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## Standing for the Most Vulnerable

MICHAEL L. RADELET\*

It takes a special sort of person to dedicate his or her professional career to fighting for those who are at the bottom of the barrel. Questions of “just desserts” aside, there are few (if any) groups in the United States today who are closer to the bottom of the barrel than those 3,500 or so who are awaiting the day when they will be strapped on a gurney and dispatched to the hereafter.<sup>1</sup> Professor Victor L. Streib not only dedicates his time to working with death-row inmates, but his strongest scholarly and legal contributions have been directed at the most vulnerable of those on that bottom rung: juveniles, women, and the mentally retarded. Like Mother Teresa, Streib is a man who has walked the walk.

It is almost impossible to imagine that Professor Streib is beginning his eighth decade on our planet. He continues to approach scholarly issues with the energy of a first-year associate in a New York law firm and the creativity of a student who might just have graduated at the top of her or his law school class. Today he has plenty of laurels to rest on, but he looks forward to retirement as a time to shed even more light on contemporary death penalty debates.

A native of Marion, Indiana, Streib completed his undergraduate work in Industrial Engineering at Auburn in 1966 and his law degree at Indiana University-Bloomington in 1970. He then spent two years with the Institute for Research in Public Safety at Indiana University (“IU”) before accepting a tenure-track position in what is now IU’s Department of Criminal Justice. In 1978 he began a two-year stay at New England College of Law in Boston and then, in 1980, he began a sixteen-year tenure at Cleveland-Marshall College of Law. In 1996 he was named Dean of Ohio Northern University Pettit College of Law.

Streib was a generalist before becoming a specialist. His first book, published in 1978, was a critical overview of the juvenile justice system in the United States.<sup>2</sup> It examined the history and philosophy of America’s

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1. As of January 1, 2011, there were 3,191 men and 60 women awaiting execution in the United States. Deborah Fins, *Death Row U.S.A.*, NAACP LEGAL DEFENSE AND EDUCATIONAL FUND, INC. 1 (Winter 2011), [http://naacpldf.org/files/publications/DRUSA\\_Winter\\_2011.pdf](http://naacpldf.org/files/publications/DRUSA_Winter_2011.pdf).

2. VICTOR L. STREIB, *JUVENILE JUSTICE IN AMERICA* (1978).

treatment of juveniles by the criminal justice system as well as the many shortcomings of this approach.<sup>3</sup> Indeed, in the book Streib outlined some thirty recommendations for how the juvenile justice system could be improved.<sup>4</sup>

Shortly after moving to Cleveland, however, he began to focus his scholarship on death penalty issues, specifically on the death penalty for juveniles. His first major publication in the area was in 1983,<sup>5</sup> and other important works on the problem soon followed.<sup>6</sup> At the time, very little was known about the issue; undoubtedly most scholars would have thought that only a handful of children had been executed in the history of the United States. In his 1983 article, Streib told the history and summarized the debate over juvenile executions, and gave information on 287 executions in American history that took the lives of children aged seventeen or younger at the time of their crimes.<sup>7</sup> Now almost thirty years old, that article can be seen in retrospect as the bugle call at the beginning of the horse race. It opened the modern debate on the wisdom and morality of executing youthful offenders, and has proved to be enormously important.

In 1987, Streib finished a book that remains the Bible in this field.<sup>8</sup> It was fittingly published by Indiana University Press,<sup>9</sup> the university where Streib received his legal training and spent the first eight years of his career. The book provides readers with an overview of the constitutional issues involved in executions of juveniles, an overview of the cases of juveniles who were executed throughout American history,<sup>10</sup> a discussion of the arguments for and against public policies that allowed states to execute youthful offenders, and a snapshot of the procedures used in various states that were continuing to sentence juveniles to death in the 1980s.<sup>11</sup> In the years since, no scholar or litigator can deal with the juvenile death penalty without first studying this book.

