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Streib, Capital Punish...
**CAPITAL PUNISHMENT OF CHILDREN IN OHIO:
"THEY'D NEVER SEND A BOY OF SEVENTEEN
TO THE CHAIR IN OHIO, WOULD THEY?"***

by

VICTOR L. STREIB**

I. INTRODUCTION

After a century of imposing capital punishment for crimes committed while under age eighteen, Ohio has joined an enlightened minority of American jurisdictions in prohibiting such lawful infanticide. Ohio's recently enacted statute generally authorizes capital punishment in certain murder cases but expressly prohibits capital punishment for persons who were under the age of eighteen at the time they committed the murder.¹ Prior to this recent change of law and policy, Ohio was responsible for nineteen of the 287 lawful American executions of children.²

This article presents first an overview of the national legal environment and actual executions in American history and then a focused, in-depth analysis of Ohio as a reasonably representative American jurisdiction. Each of the nineteen verified and documented Ohio cases are examined in some detail to determine, so far as is possible, the reasons they were selected for capital punishment. The cases are discussed within the context of the legal environment existing at the time they were decided.

Ohio's history of child executions is compared and contrasted with the overall American experience and emerges as typical in some characteristics and unique in others. Before delving into a microscopic analysis of the law and illustrative cases in one representative jurisdiction, first consider the American experience of imposing capital punishment upon children since the early seventeenth century. A change to this practice was a premise of the juvenile court's origins.

*These were the plaintive words of seventeen-year-old Sam Pupera, uttered just after he was arrested. *Cleveland Plain Dealer*, March 26, 1921, at 5, col. 1. His optimism was not totally unfounded, since he was to celebrate his eighteenth birthday a few months before he was executed in Ohio's electric chair on May 9, 1922. *Id.*, May 10, 1922, at 8, col. 2.

An earlier and very preliminary report of the research detailed in this article was presented as Streib, *Lawful Infanticide in the American Heartland: Ohio's Experience with Capital Punishment for Crimes Committed While Under Age Eighteen* (June 1983) (Annual Meeting of the Law and Society Association, Denver, Colorado) (available from the author).

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¹OHIO REV. CODE ANN. § 2929.02 (Page 1982).

²See *infra* notes 89-551 and accompanying text.

II. ADVENT OF THE JUVENILE JUSTICE SYSTEM

Prior to 1900 the criminal justice system was the primary legal system for social control of offenses by adults and teenagers. An important qualification to this premise was, and is, that persons under age seven were conclusively presumed to be incapable of possessing criminal intent, persons from age seven to fourteen were rebuttably presumed to be incapable and no presumption applied to persons age fourteen or over.³ Given these premises, teenagers and even younger children could be and were convicted of crimes and received criminal sentences, including capital punishment.⁴ This was one of the primary political and social issues that gave rise to the advent of the juvenile justice system.⁵

Following Illinois' 1899 lead,⁶ other states enacted juvenile court legislation tending to duplicate the example provided by Illinois and other pioneer states. By 1925 all states but two had such legislation,⁷ with the federal government joining this movement in 1938.⁸ The thrust of the juvenile justice system can be seen as bringing the official position of the law into line with the previous unofficial and implicit special treatment given to young offenders.⁹

For the purposes of this article, a most important premise is that no juvenile court could impose punishment upon a juvenile offender but must treat and rehabilitate.¹⁰ This seems to be an obvious rejection in principle of the death penalty for juvenile offenders. However, during this early era of juvenile justice (1900-1925), over fifty persons were executed for crimes committed while under age eighteen, as is described in more detail subsequently in this article. Of course, none were sentenced to death directly by juvenile courts but were transferred or directly prosecuted in criminal court where they were condemned.

In most jurisdictions today, delinquent acts are defined as acts which are in violation of state or federal law, local ordinance or an order of the juvenile

³W. BLACKSTONE, COMMENTARIES ON THE LAW OF ENGLAND 23-24 (1792); 1 M. HALE, PLEAS OF THE CROWN 25-28 (1682).

⁴Streib, *Death Penalty for Children: The American Experience with Capital Punishment for Crimes Committed While Under Age Eighteen*, 36 OKLA. L. REV. 613 (1983).

⁵Fox, *Juvenile Justice Reform: An Historical Perspective*, 22 STAN. L. REV. 1187 (1970).

⁶Illinois Juvenile Court Act of 1899.

⁷See generally V. STREIB, JUVENILE JUSTICE IN AMERICA 5-7 (1978).

⁸Comment, *Juvenile Criminal Proceedings in Federal Courts*, 18 LOYOLA L. REV. 133 (1971-72).

⁹V. STREIB, *supra* note 7, at 5-13.

¹⁰This premise was uniformly incorporated into juvenile statutes. Recognition of this premise was explicit by the United States Supreme Court:

The idea of crime and punishment was to be abandoned. The child was to be "treated" and "rehabilitated" and the procedures, from apprehension through institutionalization, were to be "clinical" rather than punitive.

In re Gault, 387 U.S. 1, 15-16 (1967).

court.¹¹ Generally, this means acts which would be crimes if committed by an adult. This broad category would include murder and other capital crimes unless they are specifically excluded from the jurisdiction of the juvenile court. The essentially criminal nature of these delinquent acts means that the cases could come under the jurisdiction of criminal court, as was recognized by the Supreme Court in 1967 in the landmark case of *In Re Gault*.¹² And more recently in 1975, the Supreme Court noted in passing that "an overwhelming majority of jurisdictions permit transfer in certain instances."¹³

The Supreme Court's first direct consideration of juvenile justice issues, in *Kent v. United States* in 1966,¹⁴ was a review of the procedure by which a juvenile court could and should waive jurisdiction over a juvenile offender, resulting in transfer of the case to adult criminal court. The significance of such transfer is exemplified by the facts in *Kent*: sixteen-year-old Morris A. Kent, Jr., was transferred from juvenile to criminal court, convicted of six felonies and sentenced to a total of thirty to ninety years in prison.¹⁵ For many jurisdictions, the transfer from juvenile to criminal court can trigger the possibility of the death penalty.¹⁶

Another procedure through which a person under the age limit for juvenile court jurisdiction can nonetheless end up in criminal court is to commit an offense which has been expressly excluded from the jurisdiction of juvenile court.¹⁷ These excluded offenses are typically only the most serious crimes, such as murder, rape, robbery, etc. Some states expressly exclude capital offenses from juvenile court jurisdictions, leaving only criminal court jurisdiction over such offenses.¹⁸

A third alternative is presented by those states which give the prosecuting attorney the authority to decide in which court — juvenile or criminal — the case should be filed.¹⁹ If the prosecutor files a juvenile petition, the case proceeds in juvenile court. If the prosecutor files a criminal information or obtains a grand jury indictment, the case proceeds in criminal court.

Each of these three alternatives lodges the choice of court in a different

¹¹S. DAVIS, *RIGHTS OF JUVENILES: THE JUVENILE JUSTICE SYSTEM* (2d ed. 1981).

¹²*In re Gault*, 387 U.S. at 50-51.

¹³*Breed v. Jones*, 421 U.S. 519, 535 (1975).

¹⁴*Kent v. United States*, 383 U.S. 541 (1966).

¹⁵*Id.* at 550.

¹⁶ In some jurisdictions, the question of whether a 16-year-old accused of murder will stay in juvenile court, or be tried in the criminal courts for a capital crime, will depend on an individual judge assessing whether that 16-year-old is "mature" and "sophisticated." If he is found to be "sophisticated," his reward can be eligibility for the electric chair.

F. ZIMRING, *THE CHANGING LEGAL WORLD OF ADOLESCENCE* xii (1982) (footnote omitted).

¹⁷S. DAVIS, *supra* note 11, at 2-15 to 2-17.

¹⁸*See, e.g.*, N.C. GEN. STAT. § 7A-608 (1981).

¹⁹S. DAVIS, *supra* note 11, at 2-18 to 2-19.

primary decision-maker. The traditional waiver alternative leaves the decision up to the judiciary — here the juvenile court judge. In the second alternative, the legislature has made the original and pre-emptive decision to place certain cases exclusively in criminal court. The prosecutor is the decision-maker as to the choice of court in the third alternative. Whichever means is followed, the young offender is under the juvenile court age limit but is subjected to the full authority of the criminal court, including the power to impose capital punishment for certain crimes.

III. EVOLUTION OF CAPITAL PUNISHMENT LAW

Capital punishment was in common use and authorized by law when the Constitution and the eighth amendment were adopted and was not prohibited by the express language therein.²⁰ This constitutionality of the death penalty seems to have been an accepted premise upon which the United States Supreme Court relied since that time.²¹ Welcomed by some²² and harshly criticized by others,²³ the Court has demonstrated a willingness during the last decade to re-evaluate this premise of constitutionality.

In 1972, the Court held in *Furman v. Georgia*²⁴ that the death penalty was unconstitutional as applied in those particular cases but did not decide whether it is unconstitutional for all crimes and under all circumstances. This lingering question seemed to have been answered by the Court in 1976 in *Gregg v. Georgia*,²⁵ in which a majority found that the death penalty does not

²⁰McGautha v. California, 402 U.S. 183, 226 (1971) (Black, J., separate opinion).

²¹ The several concurring opinions acknowledge, as they must, that until today capital punishment was accepted and assumed as not unconstitutional *per se* under the Eighth Amendment or the Fourteenth Amendment. This is either the flat or the implicit holding of a unanimous Court in *Wilkerson v. Utah*, 99 U.S. 130, 134-35, in 1879; of a unanimous Court in *In re Kemmler*, 136 U.S. 436, 447, in 1890; of the Court in *Weems v. United States*, 217 U.S. 349, in 1910; of all those members of the Court, a majority, who addressed the issue in *Louisiana ex rel. Francis v. Resweber*, 329 U.S. 459, 463-464, 471-472, in 1947; of Mr. Chief Justice Warren, speaking for himself and three others (Justices Black, Douglas, and Whittaker) in *Trop v. Dulles*, 356 U.S. 86, 99, in 1958; in the denial of certiorari in *Rudolph v. Alabama*, 375 U.S. 889, in 1963 (where, however, JUSTICES DOUGLAS, BRENNAN, and Goldberg would have heard argument with respect to the imposition of the ultimate penalty on a convicted rapist who had "neither taken nor endangered human life"); and of Mr. Justice Black in *McGautha v. California*, 402 U.S. 183, 226, decided only last Term on May 3, 1971.

