overcame that fear while at Draper."

A computer science major, John had completed three years of university study. In his own view he did not need crime to live and he was quite capable of being successful in a normal career. Involvement with drugs and criminal acts of robbery and impersonation, according to John, can be attributed to some emotional problems experienced during the adolescent years. Encouraged to read by his mother, a solid foundation for John's mental prowess was established at an early age. But John became restless and bored and he began to run around with a group of older friends who provided male companionship and the emotional support lost at age ten when John's parents separated.

Regarding the confinement in prison for life question, John stated:

"That person will not be on the street to commit crime. That is the only thing that can be accomplished."

As to the deterrent effect of the Habitual Offender Act, John responded:

The conditions leading to criminal behavior are still there. It takes rationalization to relate to the fact that one might get life without. Thus, the deterrent is gone.

The latter response seems particularly important because of its correspondence with the notion of aleatory risk used by Strodbeck and Short (1964) in their evaluation study of gang delinquency. Aleatory risk is conceptualized as a rational balancing or conscious weighing of the positive and negative consequences involved in delinquent behavior. There is little reason to assume that criminal behavior would be exempt from this risk-taking evaluative process. John accepts responsibility for his actions, although his understanding of the disparity between personal needs and the right of society to protect itself was fatalistic.

John remains optimistic about the future. Perhaps this optimism, the ability to adjust to prison life, and the belief that every grey cloud has a silver lining can be attributed to a deep religious commitment and a firm resolve that "God would not place a burden on a person that they cannot handle."

*Michael*

LWOP inmates represent human throwaway flushed through the criminal justice system to "the bottom," yet a number of inmates may have the potential to be rehabilitated. One example is Michael, a pleasant, articulate 33-year-old who seemed concerned about the senior author's well-being throughout the research process. When a number of items were taken from a briefcase over a period of two days, Michael apprised the author of this occurrence. Then, in an angry tone, he stated: "Don't forget where you are man! You are in a prison alongside a bunch of thieves and killers!" This declaration seems noteworthy. Despite the fact that he was convicted of burglary on more than one occasion, Michael did not appear to relate to the other inmates. Perhaps instances such as that just described represent an indicator that people can change. Although Michael is classified as sociopath, it is possible that after seven years in prison, three built on a LWOP sentence, Michael could be rehabilitated. Unfortunately, the Holman correctional facility is charged with the responsibility for securing, not rehabilitating three-time losers.

Michael experienced a good childhood while growing up in a religious home located in a middle-class neighborhood. As a youth Michael aspired to be a lawyer and a Federal Bureau of Investigation agent. In high school he served as ROTC unit commander and graduated with honors. Because of his involvement in the civil rights movement during the 1960's, Michael earned the reputation of "a smart young man who will go somewhere." He did. He earned a junior college degree while serving time in Draper prison for burglary and assault with a deadly weapon. Michael was later sentenced to LWOP at the Holman Correctional facility after being convicted of burglary and possession of a firearm. Without committing himself to the propriety of the charges, Michael stated that during the 1979-1980 period the Birmingham, Alabama police "...worked under the influence of racism..." Arrested in 1980 and sentenced to Holman in 1981, Michael believes that this arrest took place because "the police department does not like me."

Responding to the confinement question, Michael stated "For some (prisoners) it is a good thing to prevent harm and loss, but it should not be passed out indiscriminately." As for the deterrent effect of the Habitual Offender Act, the focal concern of this report again emerged when Michael stated "to me it makes it worse because it will make people (criminals) desperate and they will not leave any witnesses." Further interpreting the LWOP sentencing practice Michael stated:

It's useless, it's not working, it's messing up the lives of people and their families...the Attorney General created an image of saving society and solving all crime. This is not the way to solve the problem.

*Edward*

The Habitual Offender Act is unconstitutional because the law is practiced discriminately. The law has been applied arbitrarily and in doing so they violated my constitutional rights....The LWOP is a hell of a way to do something to a man for what I did!

Edward is a drug dependent sociopath who stated he has changed. That is to say, Edward has changed his priorities since being sentenced to LWOP. At age 32, Edward's adult life has been one of movement in and out of jail and prisons for possession and the sale of drugs. He was sentenced to LWOP after being convicted of burglarizing a drugstore to obtain drugs. Edward shares a drug problem characteristic to many other LWOP inmates. When 13 years of age, Edward began to experiment with drugs such as marijuana and LSD, and he later became a user of "all kinds" of drugs including heroin.

Inmates sentenced to LWOP do not always fit the stereotypic profile of the Habitual Offender Act. Indeed, Edward's background seems to belie his candidacy for such a sentence. Born into a financially well-to-do family, Edward's father was a high ranking member of the federal civil service employed at a war college, his mother is a supervisor for the State of Alabama. Edward further described his parents as "great parents" and "good citizens" who were proud of him, provided well for their children and used discipline. When he was caught stealing, for example, Edward's parents compelled him to pay restitution to the toyland from which the model cars were stolen by working after school.

Confident in his abilities, Edward stated "I was always successful in everything I did. I lived in the fast lane and had a good life." The good life included recognition as a high school athlete and success as a machinist and shoe salesman. Edward also characterized himself as being adventurous, having a great desire to experience things, and willing to take a calculated risk.

