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### Recommended Citation

Koosed, Margery B. () "Victor L. Streib Tribute," *Ohio Northern University Law Review*: Vol. 38: Iss. 2, Article 9.

Available at: [https://digitalcommons.onu.edu/onu\\_law\\_review/vol38/iss2/9](https://digitalcommons.onu.edu/onu_law_review/vol38/iss2/9)

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## Victor L. Streib Tribute

MARGERY B. KOOSÉD\*

Vic Streib was at the Cleveland Marshall School of Law at Cleveland State University when I first got to know him in the 1980s. He was living on the east side of Cleveland, as was I, though I have taught for over thirty-seven years down the road at the University of Akron School of Law. Like Vic, I teach criminal law and procedure, specializing in capital punishment litigation. It was natural that we would meet, sharing so much. But I honestly do not recall how or when we first met. It must have been at a death penalty-related meeting or through a phone conversation (no email was flowing in those olden days in the late '80s).

### ON DEATH AND KIDS AND WOMEN

Vic was already chronicling the death-sentencing practices, past and present, of juveniles and women then. I made sure to get on his mailing list, and going through my office file cabinets last month (which woefully need the attention of a paper recycler), I found twenty random 1990-1998 issues of Vic's *The Death Penalty for Female Offenders*. Also known as *Capital Punishment for Female Offenders*, these reports came several times a year and tracked imposition of the death penalty on women from January 1, 1973 to the then present.<sup>1</sup> A similar tracking paper for minors, *The Juvenile Death Penalty Today—Present Death Row Inmates under Juvenile Death Sentences and Death Sentences and Executions for Juvenile Crimes*, January 1, 1973 to (issue date) filled another folder in my cabinet.<sup>2</sup> These—along with *Death Row, USA*, long-published by the NAACP Legal Defense and Education Fund—were by far the best tracking mechanisms for capital case decision-making.<sup>3</sup>

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1. See, e.g., Victor L. Streib, *Death Penalty For Female Offenders, Jan. 1, 1973, Through October 31, 2010*, DEATH PENALTY INFORMATION CENTER, (2010), <http://www.deathpenaltyinfo.org/documents/femaledeathrow.pdf>.

2. See, e.g., Victor L. Streib, *The Juvenile Death Penalty Today: Death Sentences and Executions for Juvenile Crimes, Jan. 1, 1973 - Feb. 28, 2005*, (Oct. 7, 2005), <http://www.deathpenaltyinfo.org/juvdeathstreib.pdf>.

3. See, e.g., Deborah Fins, *Death Row U.S.A.*, NAACP LEGAL DEFENSE AND EDUCATIONAL FUND, INC. (Winter 2011), [http://naacpldf.org/files/publications/DRUSA\\_Winter\\_2011.pdf](http://naacpldf.org/files/publications/DRUSA_Winter_2011.pdf).

Vic provided and tracked the data—state by state, with the age, race, and sex of defendants and victims, supplying information on the proportion of women or juveniles to the total death row populations in the past and as of the current issue date. But beyond the empirical data, Vic provided an analysis of the legal context in which courts, legislatures, and governors were acting. This was especially important with regard to the constitutional question of juveniles' eligibility for death under the Eighth Amendment.

As Vic tracked each state's practices, his data became invaluable as he and others pushed the Court to reconsider its earlier cases of *Thompson v. Oklahoma*,<sup>4</sup> (in which Vic was co-counsel for Thompson) and *Stanford v. Kentucky*.<sup>5</sup> These cases upheld the imposition of death on juveniles aged sixteen and older.<sup>6</sup> In *Thompson*, the Court concluded that there was no consensus on the issue of imposing death on persons who were sixteen or older at the time of their crimes, and thus no evolving standard of decency within the Eighth Amendment precluded the death penalty imposed on sixteen and seventeen year olds.<sup>7</sup> For children under sixteen at the time of their crimes; however, the *Thompson* Court agreed that imposing death on those under sixteen did violate the Eighth Amendment when a state legislature had not specifically attended to and expressed that eligibility, which in that case had simply arisen by operation of overlapping laws.<sup>8</sup> Post-*Thompson* and *Stanford*, death could permissibly be imposed for those sixteen and above, and was in a number of states (but not Ohio).<sup>9</sup>

It took well over a decade to shift the consensus among the states to one against the death penalty for juveniles sixteen and seventeen years of age. Vic worked hard, speaking to multitudinous groups and media, and writing articles that could bring the country's attention to this human rights issue. Meanwhile, his chronicles of juvenile death-sentencing practices moved from the mailed print version to the World Wide Web in late 1998. These regular online bulletins continued to reflect the changing legislative and judicial perspective on death-sentencing of sixteen and seventeen year olds. Eventually, the Supreme Court granted certiorari on the issue of overruling that portion of *Thompson* that had upheld death sentencing. Vic's reports mapping the national consensus against death were invaluable when the fate of juveniles on death row was finally favorably resolved in *Roper v.*

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4. 487 U.S. 815 (1988).