Furman v. Georgia, 408 U.S. 238, 407-08 (1972) (Blackmun, J., dissenting) (footnote omitted);

Perhaps enough has been said to demonstrate the unswerving position that this Court has taken in opinions spanning the last hundred years. On virtually every occasion that any opinion has touched on the question of the constitutionality of the death penalty, it has been asserted affirmatively, or tacitly assumed, that the Constitution does not prohibit the penalty. No Justice of the Court, until today, has dissented from this consistent reading of the Constitution.

Furman v. Georgia, 408 U.S. at 428 (Powell, J., dissenting).

²²See H. BEDAU, THE COURT, THE CONSTITUTION, AND CAPITAL PUNISHMENT 78-90 (1977).

²³R. BERGER, DEATH PENALTIES (1982).

²⁴408 U.S. 238 (1972).

²⁵428 U.S. 153, 169 (1976) (opinion of Stewart, Powell and Stevens, JJ.); and *Id.* at 226 (opinion of White and Rehnquist, JJ., and Burger, C.J.). *Accord*, *Proffitt v. Florida*, 428 U.S. 242 (1976); and *Jurek v. Texas*, 428 U.S. 262 (1976).

per se violate the eighth amendment. In 1976²⁶ and 1977,²⁷ the Court struck down statutes incorporating mandatory death sentences, and the Court rejected the death penalty for rape cases in 1977.²⁸ The next year in *Lockett v. Ohio*,²⁹ the Court expressly required that all aspects of the offender's character and record be considered before imposing the death penalty.

It seems well established in the 1980's that the sentencing decision must take into account the age of a particularly young offender:

We conclude that the Eighth and Fourteenth Amendments require that the sentences . . . not be precluded from considering, *as a mitigating factor*, any aspect of a defendant's character or record . . . that the defendant proffers as a basis for a sentence less than death.³⁰

Lockett overruled the Ohio death penalty statute in part because "consideration of defendant's . . . age would generally not be permitted, as such, to affect the sentencing decision."³¹ The youth of the offender as an appropriate mitigating factor was also mentioned in passing by the Supreme Court in *Gregg v. Georgia*,³² *Jurek v. Texas*,³³ *Roberts v. Louisiana*,³⁴ and *Bell v. Ohio*.³⁵

The most recent Supreme Court decision on this issue is *Eddings v. Oklahoma*.³⁶ The Court granted certiorari³⁷ on only one question:

Whether the infliction of the death penalty on a child who was sixteen at the time of the crime constitutes cruel and unusual punishment under the Eighth and Fourteenth Amendments of the Constitution of the United States?³⁸

However, when the briefs were filed and the case argued before the Court, the

²⁶*Woodson v. North Carolina*, 428 U.S. 280 (1976); and *Roberts v. Louisiana*, 428 U.S. 325 (1976).

²⁷*Roberts v. Louisiana*, 431 U.S. 633 (1977).

²⁸*Coker v. Georgia*, 433 U.S. 584 (1977).

²⁹*Lockett v. Ohio*, 438 U.S. 586 (1978); *Accord*, *Bell v. Ohio*, 438 U.S. 637 (1978).

³⁰*Lockett*, 438 U.S. at 604.

³¹*Id.* at 608 (emphasis added).

³²"Are there any special facts about this defendant that mitigate against imposing capital punishment (e.g., his youth, . . .)?" 428 U.S. 153, 197 (1976).

³³"It [the jury] could further look to the age of the defendant. . . ." *Jurek*, 428 U.S. 262, 273 (1976) (quoting with approval *Jurek v. Texas*, 522 S.W.2d 934, 940 (1975) (Tex. Crim. 1975)).

³⁴ But it is incorrect to suppose that no mitigating circumstances can exist when the victim is a police officer. Circumstances such as the youth of the offender, . . . are all examples of mitigating facts which might attend the killing of a peace officer and which are considered relevant in other jurisdictions. *Roberts v. Louisiana*, 431 U.S. 633, 636-37 (1977).

³⁵In *Bell v. Ohio*, 438 U.S. 637 (1978), the offender was a sixteen-year-old boy sentenced to death for murder. *Id.* at 639-41. At the sentencing hearing, Bell's attorney had argued that "Bell's minority established mental deficiency as a matter of law. . . . [Y]outh, the fact that he cooperated with the police, and the lack of proof that he had participated in the actual killing strongly supported an argument for a penalty less than death in this case." *Id.* at 641.

³⁶455 U.S. 104 (1982).

³⁷*Eddings*, 450 U.S. 104 certiorari granted, No. 80-5727 (April 6, 1981).

³⁸Brief for Petitioner at 1, *Eddings v. Oklahoma*, 455 U.S. 104 (1982).

petitioner inserted the issue of whether the sentencing judge had refused to consider appropriate mitigating evidence.³⁹ It was this second, “eleventh-hour” claim⁴⁰ that garnered five of the nine votes in the United States Supreme Court, resulting in reversing the imposition of the death penalty on Monty Lee Eddings and remanding the case for another sentencing decision more in line with *Lockett*.⁴¹

And what of the original issue before the court: Whether inflicting the death penalty on children is unconstitutional? Chief Justice Burger made passing reference to that issue: “I would decide the sole issue on which we granted certiorari, and affirm the judgment.”⁴² Thus, four members of the Court (Chief Justice Burger and Justices Blackman, Rehnquist and White) can be said to believe that imposition of the death penalty on an offender who committed murder when age sixteen is constitutional.

The majority in *Eddings* left much more doubt as to where they stand, simply reminding us that “chronological age of a minor itself is a relevant mitigating factor of great weight.”⁴³ The constitutional question is thus left in limbo. However, despite wishes to the contrary,⁴⁴ the Court seems poised on the brink of finding no constitutional prohibition to capital punishment for crimes committed under age eighteen.

After *Furman v. Georgia*, the response of the state legislatures has been characterized as “the most marked indication of society’s endorsement of the death penalty.”⁴⁵ Even though the Model Penal Code⁴⁶ expressly rejects the death penalty for offenders under eighteen, after *Furman* the states overwhelmingly passed new death penalty statutes which would permit it. Of the thirty-nine presumptively valid death penalty statutes now in existence, only eight prohibit execution of offenders whose crimes were committed while under age sixteen,⁴⁷ seventeen⁴⁸ or eighteen.⁴⁹ Nineteen other statutes⁵⁰ have ex-

³⁹*Id.*

⁴⁰*Eddings*, 455 U.S. 104, 120 (Burger, C.J., dissenting).

⁴¹*Id.* at 117.

⁴²*Id.* at 128 (Burger, C.J., dissenting).

⁴³*Id.* at 116.

⁴⁴*See, e.g.*, Gwin, *The Death Penalty: Cruel and Unusual Punishment When Imposed Upon Juveniles*, 45 KY BENCH & B. 16 (1981).

⁴⁵*Gregg v. Georgia*, 428 U.S. 153, 179 (1976).

⁴⁶MODEL PENAL CODE § 210.6(1) (d) (Proposed Official Draft 1962).

⁴⁷NEV. REV. STAT. § 176.025 (1979).

⁴⁸TEXAS PENAL CODE ANN. § 8.07(d) (Vernon Supp. 1982).

⁴⁹CAL. PENAL CODE § 190.5 (West Supp. 1982); COLO. REV. STAT. § 16-11-103 (5) (a) (1983); CONN. GEN. STAT. ANN. § 53a-46a(f) (1) (West Supp. 1982); ILL. ANN. STAT. ch. 38, § 9-1(b) (Smith Hurd. Supp. 1982); OHIO REV. CODE ANN. § 2929.02(a) (Page 1982); TENN. CODE ANN. § 37-234(a) (1) (Supp. 1982).

⁵⁰ALA. CODE § 13A 5-51(7) (1975); ARIZ. REV. STAT. ANN. § 13-703(G) (5) (Supp. 1982); ARK. STAT. ANN. § 41-1304(4) (1977); FLA. STAT. ANN. § 921.141(6) (g) (West Supp. 1982); KY. REV. STAT. § 532.025(2) (b) (8) (Supp. 1982); LA. CODE CRIM. PROC. ANN. art 905.5(f) (1984); MD. CRIM. LAW CODE ANN. § 413(g) (5) (Supp.

pressly designated the offender's youth as a mitigating factor, while others do not specify particular mitigating circumstances but do not rule out the youth of the offender. The presently proposed federal statute⁵¹ would follow the plurality of the state statutes by expressly setting out the youth of the offender as a mitigating but not prohibitive factor.

IV. EVOLUTION OF THE LEGAL ENVIRONMENT IN OHIO

Two years after attaining statehood, the newly formed Ohio legislature enacted in 1805 a criminal code which prescribed a sentence of death for such crimes as murder, treason and rape.⁵² No express or implied provisions were included for consideration of the age of the offender at the time of the crime. In 1815, Ohio recategorized its homicide statutes and retained the death sentence for first degree murder.⁵³ Although the death sentence for treason was abolished in 1824, Ohio's first degree murder statute remained basically unchanged until 1898. The 1898 statute⁵⁴ gave the jury the option of recommending mercy after first degree murder convictions and in those instances substituting life imprisonment for the death sentence.

During this period the Ohio statutes did not address the issue of the age of the offender. However, the Ohio courts apparently were deciding these cases under the common law presumption of maturity at age fourteen.⁵⁵ In 1843 in *Clark v. State*,⁵⁶ the Ohio Supreme Court implicitly approved a trial judge's jury instructions that a person fourteen or older is presumed to have sufficient capacity to possess the criminal intent required for first degree murder.⁵⁷ A trial court similarly assumed in 1902 that a fifteen-year-old boy accused of first degree murder "is presumed in law to be accountable for his acts in the absence of proof to the contrary."⁵⁸

Following the national movement at the turn of the century, Ohio enacted statutes to establish its own juvenile court with jurisdiction comparable to that of other states' juvenile courts.⁵⁹ These statutes provided ex-

1982); MISS. CODE ANN. § 99-19-101(6) (g) (Supp. 1982); MO. REV. STAT. § 565.012(3) (7) (Supp. 1980); MONT. CODE ANN. § 46-18-304(7) (1979); NEB. REV. STAT. § 29-2523(2) (d) (1979); N.H. REV. STAT. ANN. § 630.5 II(b) (5) (Supp. 1983); N.M. STAT. ANN. § 31-20A-6(l) (1981); N.C. GEN. STAT. § 15A-2000(f) (7) (Supp. 1981); 42 PA. CONS. STAT. ANN. § 9711(e) (4) (Purdon 1982); S.C. CODE ANN. § 16-3-20(C)(b)(7) (Supp. 1982); UTAH CODE ANN. § 76-3-207(2)(e) (Supp. 1983); VA. CODE § 19.2-264.4(B)(v) (1983); WYO. STAT. § 6-2-102(j)(vii) (1983).