The perspective of an inmate who lived one year in a youth center, went to prison for the first time at age eighteen; ten years in prison by his 32nd year, and defines the Alabama State prison system as a breeding ground for criminals and homosexuals, provides some additional support for the central issue addressed in this paper. The effect of the Habitual Offender Act and the LWOP sentencing practice, according to Edward, is to:

breed hate, breed a dangerous man if he ever gets out. This (LWOP) breeds homosexuals and criminals. These people are throwaway people.

This inmate accepts full responsibility for his actions, although Edward believes that someone was out to get him and that members of the vice and narcotics squad "...were down on me hard. My lawyer stated no one would plea bargain—I would get LWOP." As to the deterrent effect

of the LWOP sentence on criminal activities, Edward offered the following statement:

I heard about it, but it did not deter me because I thought I would never get busted. However, had I really known I might get it, I would not have done some of these things....It was my fault.

## DISCUSSION AND CONCLUSION

We began by suggesting that passage of the Habitual Felony Offender Act has resulted in unfulfilled promises. Moreover, it is doubtful whether 315 LWOP inmates account for the dramatic decrease in Alabama's crime rate during the past five years. As part of a get-tough position with criminals, the Act has a definitive political tone. But the harshness of the life without parole sentence, is responsible for the socially manufactured waste of human life and a heavy financial burden being placed on the community. Such costs are difficult to justify under the rubric of law and order. Moreover, the onus of the LWOP sentence upon Alabama's criminal justice system is reminiscent of abuses of the past.

Violent criminals undoubtedly deserve special attention. But the cases reported in this paper demonstrate that not all criminals sentenced to LWOP are violent nor do they have an extensive history of violence. On the other hand, they did have adjustment problems during their childhood or experienced problems with drugs and alcohol. Many other LWOP inmates are mentally disturbed. Such individuals are deserving of medical care and treatment in adequate facilities staffed by appropriately trained personnel.

A sentence of life without parole is debilitating, stripping inmates of any hope to be free from confinement until they die. Each has been judged to be unsalvagable. It would seem, however, that our public officials should be capable of dealing with the crime problem in a more appropriate, humane manner.

According to Moran (1984), "getting tough with criminals is not the answer." Not only is the prevention of crime costly, the gradual increase in the number of criminals housed in prisons makes it difficult to punish lesser offenders by sending them to prison. The fact that disturbed individuals are not provided adequate treatment due to their confinement in maximum security prisons—is a worthy example of well-intentioned albeit misguided efforts to control social deviates.

Appropriate decisions often are made for the wrong reason. If we assume, as did John Stuart Mills, that execution is less cruel than the alternative, lifelong incarceration (van den Haag and Conrad, 1983), then what appears to be a blind public support for LWOP sentencing practices could be challenged. Many people believe that long-term incarceration

deters crime. The statistical proof that this threat actually does deter crime more than short-term imprisonment is nonexistent (van den Haag and Conrad, 1983). Aside from the death penalty, a LWOP sentence is a most draconian solution to the crime problem. LWOP may keep a particular offender off the streets, but, as Schlesinger et al. (1985) recently suggested, draconian solutions are costly forms of justice. Indeed, the financial cost of punishment may be more expensive than the cost of crime.

Still to be resolved in the courts is whether a life without parole sentence for nonviolent offenses, such as forgery, constitutes cruel and unusual punishment. Plea bargaining is another issue which, because of the LWOP sentence, needs to be reevaluated. Several individuals received a LWOP sentence based on a retroactive assessment of their past convictions. Although supposedly innocent as charged, these inmates stated that they had plea bargained their way to freedom as a way to avoid further incarceration prior to their trial. The Habitual Offender Felony Act does not discriminate in such cases. Rather, as documented in the Code of Alabama, the Act mandates that

In all cases when it is shown that a criminal defendant has been previously convicted of any three felonies and after such convictions has committed another felony, he must be punished as follows:...(3) On conviction of a Class A felony, he must be punished by imprisonment for life without parole (Acts 1977, No. 607, p. 812, 1235; Acts 1979, No. 79. 664, p. 1163,1).

Interestingly, not all of the individuals discussed in this report were found guilty of four felony offenses.

Aside from the interpretive issue, the utility of the habitual Felony Offender Act itself is of concern. A policy statement which earns its distinction primarily because of political expediency is usually expensive both in terms of its effect upon the community and, with respect to LWOP, the wasting of human life. Demographics such as the shrinking age specific 18-25 age group most crime prone, is a prime reason for the decreasing national crime rate. Furthermore, growing evidence in support of the claim that stiffer sentencing has little effect on the crime rate suggests that the Alabama's Habitual Felony Offender Act is a political tool useful for selecting out certain individuals for LWOP.

#### APPENDIX

1. In *Robertson v. State*, 8 Div 834 (1984) the Court of Criminal Appeals of Alabama ruled that life without parole does not constitute cruel and unusual punishment when armed robbery and three prior felony convictions are involved. This ruling reaffirms other challenges to the Habitual Felony Offender Act re: judicial discretion which was denied by

- Alabama's Appellate Court (*Jemison vs. State*, 439 So. 2d 786, 1983) and two State Supreme Court rulings in which the constitutionality of the life without parole sentencing practice was upheld (*Carroll v. State*, 445 So. 2d 952, 1983; *Montgomery vs. State*, 446 So 2d 697, 1983).
2. In *Helm v. Solem*, 82-1039 (1982), by a 5 to 4 decision the United States Supreme Court overruled a lower federal court decision. The majority opinion held that life without parole for a series of nonviolent offenses constitutes cruel and unusual punishment and, therefore, is in violation of the Eighth Amendment.

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