5. 492 U.S. 361 (1989).

6. *Thompson*, 487 U.S. at 838; *Stanford*, 492 U.S. at 380.

7. *Thompson*, 487 U.S. at 838; *id.* at 849 (O'Connor, J., concurring).

8. *Id.* at 838.

9. The Ohio legislature made eighteen the minimum age for death in its death sentencing statute crafted in 1981. OHIO REV. CODE ANN. §2929.023 (LexisNexis 1981); *see also* OHIO REV. CODE ANN. §2929.03(B) (LexisNexis 1981). Thus, Vic's work was not as critical within Ohio as it was elsewhere.

*Simmons*.<sup>10</sup> In all, seventy-one juvenile offenders in twelve states were removed from death row due to this decision.<sup>11</sup> A triumph for human rights, and a fulfilling moment in Vic's professional life.

#### PROLIFIC PRODUCTIVITY

Taking us back to the '90s, by August 1996, Vic had moved on to Ohio Northern University Claude W. Pettit College of Law. We kept in touch mostly through occasional phone calls, chance encounters at the Association for American Law Schools Annual Meeting or bar meetings, and email. Vic visited and researched at law schools in Ohio and Michigan over this period.

Sadly, we never brought Vic to Akron for an extended stay, and I never had the opportunity for steady day-to-day contact with Vic. I envy my peers at Cleveland Marshall, Ohio Northern and elsewhere who had that delightful opportunity. Ours was simply a 'meet and greet with the utmost respect for one another's work' collegial relationship.

My respect for Vic's work knows no bounds. I was reminded how vast his body of work is as I perused my file copy of the June 3, 1998, issue of the *Death Penalty for Female Offenders*, the last before it went to "the World Wide Web." Vic's Appendix C listed "Selected Citations to Victor Streib's Involvement with Issues in Capital Punishment of Females." This 'selected' (mind-you) list contained twenty-one articles or paper presentations, from 1984 to 1998, including law review articles and presentations at meetings devoted to interdisciplinary studies of criminology, such as the American Society of Criminology, Academy of Criminal Justice Studies, and the Institute of Criminology at the University of Cambridge.

This prolific work continued for decades. In 2005, I sent an email to Vic asking if he could assist in lobbying against proposed federal habeas corpus legislation that would have weakened this critical federal court review even further than the Anti-Terrorism and Effective Death Penalty Act ("AEDPA") already had done in 1996.<sup>12</sup> I hoped he would join with other law professors and law deans to sign on to a letter opposing these changes. When I apologized for it being so long since we had spoken and expressed my hopes that he was well, I got this message back from Vic:

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10. 543 U.S. 551 (2005).

11. Streib, *supra* note 2.

12. *See e.g.*, 28 U.S.C. § 2254 (2012).

Hi Marge:

Great to hear from you again. I will see what I can do with our dean . . . .

Just wrapping up a book on the death penalty for women in Ohio—all four executions (1844-present) and all ten recent sentences (1973-present). To be published by Ohio University Press next Spring.

New edition of the Death Penalty Nutshell came out a few weeks ago. Other death penalty articles in progress. Still doing the same stuff I have been doing for 30 years!

Vic

Exchanges with Vic invariably revealed his incredible devotion to the work. Even now, in “retirement,” he is working on an update to one book and starting another. I have had the blessing of meeting the best lawyers on the planet through working in the area of capital punishment litigation, extraordinary, selfless lawyers, some essentially itinerant advocates, moving through the South living on next to nothing, there to save lives and often succeeding. I always felt humbled and wondered how it was that I could have this opportunity to converse with them when I was but a law professor and occasional appellate death penalty litigator. Happily, many of those persons are now part-time or full-time law professors themselves, working their cases in death penalty clinics with the assistance of students, who are now learning from the best. But Vic was a pioneer law professor in this field, among a small select group working on death penalty cases from the ‘80s on. He aptly describes himself as a law professor/death penalty lawyer in the *DEATH PENALTY IN A NUTSHELL*.<sup>13</sup> He is one of a rare and wonderful breed of dedicated life-sustaining men and women.

#### FAIRNESS AND COURAGE

Truth-telling and fairness are the two other facets of Vic I would like to share with those who have not been as blessed as I to have interacted with him.