⁵¹S. 114, 97th Cong., 1st Sess., 127 CONG. REC. 5,162 (1981), § f (defendant youthful at time of crime).

⁵²LAWS OF OHIO 1-2 (1804-05).

⁵³13 LAWS OF OHIO 86 (1815).

⁵⁴LANNING'S 1905 REVISED STATUTES OF 1880, § 10404 (enacted April 23, 1898).

⁵⁵W. BLACKSTONE, *supra* note 3; M. HALE, *supra* note 3.

⁵⁶*Clark v. State*, 12 Ohio 483 (1843).

⁵⁷*Id.* at 494.

⁵⁸*State v. Strong*, 12 Ohio Dec. 698, 712 (Cuyahoga Common Pleas Court, 1902).

⁵⁹Juvenile Court Act, OHIO REV. CODE ANN. § 2151.01-.99 (Page 1982).

press language requiring transfer of all cases involving a person under age eighteen to the juvenile court if such cases were originally filed in adult courts.⁶⁰ However, it appears that the Ohio juvenile code did not preclude concurrent jurisdiction over felony cases by the Court of Common Pleas.⁶¹ Therefore, while the thrust of Ohio's juvenile code was to protect persons under age eighteen from the harshness and inappropriateness of the adult criminal justice system, some such juveniles were subjected, nevertheless, to that adult court and could receive the maximum penalty of death.

In 1972 the Ohio legislature completely rewrote the parts of the criminal code dealing with the death penalty.⁶² The new statute⁶³ provided for several aggravating and mitigating factors which were to finally determine whether or not the death sentence would be imposed. However, in 1978 in *Lockett v. Ohio*,⁶⁴ the United States Supreme Court found the Ohio statute to be unconstitutional because it permitted only three mitigating factors.

A companion case to *Lockett* was *Bell v. Ohio*,⁶⁵ which involved a boy convicted of a murder committed when he was age sixteen and sentenced to death under the existing Ohio statute. Prior to this case reaching the United States Supreme Court, the Ohio Supreme Court had affirmed Bell's conviction and sentence.⁶⁶ Two years before *Bell* the Ohio Supreme Court had expressly held that juveniles could receive the death penalty in Ohio.⁶⁷

The Ohio legislature once again reacted to the United States Supreme Court's holdings and produced the present death penalty statute.⁶⁸ This statute expressly prohibits capital punishment for crimes committed while under age eighteen.⁶⁹ Such a provision was not a part of any previous Ohio statute. Some have surmised that this post-*Lockett* age limitation was prompted by the cir-

⁶⁰*Id.* at § 2151.25.

⁶¹*See Akers v. State*, 8 Ohio L. Abs. 106 (App. 1929), and *Gerak v. State*, 22 Ohio App. 257, 153 N.E. 902 (1920).

⁶²*See generally* Comment, *Capital Punishment in Ohio: The Constitutionality of the Death Penalty Statute*, 3 U. DAY. L. REV. 169 (1978); Comment, *The Constitutionality of Ohio's Death Penalty*, 38 OHIO ST. L.J. 617 (1977); and Comment, *Legislative Response to Furman v. Georgia — Ohio Restores the Death Penalty*, 8 AKRON L. REV. 149 (1974).

⁶³OHIO REV. CODE ANN. § 2929.01 (Page 1975).

⁶⁴438 U.S. 586 (1978).

⁶⁵438 U.S. 637 (1978).

⁶⁶*Bell v. State*, 48 Ohio St. 2d 270, 358 N.E.2d 556 (1976).

⁶⁷*State v. Harris*, 48 Ohio St. 2d 351, 359 N.E.2d 67 (1976). "We conclude that the death penalty, where applicable, applies even-handedly to adults and juveniles tried as adults." *Id.*, 48 Ohio St. 2d at 355, 359 N.E.2d at 72.

⁶⁸OHIO REV. CODE ANN. § 2929.02 (Page 1982). For an insightful critique of this new statute, see Note, *Capital Punishment in Ohio: Aggravating Circumstances*, 31 CLEVE. ST. L. REV. 495 (1982).

⁶⁹"If the offender . . . was not found at trial to have been eighteen years of age or older at the time of the commission of the offense, the court . . . shall not impose a sentence of death on the offender." OHIO REV. CODE ANN. § 2929.03(E) (Page 1982).

cumstances in *Bell*.⁷⁰ State Senator Richard Finan, principal architect and senate sponsor of the bill which became this new statute, remembers the reasons for this age limitation as being a generalized sense of fairness and concern for children as well as more specific "strong reservations about the constitutionality of capital punishment for crimes under the age eighteen."⁷¹

Thus, after 175 years of statutorily authorized capital punishment for crimes committed while under age eighteen, and after nineteen documented instances of carrying out that authorized sentence, Ohio has joined the handful of states which expressly prohibit such sentences for crimes committed while under age eighteen.

V. NATIONWIDE EXECUTIONS, 1642-1964⁷²

Almost 14,000 legal executions have occurred in our nation's history.⁷³ At least 287 of them have been for crimes committed while under age eighteen.⁷⁴ One-third (95/287) of these child executions occurred prior to the advent of the juvenile justice system (pre-1900) and two-thirds (192/287) after 1900.

Execution of children occurred from 1642 to 1964 but they were quite rare prior to the Civil War. Beginning in the 1860's, executions of children accelerated to a rate of about two each year. Paralleling executions of adults, the rate rose rapidly after 1920 and peaked in the 1930's and 1940's. The rate then fell off precipitously, with only relatively few children executed between 1950 and 1964.⁷⁵

The youngest of these executed children were age ten at the time of the offense, with at least 34 children executed for crimes committed while age 15 or younger.⁷⁶ The two ten-year-olds were executed in the last century.⁷⁷ Since 1900, the youngest has been thirteen-year-old Fortune Ferguson, Jr., electrocuted at the Florida State Prison on April 27, 1927.⁷⁸ The unmistakable

⁷⁰Benson, *Constitutionality of Ohio's New Death Penalty Statute*, 14 TOL. L. REV. 77, 89 (1982).

⁷¹Telephone interview with State Senator Richard Finan in Columbus, Ohio (May 26, 1983). These are Senator Finan's recollections of discussions and considerations which occurred in committee before the bill was passed by the Ohio State Senate. Ohio has no written record of such legislative history.

⁷²For a much more detailed and comprehensive exposition of this general phenomenon throughout the United States, see Streib, *supra* note 4.

⁷³The total figure of 13,630 comes from the most recent and exhaustive compilation of information on lawful executions by Mr. Watt Espy of the University of Alabama. A brief explanation of this compilation and a listing of the more recent executions is provided in W. BOWERS, *LEGAL HOMICIDE* 395-523 (1984).

⁷⁴Streib, *supra* note 4.

⁷⁵See Table 6 and accompanying text, *infra*.

⁷⁶See Table 2 and accompanying text, *infra*.

⁷⁷An anonymous ten-year-old black child was hanged at Alexandria, Louisiana, in September of 1855. QUINBY, *THE GALLOWES, THE PRISON AND THE POOR HOUSE* 49-50 (1856). James Arcene, a ten-year-old Cherokee Indian child was hanged at Fort Smith, Arkansas, on June 26, 1885. G. SHIRLEY, *LAW WEST OF FORT SMITH* 218 (1968).

⁷⁸W. BOWERS, *supra* note 73, at 424. See generally *Ferguson v. State*, 90 Fla. 105, 105 So. 840 (1925), *cert. denied*, 273 U.S. 663 (1927) (affirming Ferguson's conviction and death sentence).

trend suggests that more recent executions have been almost exclusively for older children, with approximately two-thirds of the executions of those age 15 or younger occurring prior to 1900. Since 1900, 87% of executions of children were for crimes committed while age 16 or 17.

The race of the offender has long been a glaring issue in capital punishment.⁷⁹ For capital punishment of children, this issue also seems to be an important factor. About two-thirds of all of the children executed during this 340-year period were black.⁸⁰ Contrast this with the fact that only eight of these 287 children were female.⁸¹ All eight girls were Black or Indian. The last execution of a female child occurred in 1912.⁸²

Capital punishment stems only from capital crime, but this category of crime has been constantly changing over the three centuries of these executions. Murder is overwhelmingly (81%) the crime for which these children have been executed.⁸³ However, there have been thirty-one executions for rape and eleven executions for assault or attempted rape. All forty-two of these executed children were black. The last American execution of any child was in 1964 in Texas for the crime of rape.⁸⁴

Executions of children have been much more common in some states and regions than others.⁸⁵ Only thirty-six of the fifty states have actually executed persons for crimes committed while under age eighteen, as have the various federal jurisdictions. Georgia is by far the leader with forty such executions; thirty-eight of these forty Georgia children were black. The regional differences are particularly striking. The south region⁸⁶ has accounted for 178 of the 287 executions or 62% of the total.

As suggested earlier, over three-quarters of these executions have been for the crime of murder. Of the forty-two executions for rape or attempted rape, all have been in the south region. Also seemingly pronounced in the south region is the race factor. For all children executed in the south region, 86%

⁷⁹See generally the opinions filed in *Furman v. Georgia*, 408 U.S. 238 (1972).

⁸⁰See Table 2 and accompanying text, *infra*.

⁸¹Streib, *Females Executed for Crimes Committed While Under Age Eighteen* (Sept. 22, 1983) (unpublished research paper, available from author).

⁸²Seventeen-year-old Virginia Christian was electrocuted at the Virginia State Prison on August 16, 1912, for the murder and robbery of her employer, Mrs. Ida Virginia Belonte. *Christian Virginia vs. Virginia Christian*, 3 THE CRISIS 237 (September 1912) (Monthly journal published by the National Association for the Advancement of Colored People); and *Inquirer* (Philadelphia), Aug. 17, 1912.

⁸³See Table 4 and accompanying text, *infra*.

⁸⁴James Andrew Echols was executed by Texas on May 7, 1964. W. BOWERS, *supra* note 73, at 512. See generally *Echols v. State*, 370 S.W.2d 892 Tex. Crim. App. (1963) (affirming Echols' conviction and death sentence).