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3. *See generally id.*

4. *Id.* at 51-104.

5. Victor L. Streib, *Death Penalty for Children: The American Experience with Capital Punishment for Crimes Committed While under Age Eighteen*, 36 OKLA. L. REV. 613 (1983).

6. *See, e.g.*, Victor L. Streib, *Capital Punishment of Children in Ohio: "They'd Never Send a Boy of Seventeen to the Chair in Ohio, Would They?"*, 18 AKRON L. REV. 51 (1984-85); Victor L. Streib, *The Eighth Amendment and Capital Punishment of Juveniles*, 34 CLEV. ST. L. REV. 363 (1985-86).

7. Streib, *supra* note 5, at 613-16, 618-19.

8. VICTOR L. STREIB, *DEATH PENALTY FOR JUVENILES* (1987).

9. *Id.*

10. The book included 281 cases of juvenile executions, a figure that updated his earlier work. *Id.* at 55.

11. *See generally id.*

Streib has always been a scholar who credits others for their assistance with his projects. In particular, I have always been impressed with his willingness to share the spotlight with Watt Espy, an Alabama death penalty researcher who died in August, 2009.<sup>12</sup> Espy, who never had a college degree,<sup>13</sup> spent his life trying to document every execution in American history.<sup>14</sup> He lived in poverty and rarely got credit for his scholarship. Streib learned of Espy's work in the early 1980s and spent several days with him in Alabama going through the information he had gathered on executions of juveniles. Unlike some other academics, Streib always gave Espy credit and respect. He once described Espy as "an undisputed gem."<sup>15</sup> As Streib noted in the preface and acknowledgements section of his 1987 book, *Death Penalty for Juveniles*:

Two individuals deserve special mention. One is a recognized giant in the field of death penalty research, Watt Espy.<sup>16</sup> He generously opened his files to me originally when I sought to identify each juvenile execution and has remained a loyal and priceless contributor to this research ever since. Along with so many other death penalty researchers, I have achieved this level in my research only by standing on the shoulders of Watt Espy.<sup>17</sup>

Espy thought of Streib as a true hero. For the last twenty-five years of his life, Espy had a picture of Streib on the wall over his desk.<sup>18</sup>

Soon after completing his book on juveniles, Streib shifted gears and began to study executions of women. The first paper, coauthored with Lynn Sametz, built on his work on the juvenile death penalty.<sup>19</sup> Other papers about the death penalty for females soon followed,<sup>20</sup> as did a book in 2006.<sup>21</sup>

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12. See *M. Watt Espy Papers (APAP-301), 1730-2008: Biographical Sketch*, UNIV. AT ALBANY, <http://library.albany.edu/speccoll/findais/eresources/findingaids/apap301.xml> (last visited Mar. 14, 2012).

13. *Id.*

14. For information about Espy's work, see, e.g., Bruce Krasnow, *Chronicler Spends Life with Death*, FLORIDA TIMES-UNION (Jacksonville), Dec. 1, 1986, at A1; Ronald Smothers, *Historian's Death Penalty Obsession*, N.Y. TIMES, Oct. 21, 1987, at A16; Francis X. Clines, *A Dismayed Historian of the Gallows*, N.Y. TIMES, Nov. 18, 1992, at A16. Espy's papers are now housed in the National Death Penalty Archives in the M.E. Grenander Department of Special Collections and Archives. See *M. Watt Espy Papers*, *supra* note 12. At the time of this writing, the University at Albany is trying to convince Professor Streib to add some of his papers to this collection.