In 2007, Vic came to the University of Akron School of Law on our invitation to do a faculty workshop and a presentation for the Akron law

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13. VICTOR STREIB, *DEATH PENALTY IN A NUTSHELL* (3d ed. 2005).

school community. He had just published *THE FAIRER DEATH—EXECUTING WOMEN IN OHIO*.<sup>14</sup> He did not expect to sell many books, but as he said, “it is an intriguing topic prompting lots of discussion, much of it across disciplines.” He captivated the room full of students, drawing on the fascinating vignettes of Ohio women on death row that illuminated our past and contemporary experiences with the death penalty.

Vic was never at a loss for a true tale from the annals of the death penalty. One was particularly poignant and disturbing, though the setting itself would appear humorous at first thought. He related a conversation he had overheard years before, one occurring—of all places—in a men’s bathroom. Vic told my Akron students how he had entered the men’s room for the usual purpose while attending a Youngstown area death penalty seminar only to find two men talking about a death penalty case. One of the men said he was a prosecutor in the Donna Roberts case,<sup>15</sup> and that one reason for seeking death was she was a white woman “fooling around with a nigger.”

That case actually arose in neighboring Trumbull County, not Mahoning County where the seminar was being held.<sup>16</sup> Vic later feared that the students and others in attendance at his Akron talk may have gotten the wrong impression about which prosecuting office may have been so infected. He wrote me the next day asking me to make clear to my students, the Mahoning County Prosecutor (who was a former student), and those who had videotaped the lecture for airing on a local public access channel that it was the Trumbull County office that had handled the case.

That episode confirmed a lot of my understanding of Vic. Vic Streib is “fair” in life. As he spoke about *THE FAIRER DEATH*, he wanted to be altogether certain that no one had inadvertently gotten the wrong impression about which office this noxious comment emanated from.

He is also courageous, and will call people out on race or other biases whenever circumstances permit. He wrote me:

The men’s room was fairly crowded, and I don’t remember actually identifying the speaker one-to-one. I did assume, however, that the speaker worked for the Trumbull County prosecutor’s office (since that’s the office that prosecuted the case), and I remember vividly his use of the term “nigger.” In hindsight, I should have been more

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

15. *See id.* at 112-17.

16. *Id.* at 112.

aggressive in figuring out who said it and calling him out on it, but the crowd and noise prevented that.

Fairness, in the sense of neutral examination of the issues, also drives Vic's research and publications. In the Preface to *FAIRER DEATH*, Vic writes:

I have written elsewhere on the distinction between two categories of research and its publication: academic research and advocacy research. The broad goal of academic research is to generate and publish accurate information based upon research results, typically driven by the delight of discovery and regardless of whether the information advances or hinders any particular advocacy position of political agenda . . . .

. . . .

My analysis of these cases is based upon academic research, not advocacy research. As such, it is intended simply to explore an interesting topic rather than to advocate a specific agenda.<sup>17</sup>

His fairness and commitment shines through in all he does. Vic is utterly devoted to the cause of teaching and writing, joyously so. In the preface to *FAIRER DEATH*, Vic wrote "I have had the joy of being a law professor . . . . In this role, they actually pay me to do what I love to do, and would do, no matter what."<sup>18</sup> (Being one myself, I fully share his gratefulness—somehow we have both found this wonderful career.) His appreciation for those who have made it possible for him to do this work is similarly joyously pronounced. In the preface to the third edition of the *DEATH PENALTY IN A NUTSHELL*, Vic writes:

My family has, as always, allowed me to slave away at the office doing what I seemingly must do, instead of going on vacations and family outings like normal people. Far more important than their tolerance is their daily encouragement and support for my work, without which you would not be reading these words.<sup>19</sup>

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17. *Id.* at xi.

18. *Id.*

19. STREIB, *supra* note 13, at VIII; STREIB, *supra* note 14, at xii (noting the support of his family in his research).

Those words are so insightful; it is hard to imagine what the study of women or juveniles on death row would have been like without Vic's research and stories. About *THE FAIRER DEATH*, I wrote for the jacket notes:

Professor Streib's fascinating vignettes of Ohio women on death row illuminate our past and contemporary experiences with the death penalty. Analyzing these stories, Streib chillingly demonstrates that the concerns we have grappled with on a national level have antecedents here, that only a handful of these concerns have thus far been successfully addressed by court or legislative decisions, and that we still have much work to do.<sup>20</sup>

Vic signed my copy of *FAIRER DEATH* at the Akron book-signing on April 5, 2007: "To Marge—My death penalty hero!"  
I said it at the time, and I will say it again: he is the hero.

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20. STREIB, *supra* note 14.