⁸⁵Streib, *supra* note 4.

⁸⁶According to the United States Bureau of the Census, the south region includes Alabama, Arkansas, Delaware, Florida, Georgia, Kentucky, Louisiana, Maryland, Mississippi, North Carolina, Oklahoma, South Carolina, Tennessee, Texas, Virginia and West Virginia. BUREAU OF CENSUS, 1980 CENSUS OF POPULATION, NUMBER OF INHABITANTS 1-7 (1983).

have been black, while for those children outside of the south region, 23% have been black.⁸⁷

For a variety of reasons, executions of children as well as adults ceased in the 1960's. No children have been executed since 1964, but at least thirty-eight persons now await execution for crimes committed while under age eighteen.⁸⁸

VI. OHIO EXECUTIONS, 1880-1956

Ohio now has twenty-eight adults on death row⁸⁹ but has discontinued the practice of sentencing children to death.⁹⁰ However, from 1880 through 1956 the State of Ohio executed nineteen persons for crimes committed while under age eighteen. The following case studies of these nineteen executed children reveal a wide variety of crimes and youthful criminals but they may raise many more questions than they answer.⁹¹ The similarities of these child murderers and their crimes are pervasive but each case retains unique twists on this general theme.

George E. Mann; June 25, 1880

Early records of lawful, official executions are very difficult to verify, but it appears that Ohio began the execution of children with a triple hanging of three teenaged boys.⁹² One of these boys was George Mann, who along with the other two continued to protest that he was innocent even as he walked to the gallows.⁹³

Mann's mother died when he was very young and he lived with his grandmother for a while.⁹⁴ His father remarried and Mann moved in with his father and new stepmother.⁹⁵ Mann apparently didn't adapt well to this environment and ran away from home several times.⁹⁶

⁸⁷Streib, *supra* note 4.

⁸⁸Thirty-eight were on death row at the end of 1983 and this number has undoubtedly grown since then. Streib, *Persons on Death Row as of December 1983 for Crimes Committed While Under Age Eighteen* (June 15, 1984) (unpublished research paper, available from author).

⁸⁹NAACP LEGAL DEFENSE AND EDUCATIONAL FUND, INC., DEATH ROW, U.S.A. 14 (Aug. 1, 1984).

⁹⁰OHIO REV. CODE ANN. § 2929.03(D)(1) (Page 1982).

⁹¹These nineteen cases are reported *infra* in widely varying degrees of detail. This variation is due to the existence and availability of original source documents for each individual case. In those cases for which a substantial number of appellate opinions, journalistic articles and other documents were available, considerable detail is presented concerning the offender, the crime and the criminal process that resulted. Other cases are presented only in the most general manner because very few such documents were available. Finally, the source of much of the data and information presented in this section is local newspaper articles. This data and information has been double-checked wherever possible but the author shares the widely held pessimism as to the accuracy of journalistic reports, either then or now. See, e.g., TIME, Dec. 12, 1983, at 76 (cover story on "Journalism Under Fire" for, among other things, accuracy in reporting).

⁹²For a detailed but somewhat fictionalized account of this, see J. ARTZNER, THE BLACK MINUTE (1981).

⁹³*Id.* and Plain Dealer (Cleveland), Apr. 4, 1976, at 2, col. 1.

⁹⁴Cleveland Plain Dealer, June 26, 1880, at 1, col. 8.

⁹⁵*Id.*

⁹⁶*Id.*

Mann's capital crime occurred during one of these instances of running away from home, this time at age sixteen.⁹⁷ Mann adopted the life of the railroad tramp and began to travel with fifteen-year-old Gustave Ohr and an older man, John Watmough.⁹⁸ The three tramps spent Thursday night, June 27, 1879, camped near Alliance, Ohio, and Watmough peacefully napped after their breakfast the next morning, Friday, June 27, 1879.⁹⁹

As Watmough slept, Ohr and Mann devised a plan to rob him. Ohr struck Watmough on the head with a railcar coupling pin and severely injured him.¹⁰⁰ Ohr and Mann then took Watmough's watch, money and clothes and ran away from the scene.¹⁰¹ Watmough recovered consciousness just long enough to crawl to a nearby house and utter a few words before he died.¹⁰²

The people who found Watmough and heard his last words alerted the marshall and other townspeople.¹⁰³ Ohr and Mann were seen walking along the railroad tracks, apparently trying to find another train to ride out of town.¹⁰⁴ They were arrested only minutes after their crimes and taken to the county jail.¹⁰⁵

After arrest, a brief investigation was conducted and the trial was scheduled to be held many months in the future at the Stark County Common Pleas Court in the county seat.¹⁰⁶ The trial finally took place in early December and, needing only 35 minutes of deliberation, the jury convicted Mann of first degree murder on December 6, 1879.¹⁰⁷ After a separate trial, Ohr was convicted on December 13, 1879.¹⁰⁸ On New Year's Eve, December 31, 1879, the trial judge sentenced both Mann and Ohr to be hanged.¹⁰⁹

Their original execution date was set as May 7, 1880, but on May 2, 1880, Governor Foster granted a temporary reprieve.¹¹⁰ Since several people petitioned for a reduced sentence from the governor, apparently Mann was still hopeful that his sentence would be commuted as late as June 23, 1880.¹¹¹ The

⁹⁷J. ARTZNER, *supra* note 92.

⁹⁸Cleveland Plain Dealer, *supra* note 92, at col. 7.

⁹⁹*Id.* at col. 8 and J. ARTZNER, *supra* note 92, at 28.

¹⁰⁰Cleveland Plain Dealer, *supra* note 94, at col. 7.

¹⁰¹*Id.*

¹⁰²*Id.* at col. 7.

¹⁰³J. ARTZNER, *supra* note 92, at 21-26.

¹⁰⁴*Id.*

¹⁰⁵Cleveland Plain Dealer, *supra* note 94, at col. 7.

¹⁰⁶*Id.* and J. ARZNER, *supra* note 92, at 26.

¹⁰⁷Cleveland Plain Dealer, *supra* note 94, at col. 7.

¹⁰⁸*Id.*

¹⁰⁹*Id.*

¹¹⁰*Id.*

¹¹¹Cleveland Plain Dealer, June 24, 1880, at 1, col. 5.

thrust of the petitions for commutation was sympathy "with the youth of the condemned."¹¹²

Mann's hopes for commutation were not realized and he was hanged in Canton, Ohio, at 11:35 a.m. on June 25, 1880.¹¹³ The public hanging of Mann and Ohr, along with John Sammett, was the occasion for a community-wide extravaganza. People came to the small town of Canton in eastern Ohio by excursion train from as far away as Chicago and Pittsburgh to witness the event.¹¹⁴ A circus was part of the extravaganza and the night before the hangings included much music, cannon firing, speech making and similar merriment.¹¹⁵ The next morning, Mann and the other two teenaged boys were hanged in the city square of Canton before an estimated crowd of 10,000 people!¹¹⁶

After the triple hanging, sheriff's deputies placed the three bodies in the jail corridor and permitted the entire crowd to file through and view the bodies.¹¹⁷ The public viewing lasted almost four hours, with the doors being closed at 3:30 p.m.¹¹⁸

Gustave A. Ohr; June 25, 1880

Gustave Ohr was also one of the star attractions in this triple hanging on June 25, 1880. He was executed for a crime he committed when only fifteen years old,¹¹⁹ an age at which his contemporaries were high school sophomores.

Ohr was born in Bavaria and was only an infant when his parents emigrated with him to this country.¹²⁰ His father died when he was still a child and he lived in Chicago with his mother who remarried.¹²¹ Ohr left Chicago in the late Spring of 1879 and joined up with Mann and Watmough in Fort Wayne, Indiana, while riding the rails.¹²² The three proceeded to Alliance, Ohio, where the killing of Watmough was committed.¹²³

Mann claimed until his death that Ohr had been the person who actually struck and killed Watmough.¹²⁴ The truth was never revealed as Ohr steadfast-

¹¹²*Id.* at col. 6 and J. ARTZNER, *supra* note 92, at 247.

¹¹³Cleveland Plain Dealer, *supra* note 94, at col. 6.

¹¹⁴Plain Dealer (Cleveland), Apr. 4, 1976, at 2, col. 1.

¹¹⁵Cleveland Plain Dealer, *supra* note 94.

¹¹⁶*Id.*

¹¹⁷*Id.* at col. 7.

¹¹⁸*Id.*

¹¹⁹*Id.* at col. 8.

¹²⁰*Id.*

¹²¹*Id.*

¹²²*Id.* at col. 7.

¹²³See notes 99-105, *supra*, and accompanying text.

¹²⁴Cleveland Plain Dealer, *supra* note 94, at col. 8.

ly refused to exonerate Mann.¹²⁵ Mann and Ohr were tried before the same judge and in the same courtroom but their individual trials were separate and sequential.¹²⁶ Following Mann's conviction on December 6, 1879, Ohr's trial was conducted.¹²⁷ Ohr was convicted on December 13, 1879, and Judge Mayers sentenced Mann and Ohr together at a hearing on December 31, 1879.¹²⁸

Appeals and petitions for commutation were unsuccessful.¹²⁹ On June 25, 1880, sixteen-year-old Gustave Ohr was hanged on the city square of Canton, Ohio, along with seventeen-year-old George Mann and eighteen-year-old John Sammett.¹³⁰ Many of the crowd of 10,000 spectators filed through the jail corridor to view the three bodies and then returned to the circus and other merriment.¹³¹

John Sammett; June 25, 1880

John Sammett's adult life was remarkably brief. He celebrated his eighteenth birthday on June 24, 1880, and was hanged before noon the next day.¹³² Sammett was the third of the star attractions at this triple hanging, but his crime was different from the crimes committed by Mann and Ohr.

Sammett was born on June 24, 1862, in Massillon, Ohio.¹³³ He and his family were of German extraction.¹³⁴ Sammett's mother died when he was very young and his father remarried and moved to Columbus, Ohio.¹³⁵ The family returned to live in Massillon in 1877.¹³⁶ Sammett continued to live with his father and stepmother but came to be involved in criminal activities.¹³⁷

In August of 1879, seventeen-year-old Sammett joined with sixteen-year-old Christopher Spahler and broke into a saloon.¹³⁸ After they were arrested, Spahler agreed to testify for the prosecution against Sammett.¹³⁹ The day before the trial for this burglary, Sammett went to Spahler to convince Spahler

¹²⁵*Id.*

¹²⁶*Id.* at col. 7.

