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Victor Streib: A Man on a Mission, Mission Accomplished

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For most of the history of our nation, courts in a number of states have allowed the execution of minors. To many people outside of the United States, the notion of executing a sixteen-year-old or a fifteen-year-old, or even a fourteen-year-old, is shocking, and indeed the vast majority of countries throughout the world long ago concluded that such a practice could not be tolerated.¹ Today, very few nations allow for the executions of individuals under the age of eighteen.²

Less than ten years ago, the Supreme Court of the United States abolished the death penalty for minors, even in connection with homicide offenses. It was the second of a two-step process in its jurisprudence, as I shall explain below. Few American lawyers are more directly responsible for achieving this abolition than Professor Victor Streib. Before paying tribute to this extraordinary man, I begin with the story of the process of elimination of this awful procedure.

In *Thompson v. Oklahoma*,³ the Supreme Court decided that the execution of a defendant who was fifteen years old at the time of his offense for a heinous crime (a brutal murder) violated the constitutional prohibition against the infliction against cruel and unusual punishment found in the Eighth Amendment.⁴ The Justices did not speak to the question of those who were above the age of sixteen. Instead, they looked solely at the few states that still allowed for the execution of those under sixteen. The language of Justice Stevens for the plurality opinion is striking:

It is generally agreed that “punishment should be directly related to the personal culpability of the criminal defendant.” There is also broad agreement on the proposition that adolescents as a class, are less mature and responsible than adults. . . . “But youth is

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1. The United Nations Convention on the Rights of the Child specifically forbids such executions. U.N. Convention on Rights of the Child [CRC], Nov. 20, 1989, U.N. Doc. A/44/49, 1577 U.N.T.S., Art. 37(a).

2. Iran, Saudi Arabia, Sudan, Pakistan, and Yemen are on that short list. See Human Rights Watch, *The Last Holdouts: Ending the Death Penalty in Iran, Saudi Arabia, Sudan, Pakistan, and Yemen* 2 (Sept. 2008), www.hrw.org/sites/default/files/reports/crd0908webwcover_0.pdf.

3. 487 U.S. 815 (1988).

4. *Id.* at 818, 838.

more than a chronological fact. It is a time and condition of life when a person may be most susceptible to influence and to psychological damage. Our history is replete with laws and judicial recognition that minors, especially in their earlier years, generally are less mature and responsible than adults. Particularly ‘during the formative years of childhood and adolescence, minors often lack the experience, perspective, and judgment’ expected of adults.”⁵

The case which forced the Justices to face the issue of minors over the age of sixteen being executed is *Roper v. Simmons*,⁶ decided in 2005.⁷ There, the majority of the Court continued the analysis from the *Thompson* case:

When a juvenile offender 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.

....

Three general differences between juveniles under 18 and adults demonstrate that juvenile offenders cannot with reliability be classified among the worst offenders. First, as any parent knows . . . “[a] lack of maturity and an underdeveloped sense of responsibility are found in youth more often than in adults and are more understandable among the young. These qualities often result in impetuous and ill-considered actions and decisions.” . . . “[A]dolescents are overrepresented statistically in virtually every category of reckless behavior.”

....

The second area of difference is that juveniles are more vulnerable or susceptible to negative influences and outside pressures, including peer pressure. (“[Y]outh is more than a chronicle fact. It is a time and condition of life when a person is most susceptible to influence and to psychological damage”).

5. *Id.* at 834 (citations omitted).

6. *Roper v. Simmons*, 543 U.S. 551 (2005).

7. In reaching its result, the Court overturned its earlier opinion in *Stanford v. Kentucky*, 492 U.S. 361 (1989), which had allowed the death penalty for offenders above or at the age of sixteen. *Id.* at 380.

....

The third broad difference is that the character of a juvenile is not as well formed as that of an adult. The personality traits of juveniles are more transitory, less fixed.⁸

Victor Streib has taught several generations of law students, principally at Ohio Northern University Pettit College of Law but also at the New England School of Law and the Cleveland-Marshall College of Law. He talks with his students of the evils of the death penalty generally, but also particularly in connection with juvenile offenders. He is extremely effective in this context and has influenced many students throughout the country. Indeed, I saw him recently speak to a captivated group of law students at the College of William and Mary, laying out the U.S. experience of the death penalty with respect to minors and why that chapter in our history is so shameful.