15. Bruce Krasnow, *supra* note 14, at A5.

16. The other, not surprisingly, is his wife, Lynn Sametz.

17. STREIB, *supra* note 8, at x.

18. However, Espy could never remember how to pronounce "Streib," doing so without a long "i."

19. Victor L. Streib & Lynn Sametz, *Executing Female Juveniles*, 22 CONN. L. REV. 3 (1989). This is one of five publications that Vic and Lynn coauthored. She holds an M.A. in Special Education

Streib has always been generous sharing the data that he gathered for his own work with others who share his interests. In January 1984, he published the first issue of “The Juvenile Death Penalty Today,” which went through seventy-six updates<sup>22</sup> until execution of offenders aged seventeen or younger at the time of the crime was finally banned by the Supreme Court in 2005.<sup>23</sup> Shortly after he began distributing the information on the death penalty for juveniles, he undertook a similar project summarizing data on the death penalty for women. He continues to update that document today.<sup>24</sup> I cannot imagine a college class on the death penalty today that would not list these two documents as required or suggested reading.

By the early 1990s, Streib expanded his interests to include more global issues in death penalty debates. In 1993 he published one of the most important edited books on the death penalty in the modern era, with excerpts from over forty scholarly articles that discuss a wide array of death penalty issues.<sup>25</sup> Ten years later, the first edition of a wonderful overview of death penalty issues, *Death Penalty in a Nutshell*, first appeared.<sup>26</sup> There really is no other book like it on the market: in three hundred pages the monograph synthesizes all the major issues in contemporary death penalty debates. It is useful not only in law school courses, but as a supplement for undergraduate criminology courses.

With this record, it is not surprising that Streib has had a hand in virtually all of the litigation surrounding the juvenile death penalty over the past three decades. He has struggled with the (sometimes) conflicting roles

and a Ph.D. in Education, and has been a constant sounding board for Vic throughout his career. In addition to the five papers, they also collaborated twenty-eight years ago to produce twin children, Jessi and Noah. Lynn is currently the Associate Director of the Center for Youth, Family and Community Partnerships, University of North Carolina Greensboro.

20. See, e.g., Victor L. Streib, *Death Penalty for Female Offenders*, 58 U. CIN. L. REV. 845 (1990); Victor L. Streib, *Death Penalty for Battered Women*, 20 FLA. ST. U. L. REV. 163 (1992).

21. VICTOR L. STREIB, THE FAIRER DEATH: EXECUTING WOMEN IN OHIO (2006).

22. The final issue is dated October 7, 2005. See Victor L. Streib, *The Juvenile Death Penalty Today: Death Sentences and Executions for Juvenile Crimes, January 1, 1973 – February 28, 2005*, 3 (Issue # 77) (Oct. 7, 2005), available at [http://www.law.onu.edu/faculty\\_staff/faculty\\_profiles/coursematerials/streib/juvdeath.pdf](http://www.law.onu.edu/faculty_staff/faculty_profiles/coursematerials/streib/juvdeath.pdf). By this time, Streib had documented 366 executions of juveniles in American history. *Id.* at 3. In the pre-Internet era, spanning the first ten years or so of this publication, Streib would photocopy several dozen copies and mail them to a growing list of subscribers.

23. *Roper v. Simmons*, 543 U.S. 551, 578 (2005).

24. Victor Streib, *Death Penalty for Female Offenders, January 1, 1973, through October 31, 2010*, DEATH PENALTY INFO. CENTER, no. 65, 2010 at 2 (Nov. 3, 2010), <http://www.deathpenaltyinfo.org/documents/femaledeathrow.pdf>.

25. VICTOR L. STREIB, A CAPITAL PUNISHMENT ANTHOLOGY (1993).

26. VICTOR L. STREIB, DEATH PENALTY IN A NUTSHELL (2003). The third edition of this book was published in 2009.

of scholar and advocate,<sup>27</sup> but just a few weeks after he finished his 1987 book he became co-counsel for Wayne Thompson, who was sentenced to death in Oklahoma for a murder committed when he was fifteen.<sup>28</sup> Later, he also became co-counsel for other juveniles on death row, Paula Cooper<sup>29</sup> and Jerome Allen.<sup>30</sup> I am sure that he has spent literally thousands of hours in uncompensated time brainstorming about various death penalty issues with both litigators and scholars.