¹²⁷*Id.*

¹²⁸*Id.*

¹²⁹*Id.*; Cleveland Plain Dealer, *supra* note 111; J. ARTZNER, *supra* note 92, at 247.

¹³⁰Cleveland Plain Dealer, *supra* note 94, at col. 7.

¹³¹*Id.*

¹³²*Id.* at col. 8.

¹³³*Id.*

¹³⁴*Id.* at col. 7.

¹³⁵*Id.* at col. 8.

¹³⁶*Id.*

¹³⁷Plain Dealer (Cleveland), *supra* note 114; J. ARTZNER, *supra* note 92, at 71.

¹³⁸Plain Dealer (Cleveland), *supra* note 114.

¹³⁹*Id.*

not to testify against him.¹⁴⁰ Unsuccessful and presumably frustrated, Sammett shot Spahler in the chest and he died as a result of the wound.¹⁴¹ This killing occurred a little after 7 p.m. on the evening of November 25, 1879.¹⁴²

Several people who heard the shot came to the scene to find Spahler dying without speaking a word about what had happened.¹⁴³ When the police arrived they found the murder weapon in a cabinet and Sammett still there.¹⁴⁴ Sammett was arrested immediately for the criminal homicide of Spahler.¹⁴⁵

A preliminary hearing before the Mayor of Massillon produced strong circumstantial evidence against Sammett and he was remanded to jail without bail.¹⁴⁶ While the murder charge was being prepared, Sammett was tried, convicted and imprisoned for the original burglary crime over which he and Spahler had quarrelled.¹⁴⁷

Sammett was indicted on the murder charge by the Grand Jury of Stark County (Ohio) and his trial began on February 18, 1880.¹⁴⁸ On March 2, 1880, the jury returned a verdict of first degree murder.¹⁴⁹ The trial judge sentenced Sammett to be hanged on June 25, 1880, the same execution date already set for the other two residents of Stark County's death row, George Mann and Gustave Ohr.¹⁵⁰

Appeals and pleas for mercy were unsuccessful for Sammett.¹⁵¹ Sammett's more pragmatic effort, an attempt to dash out of the jail and escape when the fire alarm sounded on the eve of the executions, was similarly unsuccessful.¹⁵² In the late morning hours of June 25, 1880, the three teenaged boys were led out of the jail and toward the scaffold.¹⁵³ Sammett came out first and led the procession.¹⁵⁴ All three boys were hanged at 11:35 a.m. and were dead before noon.¹⁵⁵

¹⁴⁰*Id.*

¹⁴¹*Id.*

¹⁴²J. ARTZNER, *supra* note 92, at 71.

¹⁴³Cleveland Plain Dealer, *supra* note 94, at col. 7.

¹⁴⁴*Id.*

¹⁴⁵*Id.*

¹⁴⁶*Id.*

¹⁴⁷*Id.*

¹⁴⁸*Id.*

¹⁴⁹*Id.*

¹⁵⁰*Id.*

¹⁵¹*Id.* at col. 5; Cleveland Plain Dealer, *supra* note 111.

¹⁵²Cleveland Plain Dealer, *supra* note 94, at col. 6.

¹⁵³*Id.* at col. 6.

¹⁵⁴*Id.*

¹⁵⁵*Id.*

Otto Leuth; August 29, 1890

Ohio's next execution of a child occurred more than ten years after the triple hanging. The "Cleveland 'boy murderer'"¹⁵⁶, Otto Leuth, had been labeled a born criminal by the prominent phrenologists of that time.¹⁵⁷ Born in Berlin, Germany, on February 3, 1873, Leuth was only sixteen at the time of his crimes.¹⁵⁸

Leuth emigrated to the United States with his parents in 1883.¹⁵⁹ Living in Cleveland, Ohio, the Leuth family members were known as "honest, respectable people"¹⁶⁰ whose two-story frame home displayed "unmistakable marks of thrift."¹⁶¹ However, their family bore the heavy burden of congenital epilepsy which had burdened them through three generations.¹⁶² Leuth's maternal grandmother suffered convulsions from the age of five,¹⁶³ his mother's sister was apoplectic and sonambulist,¹⁶⁴ and his mother's brother had "attacks of madness."¹⁶⁵ This family medical history was inherited by Leuth's mother and passed on to her son.¹⁶⁶

Leuth's mother had suffered convulsions regularly since age ten.¹⁶⁷ Her nervous disorder resulted in headaches, spasms, convulsions and occasionally unconsciousness, and may have contributed to her suicidal tendencies.¹⁶⁸ She reportedly had homicidal tendencies toward her son Otto and had beaten him savagely over several years.¹⁶⁹ These beatings added to Leuth's other medical problems by leaving him blind in one eye and with a soft, sensitive depression in the side of his skull caused by a poker wielded by his mother during one of the beatings.¹⁷⁰

As a result of Leuth's inherited epilepsy and considerable injuries from beatings, he was characterized as a "neglected, undersized boy with his head which is described as being too ill shapen to exist."¹⁷¹ Although an apt scholar

¹⁵⁶H. FOGLE, *THE PALACE OF DEATH* 50 (1909).

¹⁵⁷Cleveland Plain Dealer, June 15, 1889, at 8, col. 1.

¹⁵⁸*Id.*

¹⁵⁹*Id.*

¹⁶⁰H. FOGLE, *supra* note 156, at 53.

¹⁶¹Cleveland Plain Dealer, June 10, 1889, at 8, col. 1.

¹⁶²Cleveland Plain Dealer, Dec. 17, 1889, at 6, col. 5; *Id.*, Dec. 20, 1889, at 6, col. 5.

¹⁶³Cleveland Plain Dealer, Dec. 17, 1889, at 6, col. 5.

¹⁶⁴*Id.*

¹⁶⁵Cleveland Plain Dealer, Dec. 19, 1889, at 6, col. 5.

¹⁶⁶Cleveland Plain Dealer, Dec. 29, 1889, at 6, col. 5.

¹⁶⁷Cleveland Plain Dealer, *supra* note 163.

¹⁶⁸Cleveland Plain Dealer, *supra* note 166.

¹⁶⁹*Id.*; Cleveland Plain Dealer, *supra* note 163.

¹⁷⁰*Id.*

¹⁷¹Cleveland Plain Dealer, Dec. 25, 1889, at 6, col. 4 (statement by Leuth's attorney during closing argument to the jury).

adept at languages and mathematics¹⁷² as well as a welcomed fiddler at local dances,¹⁷³ he nevertheless was described as not only having a “bad reputation for general cussedness”¹⁷⁴ but even as “the most depraved creature ever confined behind the walls of the Penitentiary.”¹⁷⁵

At around 11:30 a.m. on Thursday, May 9, 1889, seven-year-old Maggie Thompson passed by Leuth's house.¹⁷⁶ Leuth was alone in his house, with his father working out-of-town and his mother in the hospital with various medical problems.¹⁷⁷ Young Maggie saw Leuth in front of his house and asked him for some buttons for her collection.¹⁷⁸ Leuth invited her inside and she followed him.¹⁷⁹

Leuth lured Maggie into the bedroom where he raped her and bashed in her skull with a tinsmith's sledgehammer.¹⁸⁰ Leuth left the dead girl's body on the bed for six days before he decided something must be done.¹⁸¹ His solution to this malodorous problem was to hide the body in a shallow cellar under his house and to pour chloride of lime on top.¹⁸²

Leuth's attempt to cover up the evidence of his crime was successful for a month.¹⁸³ Maggie was missed almost immediately by her parents who lived just seven houses away from Leuth and the ensuing search extended for miles around their neighborhood.¹⁸⁴ Leuth was one of the most conscientious and untiring searchers and at first no one suspected his involvement in the crime.¹⁸⁵

Leuth was undone by the stench that began to emanate from underneath his house.¹⁸⁶ A patrolman walking by the house was alerted by a neighbor and a crowd formed which included Maggie's parents, Mr. and Mrs. Thompson.¹⁸⁷ Otto's father, Henry Leuth, was home at the time and he found the body first.¹⁸⁸ He crawled under the house and dragged out the decomposed remains

¹⁷²Cleveland Plain Dealer, Dec. 15, 1889, at 8, col. 1.

¹⁷³Cleveland Plain Dealer, *supra* note 166.

¹⁷⁴Cleveland Plain Dealer, June 12, 1889, at 6, col. 5.

¹⁷⁵H. FOGLE, *supra* note 156, at 53.

¹⁷⁶Cleveland Plain Dealer, June 11, 1889, at 8, col. 1.

¹⁷⁷Cleveland Plain Dealer, June 10, 1889, at 1, col. 2, and at 8, col. 1.

¹⁷⁸*Id.* at 1, col. 3.

¹⁷⁹*Id.*

¹⁸⁰*Id.*; Cleveland Plain Dealer, *supra* note 176; *see also* H. FOGLE, *supra* note 156, at 54.

¹⁸¹Cleveland Plain Dealer, *supra* note 177.

¹⁸²*Id.*

¹⁸³Cleveland Plain Dealer, *supra* note 177.

¹⁸⁴*Id.* and H. FOGLE, *supra* note 156, at 53.

¹⁸⁵H. FOGLE, *supra* note 156, at 54.

¹⁸⁶Cleveland Plain Dealer, *supra* note 177.

¹⁸⁷*Id.*

¹⁸⁸*Id.*

of young Maggie Thompson.¹⁸⁹

The police immediately arrested all of the persons living in the house, including the Leuths as well as the Shreves who rented and lived in the rear of the house.¹⁹⁰ Soon thereafter, Otto Leuth made a full confession while at the Ninth Precinct Station and the other persons were released.¹⁹¹

After his arrest and confession on June 9, 1889, Leuth had his preliminary hearing the next day.¹⁹² The preliminary charge was murder and he was bound over without bail to await action by the grand jury.¹⁹³ Even at this early stage of the criminal process, news media were reporting the possibility that capital punishment might not be available for a murderer as young as Leuth.¹⁹⁴

The grand jury returned a four count murder indictment against Leuth on June 14, 1889.¹⁹⁵ Leuth entered a not guilty plea at his arraignment the next day.¹⁹⁶ The trial was scheduled for the fall term in order to allow the defense to prepare their case and to let the public outcry subside somewhat.¹⁹⁷

Jury selection began on December 2, 1889.¹⁹⁸ Testimony began one week later and was covered in great detail each day by local newspapers.¹⁹⁹ The trial lasted almost four weeks.²⁰⁰

The major thrust of the defense was Leuth's mental disabilities but the legal insanity defense was never actually argued by Leuth's attorney.²⁰¹ Apparently Leuth's attorney was presenting a diminished capacity defense even

¹⁸⁹*Id.*

¹⁹⁰*Id.* at col. 3; Cleveland Plain Dealer, Dec. 10, 1889, at 6, col. 1.