Professor Streib's contribution to the elimination of this "utterly barbaric"⁹ practice is broader than simply educating law students. He is a scholar of the first rank, who has focused his attention on capital punishment issues. To cite but one of many examples, his influential 1998 article, *Moratorium on The Death Penalty for Juveniles*,¹⁰ is a careful and detailed view of the rules throughout the United States regarding the problem, as well as actions taken by the American Bar Association to eliminate the problem. His conclusion is a forceful assertion to readers that we should simply get out of the business of executing minors:

[I]t is clear that the Court does not clearly and strongly endorse the death penalty for juvenile offenders.

The international community is also on the side of opposing the death penalty for juveniles. The continuing involvement of the United States in this practice aligns us with the criminal justice and human rights practices of such countries as Iran and Iraq, odd company indeed for the leading democratic nation of the western world. If the United States wishes to continue to take the high road

8. *Roper*, 543 U.S. at 569-70 (citations omitted).

9. Outside the United States, I have heard this term on numerous occasions. It was most recently spoken to me, in light of the Court's decision in *Roper*, by an Australian judge praising the Court's actions, but she wondered why it had taken so long.

10. Victor L. Streib, *Moratorium on the Death Penalty for Juveniles*, 61 LAW & CONTEMP. PROBS. 55 (1998).

in pushing other nations to improve their human rights records, our leadership in the practice of the death penalty for juvenile offenders is a strong counterweight to our efforts.¹¹

Professor Streib's scholarship has influenced many, and certainly in that group would be Justices of the Supreme Court of the United States. This remarkable individual's research has been cited more than two dozen times in opinions of the Court. In the *Thompson* case discussed above, the Court struggled to find exact figures for executions of minors:

While it is not known precisely how many persons have been executed during the 20th century for crimes committed under the age 16, a scholar has recently compiled a table revealing this number to be between 18 and 20. All of these occurred during the first half of the century, with the last such execution taking place apparently in 1948.¹²

The scholar to whom the Court was referring is, of course, Victor Streib.¹³

The involvement of Professor Steib in the abolition of the death penalty for minors has been even more active than as a scholar and teacher. He has served as an expert witness in a number of states including Florida, Texas, Arizona, Louisiana, and Pennsylvania.¹⁴ Moreover, he has been counsel or co-counsel in several important cases in which the issue has been raised.¹⁵ Foremost of these, of course, is *Thompson v. Oklahoma*, where he represented the fifteen-year-old boy who was sentenced at trial to be executed.¹⁶ Less widely known, but just as significant, was his role as lawyer for Paula R. Cooper, who was convicted—at fifteen years old—of murder and felony murder and was sentenced to death.¹⁷ Cooper was the youngest person ever to be placed on Indiana's death row. In a series of cases going up and back through the Indiana state court system, Professor Streib vigorously represented the interests of his client and argued

11. *Id.* at 73.

12. *Thompson*, 487 U.S. at 832.

13. The opinion here was citing Professor Streib's highly influential work *Death Penalty for Juveniles*. VICTOR L. STREIB, DEATH PENALTY FOR JUVENILES 190-287 (1987).

14. Victor L. Streib, Biography, OHIO NORTHERN UNIVERSITY, http://www.law.onu.edu/faculty_staff/faculty_profiles/victorstreib.html (last visited Feb. 20, 2012).

15. *Id.*

16. *Thompson*, 487 U.S. 815. The 5-4 decision removed seventy-two juvenile offenders in twelve states from death row, and ended more than 360 years of the death penalty for juvenile offenders in the United States.

17. *Cooper v. Indiana*, 540 N.E.2d 1216 (Ind. 1989).

strenuously for a lesser penalty. He was ultimately successful, and the death penalty judgment against Cooper was invalidated.¹⁸

It is truly a great pleasure for me to participate in this limited way with others in the issue of the Ohio Northern Law Review dedicated to the life and career of Victor Streib. He is a man I admire very much for being willing to spend a good deal of his time taking what—for a considerable period—was an unpopular and often highly-controversial position. He, of course, ultimately prevailed in the courts of law in the United States as well as in the courts of public opinion in our country. Albert Einstein once wrote, “[t]ry not to become a man of success but rather try to become a man of value.”¹⁹ Victor Streib is both a man who is of great success and a man of clear and important value.

18. *Id.* at 1221.

19. William Miller, *Death of a Genius*, TIME MAGAZINE, May 2, 1955, at 64, available at <http://www.time.com/time/magazine/article/0,9171,866292,00.html>.