In 1998, Streib wrote an essay that linked death penalty issues for “second class citizens”—juveniles, women, and the mentally retarded.<sup>31</sup> By any measure and for different reasons, these demographic groups are especially vulnerable in death penalty proceedings. In part, this is precisely why the Supreme Court has banned the death penalty for two of the three groups.<sup>32</sup> Female defendants, too, can have special vulnerabilities: in determining punishment for women, jurors and judges need to be aware of the possibility that the defendant was acting under the domination of a male accomplice, or had a history of abuse from male partners or acquaintances that dramatically increases the probability of criminal violence.

Ohio Northern University (“ONU”) is fortunate to have attracted to its faculty a scholar with such a strong commitment to the general principles on which the university was founded. ONU is a private university affiliated with the United Methodist Church (“UMC”).<sup>33</sup> In 1956 the UMC became one of the first major organized religions in the United States to take a formal (and firm) stand against the death penalty.<sup>34</sup> Their 1956 statement read, in part, “[w]e stand for the application of the redemptive principle to

27. Victor L. Streib, *Academic Research and Advocacy Research*, 36 CLEV. ST. L. REV. 253 (1988).

28. *Thompson v. Oklahoma*, 487 U.S. 815, 838 (1988) (banning the death penalty for offenders aged fifteen or younger).

29. *Cooper v. State*, 540 N.E.2d 1216, 1217 (Ind. 1989) (a case that tested the retroactivity of *Thompson* and ultimately banned the death penalty in Indiana for offenders aged fifteen or younger).

30. *Allen v. State*, 636 So.2d 494, 496 (Fla. 1994) (Allen was sentenced to death by a judge who apparently hoped the Supreme Court would ultimately reverse the *Thompson* decision; the result was that the Florida Supreme Court firmly banned the death penalty in Florida for offenders aged fifteen or younger).

31. Victor L. Streib, *Executing Women, Juveniles, and the Mentally Retarded: Second Class Citizens in Capital Punishment*, in *AMERICA’S EXPERIMENT WITH CAPITAL PUNISHMENT: REFLECTIONS ON THE PAST, PRESENT, AND FUTURE OF THE ULTIMATE PENAL SANCTION* 301 (James R. Acker, Robert M. Bohm & Charles S. Lanier eds., 2d ed. 2003).

32. The Court banned the imposition of the death penalty on mentally retarded defendants in *Atkins v. Virginia*, 536 U.S. 304, 321 (2002).

33. Ohio Northern University, *Mission and Purpose Statement*, OHIO NORTHERN UNIVERSITY, [http://www.onu.edu/about\\_onu/mission\\_and\\_purpose](http://www.onu.edu/about_onu/mission_and_purpose) (last visited Mar. 14, 2012).

34. Tom McAnally, *Death penalty continues despite church’s 50-year opposition*, THE UNITED METHODIST CHURCH (Oct. 19, 2006), [http://www.umc.org/site/c.gjJTJbMUuE/b.2176103/k.A6EA/Death\\_penalty\\_continues\\_despite\\_churchs\\_50year\\_opposition.htm](http://www.umc.org/site/c.gjJTJbMUuE/b.2176103/k.A6EA/Death_penalty_continues_despite_churchs_50year_opposition.htm).

the treatment of offenders against the law, to reform of penal and correctional methods, and to criminal court procedures. [For this reason] [w]e deplore the use of capital punishment.”<sup>35</sup>

These are stands that have guided the career of Professor Victor Streib. May his work continue to inspire the ONU law students and faculty, as it has and will continue to inspire contemporary and future students of the death penalty in America.

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35. *United Methodist Church Marks 50<sup>th</sup> Anniversary of Stance Against Death Penalty*, DEATH PENALTY INFORMATION, <http://www.deathpenaltyinfo.org/node/1707> (last visited Mar. 9, 2012).