¹⁹¹Cleveland Plain Dealer, *supra* note 177, at col. 3.

¹⁹²Cleveland Plain Dealer, *supra* note 176, at 8, col. 1.

¹⁹³*Id.*

¹⁹⁴ There is a general impression that the extreme penalty for murder cannot be inflicted on a person under 18 years. Prominent attorneys say that there is not such limitation in the law of this state. No authority exists in the revised statutes to exclude the murderer from punishment on account of his youth.

Id.

¹⁹⁵Cleveland Plain Dealer, *supra* note 157. The four counts were (1) murder with a hammer, (2) murder with a blunt instrument, (3) murder with a hammer while criminally assaulting, and (4) murder with a blunt instrument while criminally assaulting. *Id.*

¹⁹⁶Cleveland Plain Dealer, June 16, 1889, at 5, col. 1.

¹⁹⁷Cleveland Plain Dealer, June 19, 1889, at 6, col. 3.

¹⁹⁸Cleveland Plain Dealer, Dec. 3, 1889, at 6, col. 1.

¹⁹⁹Cleveland Plain Dealer, Dec. 10, 1889, at 6, col. 1; *Id.*, Dec. 11, 1889, at 6, col. 4; *Id.*, Dec. 12, 1889, at 6, col. 4; *Id.*, Dec. 13, 1889, at 6, col. 3; *Id.*, Dec. 17, 1889, at 6, col. 5; *Id.*, Dec. 19, 1889, at 6, col. 5; *Id.*, Dec. 20, 1889, at 6, col. 5; *Id.*, Dec. 24, 1889, at 6, col. 3; *Id.*, Dec. 25, 1889, at 6, col. 3; *Id.*, Dec. 27, 1889, at 4, col. 6; and *Id.*, Dec. 28, 1889, at 8, col. 1.

²⁰⁰Jury selection began on December 2 and the verdict was returned on December 27, 1889. Cleveland Plain Dealer, Dec. 3, 1889, at 6, col. 1; *Id.*, Dec. 28, 1889, at 8, col. 1.

²⁰¹Cleveland Plain Dealer, Dec. 24, 1889, at 6, col. 3.

though that legal doctrine probably was not extant in Ohio at that time.²⁰² In his closing argument Leuth's attorney reasoned that Leuth should not be convicted but should be confined in a mental hospital because of his admitted dangerousness.²⁰³

The jury returned its verdict on December 27, 1889, after four and one-half hours of deliberation.²⁰⁴ Leuth was convicted on just one of the four counts, the felony-murder crime of killing the victim with a hammer while attempting to rape her.²⁰⁵ He was sentenced to death for this crime of murder.²⁰⁶

Leuth was originally sentenced to die on April 20, 1890, but appeals resulted in stays of that execution date.²⁰⁷ His appeal to the circuit court of appeal was unsuccessful and the Ohio Supreme Court refused to grant certiorari.²⁰⁸ The Governor delayed the execution for a short period in order for the board of pardons to consider the case but the Governor ultimately denied relief to the condemned Leuth.²⁰⁹ Despite some pressure from citizen's groups, the majority of the general public seemed to support the execution of Leuth.²¹⁰

Leuth was hanged at the Ohio Penitentiary Annex in Columbus, Ohio, at 12:05 a.m. on August 29, 1890.²¹¹ Although only sixteen at the time of his crimes, he was seventeen and one-half when he was executed.

William Taylor; July 26, 1895

William Taylor was born in 1877 in a ghetto in Columbus, Ohio, the illegitimate son of a black woman who herself was born in slavery.²¹² He was

²⁰²Diminished capacity is a special defense which asserts that the defendant, although not legally insane, did not have the mental capacity to entertain the mens rea required by a certain crime, such as the premeditation, deliberation and malice aforethought required in aggravated or first degree murder. *See generally*, United States v. Calley, 46 C.M.R. 1131 (1973); People v. Conley, 64 Cal.2d 310, 411 P.2d 911, 49 Cal. Rptr. 815 (1966); State v. Sikora, 44 N.J. 453, 210 A.2d 193 (1965); Dix, *Psychological Abnormality as a Factor in Grading Criminal Liability: Diminished Capacity, Diminished Responsibility, and the Like*, 62 J. CRIM. L.C. & P.S. 313 (1971); Arenella, *The Diminished Capacity and Diminished Responsibility Defenses: Two Children of a Doomed Marriage*, 77 COLUM. L. REV. 827 (1977).

²⁰³Cleveland Plain Dealer, Dec. 25, 1889, at 6, col. 5.

²⁰⁴Cleveland Plain Dealer, Dec. 28, 1889, at 8, col. 1.

²⁰⁵*Id.*

²⁰⁶*Id.*

²⁰⁷The circuit court of appeals stayed the execution while considering Leuth's appeal. Cleveland Plain Dealer, Aug. 29, 1890, at 1, col. 6.

²⁰⁸*Id.*

²⁰⁹*Id.*

²¹⁰ Strange to say, in the face of all this misery and death, there are those who regarded Otto Leuth as a martyr, a saint, and his execution a crime. . . . Certain Christian ladies . . . deeply interested themselves in this young ravisher's behalf and endeavored to save his neck from the hangman's halter.

H. FOGLE, *supra* note 156, at 54.

²¹¹*Id.* at 50-55; Cleveland Plain Dealer, Aug. 29, 1890, at 1, col. 4.

²¹²Cleveland Plain Dealer, July 26, 1895, at 1, col. 3; H. FOGLE, *supra* note 156, at 122.

raised in Columbus, went to school there, and worked there for some time as a bootblack.²¹³ Limited by “a very low order of mind,”²¹⁴ Taylor began to perform menial labor for a prosperous farmer who lived a few miles north of Columbus near Worthington, Ohio.²¹⁵

Taylor and a co-worker were hired to cut firewood by farmer Isaac Yoakum and were furnished living quarters in a log cabin on the Yoakum farm.²¹⁶ Taylor and his cohort capped a day of heavy drinking with a plan to rob Yoakum who was known to carry large sums of money on his person.²¹⁷ At about 7 p.m. on the night of December 20, 1894, they hid in a shed on the farm and struck Yoakum a severe blow to the head with a hickory club when he passed by.²¹⁸ Yoakum was severely injured by this blow and died a few days later.²¹⁹ Taylor later claimed that his co-felon struck the blow and that he had only shared in the money robbed from Yoakum, but this argument was to be unpersuasive to the jury.²²⁰

Taylor escaped temporarily to Caperton, West Virginia, but was captured there nine days later at the home of his stepfather.²²¹ He was arraigned in Worthington and stood trial in Columbus.²²² At trial Taylor testified in his own behalf but hurt his defense badly by telling several different versions of the events and getting quite mixed up as to his recollection of the facts.²²³ He was convicted of murder under a felony-murder theory and sentenced to death.²²⁴

No record could be found of appeals to higher courts or to the governor and it is assumed that if pursued they were unsuccessful. Taylor was executed by hanging at the Ohio Penitentiary Annex in Columbus, Ohio, at 12:06 a.m. on July 26, 1895, having been on death row about six months.²²⁵ Due to a trend to modernize executions in Ohio, Taylor was the last of Ohio's child executions by hanging.²²⁶

²¹³Columbus Dispatch, Dec. 29, 1894, at 6, col. 1.

²¹⁴Cleveland Plain Dealer, *supra* note 212, at col. 3-4.

²¹⁵Columbus Dispatch, Dec. 21, 1894, at 7, col. 3; H. FOGLE, *supra* note 156, at 121-23.

²¹⁶H. FOGLE, *supra* note 156, at 121-23.

²¹⁷*Id.* at 123; Cleveland Plain Dealer, *supra* note 212; Columbus Dispatch, *supra* note 215.

²¹⁸Columbus Dispatch, *supra* note 215.

²¹⁹Columbus Dispatch, Dec. 22, 1894, at 7, col. 4.

²²⁰Cleveland Plain Dealer, *supra* note 212.

²²¹Columbus Dispatch, *supra* note 213.

²²²Columbus Dispatch, Dec. 31, 1894, at 7, col. 3.

²²³Cleveland Plain Dealer, *supra* note 212, at col. 3-4.

²²⁴*Id.* and Columbus Dispatch, *supra* note 222.

²²⁵H. FOGLE, *supra* note 156, at 122; Cleveland Plain Dealer, *supra* note 212; Columbus Dispatch, July 26, 1895, at 6, col. 1.

²²⁶H. FOGLE, *supra* note 156, at 136-37.

William Haas; April 21, 1897

William Haas, an illiterate and orphaned farm boy, had the dubious honor of being the first Ohio prisoner of any age executed by use of the electric chair.²²⁷ Haas was only sixteen years old at the time of his crime and thus was labeled the "boy murderer."²²⁸

Haas never knew his parents or any other family members; he grew up working on farms and group homes in the Cincinnati area.²²⁹ He ran away for a period of time and when he returned to the Cincinnati area he was taken in by a young married couple, Mr. and Mrs. William Brader, who lived on a suburban farm near Cloverdale, Ohio.²³⁰ Haas worked around the Brader farm for room and board and a little money, sleeping in a bedroom just off Mr. and Mrs. Brader's master bedroom.²³¹

Mr. Brader regularly sold his produce at urban markets and left for those markets very early on the morning of July 2, 1896.²³² After Mr. Brader left and still before dawn, Mrs. (Emma) Brader entered Haas' bedroom and awakened him.²³³ According to Haas' subsequent confession, Haas grabbed Mrs. Brader and began choking her, apparently also raping her.²³⁴ When she became unconscious he cut her throat with Mr. Brader's shaving razor.²³⁵ Even though she was already dead or dying, Haas placed her body on her bed and set the bed on fire.²³⁶

Neighbors discovered the house in flames and were able to save most of the house from destruction.²³⁷ Haas had fled the house, walked to Cumminsville, Ohio, and boarded a freight train to Hamilton, Ohio.²³⁸ He was captured in the railroad yards there on the night of July 3, 1896, less than forty-eight hours after the crime.²³⁹ The next morning Haas gave a complete confession and said he wanted to admit his crimes.²⁴⁰

²²⁷*Id.* and Plain Dealer (Cleveland), March 8, 1981, at 25, col. 3.

²²⁸H. FOGLE, *supra* note 156, at 135.

²²⁹*Id.* at 136-37; Plain Dealer (Cleveland), *supra* note 227, at col. 2.

²³⁰The Enquirer (Cincinnati), April 21, 1897, at 12, col. 1.

²³¹*Id.*; Cleveland Plain Dealer, April 21, 1897, at 2, col. 6.

²³²The Enquirer (Cincinnati), *supra* note 230; Cleveland Plain Dealer, *supra* note 231.

²³³Cleveland Plain Dealer, *supra* note 223.

²³⁴Cleveland Plain Dealer, July 5, 1896, at 9, col. 3.

²³⁵*Id.*; Cleveland Press, April 20, 1897, at 1, col. 6.

²³⁶Cleveland Plain Dealer, *supra* note 233; Cleveland Press, *supra* note 235.

²³⁷H. FOGLE, *supra* note 156, at 139; Cleveland Press, *supra* note 235.

²³⁸Cleveland Plain Dealer, *supra* note 234.

²³⁹*Id.*

²⁴⁰*Id.*; Cleveland Press, *supra* note 235.

Haas pleaded guilty and waived any rights to a trial by jury.²⁴¹ His case was heard jointly by two judges in Cincinnati and he was found guilty of murder in the first degree.²⁴² Despite his youth and deprived background, he was sentenced to death for his crimes.²⁴³

Appeals to higher courts are not reported but a petition for commutation of the death sentence was presented to the Governor.²⁴⁴ Despite sympathy prompted by his "very weak mind and extreme youthfulness,"²⁴⁵ commutation was not granted.²⁴⁶ The next day Haas became a footnote in capital punishment history as the "Farm boy [who] was the first victim of Ohio's electric chair."²⁴⁷ He was electrocuted at 12:30 a.m. on April 21, 1897, at the Ohio Penitentiary Annex in Columbus.²⁴⁸ The execution was described in glowing terms as a "complete success"²⁴⁹ and received major coverage in the press.²⁵⁰ However, apparently the execution had been delayed for some period of time by a malfunctioning dynamo in the electrical plant that operated the electric chair.²⁵¹

Harley Beard; December 4, 1914

Harley Beard was a teenaged farm worker of "low mentality"²⁵² who ascribed his problems to "bad company, cigarettes and intoxicating stimulants."²⁵³ His well-publicized last words were "I think it is awful to send

²⁴¹Cleveland Press, *supra* note 235.

²⁴²The Enquirer (Cincinnati), *supra* note 230.

²⁴³H. FOGLE, *supra* note 156, at 139.

²⁴⁴Cleveland Plain Dealer, April 21, 1897, at 1, col. 3.

²⁴⁵The Enquirer (Cincinnati), *supra* note 230, at 8, col. 3.

²⁴⁶*Id.*

²⁴⁷This phrase was part of the headline of an article written almost eighty-four years after the execution of Haas. Bean, *Old Thunderbolt: Farm Boy was the First Victim of Ohio's Electric Chair*, Plain Dealer (Cleveland), March 8, 1981, at 25.

²⁴⁸*Id.* and Cleveland Plain Dealer, *supra* note 244.

²⁴⁹Cleveland Plain Dealer, *supra* note 244.

²⁵⁰The Cincinnati newspaper ran two three-quarter page articles about the execution, complete with a five inch by seven inch portrait sketch of Haas and an eleven inch square sketch of Warden Coffin throwing the switch with Haas strapped to the chair. The Enquirer (Cincinnati), April 21, 1897, at 8, col. 1; *id.* at 12, col. 1.

²⁵¹H. FOGLE, *supra* note 156, at 140.

²⁵²Cleveland Plain Dealer, Dec. 4, 1914, at 13, col. 6.

²⁵³The Portsmouth Daily Times, Dec. 4, 1914, at 1, col. 1. The complete statement, written by Beard less than an hour before he was executed, is as follows:

Boys and girls, stay away from bad company, cigarettes and intoxicating stimulants. I never had a chance. I was motherless and fatherless and if I could have had a chance I would never have been put in the penitentiary. Even though they say I'm a murderer, I got a good heart, which goes out to anyone in trouble, and you can go anywhere and ask what kind of a fellow I was and you'll find I got a good name. So young men, stay away from cigarettes. I know them and what they did to me. I did not know what I was doing when I got into trouble.

Id.

me to my Father this way."²⁵⁴

Apparently an orphan, Beard was a white teenaged boy of sixteen when he became employed on the Massie farm near Irontown, Ohio, in September of 1913.²⁵⁵ On May 11, 1914, Beard found himself in a heated quarrel with Robert Massie, age 45, which expanded to include Robert's sister Mary, age 46, and mother Mrs. Dennis Massie, age 80.²⁵⁶ Robert Massie struck Beard during the quarrel, and Beard responded by first beating all three members of the Massie family with a club and then ensuring their death with a shaving razor.²⁵⁷ Beard later claimed that his mistreatment by the Massie family had "brought him to a pitch of frenzy."²⁵⁸

Beard immediately boarded a train in Irontown for Chicago but was arrested as he left that train in Chicago on May 15, 1914.²⁵⁹ While being held until Ohio police officers could arrive, Beard made a full confession to the Chicago police.²⁶⁰ Beard was tried during the summer of 1914, convicted and sentenced to death.²⁶¹ His appeals were fruitless, and Ohio Governor Cox could not find "any element that justified extension of mercy."²⁶²

As the execution date of December 4, 1914, approached, Mr. W.E. Massie, brother of Robert and Mary and son of Mrs. Dennis Massie, aggressively petitioned the governor for permission to be present at Beard's execution.²⁶³ Permission was denied²⁶⁴ and the execution was carried out as scheduled shortly after midnight on December 4, 1914.²⁶⁵

Ignatius (Sam) Pupera; May 9, 1922

Sam Pupera was the first juvenile to be executed in Ohio during the 1920s, a decade in which five such juvenile executions took place.²⁶⁶ True to

²⁵⁴*Id.* at 1, col. 7.

²⁵⁵Cleveland Plain Dealer, May 16, 1914, at 1, col. 2.

²⁵⁶*Id.*

²⁵⁷*Id.* and Cleveland Plain Dealer, *supra* note 252.

²⁵⁸Cleveland Plain Dealer, *supra* note 255.

²⁵⁹*Id.*

²⁶⁰*Id.*

²⁶¹Cleveland Plain Dealer, *supra* note 252.

²⁶²*Id.*

²⁶³*Id.*

²⁶⁴Governor James M. Cox's words were:

The unfortunate young man under sentence is entitled in his last hour to the largest measure of peace possible under the circumstances. The state cannot look with favor on the gratification of hate and revenge on such an occasion.

The process of the law is cruel enough at its best, and we should permit no impropriety so far as to grant this. I respectfully direct you [Warden Thomas], therefore, to see to it that the person in question [Massie] be not admitted.

Id. (reprinting letter from Governor James M. Cox to Warden Thomas).

²⁶⁵Cleveland Plain Dealer, *supra* note 252.

²⁶⁶Ignatius (Sam) Pupera, executed on May 9, 1922; Emanuel Ross, executed on November 26, 1926; Floyd

the popular conception of the roaring twenties, Pupera's crime was a New Year's Eve payroll robbery shoot-out, complete with the obligatory car chase scene.²⁶⁷

Pupera was born in Pittsburgh on February 21, 1904, of parents who had emigrated from Sicily only a few years earlier.²⁶⁸ Raised in the poorest parts of Pittsburgh and Cleveland, Pupera left school at age fifteen and began to study the trade of barbering.²⁶⁹ He was arrested for car theft in early December, 1920, but escaped from the Boy's Detention Home on December 13.²⁷⁰ Arrested almost immediately in Pittsburgh on an alcohol charge he then jumped bail.²⁷¹ The sixteen-year-old Pupera next became involved in the crimes which led to his execution.

Pupera associated with a gang of young men who frequented a pool hall in Cleveland and who glowingly discussed various past robberies.²⁷² Six of them, including Pupera, developed an elaborate plan to rob the cash payroll from the president and the superintendent of the W.W. Sly Company.²⁷³ At around noon on December 31, 1920, these two couriers were transporting a \$4,200 payroll from the bank to the company in their private automobile.²⁷⁴ Meanwhile, the would-be robbers had stolen another automobile which Pupera was now driving with four of his cohorts as passengers.²⁷⁵

At a prearranged time and place, Pupera drove this automobile around the payroll automobile and forced it off of the road.²⁷⁶ The two occupants of the payroll automobile, the company president and the superintendent, were shot and killed immediately.²⁷⁷ There were conflicting stories as to which of the robbers actually fired the fatal shots, but at the subsequent trial two witnesses identified Pupera as the one who killed both victims.²⁷⁸

After the victims had been killed and the payroll obtained, the sixth gang member arrived with another automobile in which several of the others escaped.²⁷⁹ Pupera ran away on foot and began an extensive flight that

Hewitt, executed on January 6, 1928; John Coverson, executed on January 9, 1928; and James Coleman, executed on July 5, 1928. See Table 6 and accompanying text, *infra*.

²⁶⁷Cleveland Plain Dealer, Jan. 1, 1921, at 1, col. 1.

²⁶⁸Cleveland Plain Dealer, March 26, 1921, at 1, col. 1.

²⁶⁹*Id.* and Cleveland Plain Dealer, May 19, 1921, at 1, col. 6.

²⁷⁰Cleveland Plain Dealer, March 17, 1921, at 1, col. 8.

²⁷¹*Id.*

²⁷²Cleveland Plain Dealer, May 2, 1921, at 2, col. 4.

²⁷³*Id.*

²⁷⁴Cleveland Plain Dealer, *supra* note 267.

²⁷⁵*Id.* and Cleveland Plain Dealer, *supra* note 272.

²⁷⁶Cleveland Plain Dealer, *supra* note 267.

²⁷⁷*Id.*

²⁷⁸Cleveland Plain Dealer, May 18, 1921, at 1, col. 5.

²⁷⁹Cleveland Plain Dealer, *supra* note 267.

included Boston, Chicago, El Paso and Juarez before ending in Los Angeles.²⁸⁰ Pupera was arrested in Los Angeles on a California automobile theft charge and then was recognized as being wanted for murder in Cleveland.²⁸¹ His California arrest occurred on March 11, 1921.²⁸²

Extradited back to Cleveland, Pupera was indicted by a grand jury on two counts of first degree murder.²⁸³ Several witnesses had identified Pupera and other gang members, but Pupera was the first to be located and arrested.²⁸⁴ Although Pupera had confessed his involvement in the robbery and killings, he maintained that he did not shoot either of the victims and had never received any of the stolen payroll money.²⁸⁵ Having passed his seventeenth birthday while hiding from the Cleveland police, the now incarcerated Pupera remained guardedly optimistic, commenting: "They'd never send a boy of seventeen to the chair in Ohio, would they?"²⁸⁶

Pupera's trial began on May 16, 1921.²⁸⁷ Although Pupera had confessed to driving the automobile used in the robbery, he denied involvement in the first degree murder for which he was being tried.²⁸⁸ The prosecution apparently proceeded under a felony-murder theory, the killing of the victims having been an integral part of the armed robbery.²⁸⁹ Two eyewitnesses identified Pupera as the person who killed both victims, but Pupera testified that he never fired the handgun he admittedly had with him at the robbery.²⁹⁰ In the closing arguments to the jury, both the prosecuting attorney and the defense attorney took particular note of the defendant's youthful age.²⁹¹

The case went to the jury at midday on May 18, 1921, and they returned a verdict of guilty of first degree murder on the morning of May 19, 1921.²⁹²

²⁸⁰Cleveland Plain Dealer, *supra* note 278; *Id.*, *supra* note 268.

²⁸¹Cleveland Plain Dealer, *supra* note 270.

²⁸²Cleveland Plain Dealer, *supra* note 268.

²⁸³Cleveland Plain Dealer, *supra* note 270.

²⁸⁴*Id.* and Cleveland Plain Dealer, March 28, 1921, at 1, col. 6.

²⁸⁵Cleveland Plain Dealer, *supra* note 268; Cleveland Plain Dealer, *supra* note 270.

²⁸⁶Cleveland Plain Dealer, *supra* note 268.

²⁸⁷Cleveland Plain Dealer, May 16, 1921, at 1, col. 2.

²⁸⁸*Id.*

²⁸⁹Cleveland Plain Dealer, *supra* note 278; Cleveland Plain Dealer, May 17, 1921, at 1, col. 8.

²⁹⁰Cleveland Plain Dealer, May 19, 1921, at 1, col. 7; Cleveland Plain Dealer, *supra* note 278.

²⁹¹Cleveland Plain Dealer, May 19, 1921, at 1, col. 7. The defense attorney's closing argument included such pleas as the following:

"The child and he is a child — was not the perpetrator of the deed." *Id.*; "Sending a seventeen-year-old to the chair is not going to stop crime in this city. . . . The boy's life is ahead of him." *Id.* at 1, col. 8.

The prosecuting attorney's closing argument responded with: "Counsel says he is not old enough to vote. He is old enough to tote a gun and shoot down two citizens in cold blood, if he is old enough for anything."

Id. at 4, col. 3.

²⁹²Cleveland Plain Dealer, May 21, 1921, at 1, col. 8. *Id.*, May 19, 1921, at 1, col. 6.

Pupera was immediately sentenced to death by Common Pleas Trial Judge Maurice Bernon, with an original execution date set for August 29, 1921.²⁹³

Through various court appeals and petitions to the Governor, Pupera received three stays of his execution date.²⁹⁴ His age seemed to be an important factor in this consideration: "Pupera, who says he is 17 years old, will be the youngest criminal to be electrocuted in the history of the state . . ."²⁹⁵ However, he would not have been younger than seventeen-year-old William Haas, electrocuted by Ohio on April 21, 1897.²⁹⁶ In any event, Pupera was to pass his eighteenth birthday before his execution date finally arrived on May 9, 1922.²⁹⁷ Pupera was executed in Ohio's electric chair at the Ohio Penitentiary Annex in Columbus on that date shortly after midnight.²⁹⁸

Emmanuel Ross; November 26, 1926

Four and one-half years later, Ohio executed another very young man for a Cleveland murder.²⁹⁹ Emmanuel Ross was also eighteen by the time he was executed but apparently had been only seventeen at the time of his crime.³⁰⁰ Ross was born on August 22 in either 1907 or 1908, according to various conflicting reports.³⁰¹ Since the weight of the evidence seems to place the year of his birth as 1908, it is assumed that he was thus only seventeen at the time of his crime and can be included in this study of Ohio offenders under age eighteen.³⁰²

Ross was born in Brookhaven, Mississippi, to a very poor black mother whose husband soon left her and Ross.³⁰³ Ross and his mother moved to Chicago when he was thirteen, and Ross came to Cleveland in October, 1925.³⁰⁴ His job as a dishwasher was to be complemented by involvement in criminal activity.³⁰⁵

After several hours of drinking and socializing on the evening of

²⁹³Cleveland Plain Dealer, May 21, 1921, at 1, col. 8.

²⁹⁴Cleveland Plain Dealer, May 8, 1922, at 1, col. 2.

²⁹⁵Cleveland Plain Dealer, *supra* note 293.

²⁹⁶See notes 227-51, *supra* and accompanying text.

²⁹⁷Cleveland Plain Dealer, May 10, 1922, at 1, col. 2.

²⁹⁸*Id.*

²⁹⁹Cleveland Plain Dealer, Nov. 26, 1926, at 1, col. 2.

³⁰⁰Cleveland Plain Dealer, Aug. 29, 1926, at 2, col. 2; *Id.*, Aug. 26, 1926, at 1, col. 1.

³⁰¹Cleveland Plain Dealer, Aug. 29, 1926, at 2, col. 2; *Id.*, Aug. 26, 1926, at 1, col. 1.

³⁰²Ross's mother signed an affidavit stating that Ross was only seventeen at the time of his trial in January, 1926, so he would have been born on August 22, 1908, and not 1907. Cleveland Plain Dealer, Sept. 2, 1926, at 3, col. 2.

³⁰³Cleveland Plain Dealer, Aug. 29, 1926, at 2, col. 2.

³⁰⁴*Id.*

³⁰⁵Ross v. State, 22 Ohio App. 304, 305, 153 N.E. 865, 866 (Ct. App. 1926).

November 5, 1925, Ross and a companion, Slim Young, decided to commit a robbery.³⁰⁶ The target for their robbery was a confectionary store owned by Isadore Steck on Central Avenue in Cleveland.³⁰⁷ During the robbery the owner Steck resisted, so Ross shot and killed Steck, and Young took the money from the cash register.³⁰⁸

Two weeks later, Ross was arrested in Chicago based upon information provided by the Cleveland police.³⁰⁹ Ross confessed to the robbery and the homicide.³¹⁰ He also provided information which led to the arrest of Young in Detroit.³¹¹ Ross was returned to Cleveland and indicted for first degree murder under a robbery-murder theory of felony-murder.³¹²

His trial began on January 11, 1926, and on January 14 he was found guilty of first degree murder.³¹³ The jury did not recommend mercy and the trial judge imposed the death sentence on January 16, 1926.³¹⁴

On May 17, 1926, the Ohio Court of Appeals for Cuyahoga County upheld the conviction and sentence.³¹⁵ Ross made several more attempts to have the Ohio Supreme Court review his case but to no avail.³¹⁶ He was similarly unsuccessful with the state clemency board and the governor.³¹⁷ However, in the interim he received five temporary stays of his execution date.³¹⁸

One issue raised late in Ross's appeal was the fact that he was under the juvenile court age limit but had been indicted and tried in adult Common Pleas Court without ever appearing in juvenile court.³¹⁹ One of the stays of execution was granted so that this question could be litigated in a state habeas corpus proceeding.³²⁰ However, the state trial court decided that Ross was not entitled to a new trial and this decision was not disturbed by the appellate courts.³²¹ The

³⁰⁶*Id.*

³⁰⁷*Id.* and *Cleveland Plain Dealer*, Nov. 6, 1925, at 1, col. 1.

³⁰⁸*Ross v. State*, 22 Ohio App. 304, 305, 153 N.E. 865, 866 (Ct. App. 1926).

³⁰⁹*Cleveland Plain Dealer*, Nov. 20, 1925, at 6, col. 3.

³¹⁰*Id.*

³¹¹*Cleveland Plain Dealer*, Jan. 10, 1926, § A, at 4, col. 4.

³¹²*Ross v. State*, 22 Ohio App. 304, 153 N.E. 865 (Ct. App. 1926).

³¹³*Cleveland Plain Dealer*, Jan. 15, 1926, at 1, col. 8; *Cleveland Plain Dealer*, *supra* note 311.

³¹⁴*Cleveland Plain Dealer*, Jan. 20, 1926, at 5, col. 6; *Id.*, Jan. 15, 1926, at 1, col. 8.

³¹⁵*Ross v. State*, 22 Ohio App. 304, 153 N.E. 865 (Ct. App. 1926).

³¹⁶*Cleveland Plain Dealer*, Nov. 17, 1926, at 18, col. 1; *Id.*, July 2, 1926, at 3, col. 2.

³¹⁷*Cleveland Plain Dealer*, Aug. 28, 1926, at 1, col. 3; *Id.*, Aug. 26, 1926, at 1, col. 3; *Id.*, Aug. 24, 1926, at 5, col. 6.

³¹⁸*Cleveland Plain Dealer*, Nov. 25, 1926, at 1, col. 4.

³¹⁹*Cleveland Plain Dealer*, June 3, 1926, at 6, col. 1.

³²⁰*Cleveland Plain Dealer*, Aug. 28, 1926, at 1, col. 6.

³²¹*Cleveland Plain Dealer*, Sept. 10, 1926, at 1, col. 3; *Id.*, Sept. 9, 1926, at 5, col. 7.

courts apparently assumed that the adult Common Pleas Court had concurrent jurisdiction with juvenile court over cases such as this and didn't require that the state first go through a juvenile court waiver hearing before proceeding to an adult court trial.

After all of these stays of the execution date, Ross finally exhausted his ability to forestall the execution. Ross died in the electric chair at the Ohio Penitentiary Annex in Columbus at 1:05 a.m. on November 26, 1926.³²² He had spent over ten months on Ohio's death row. Although the press had reported that Ross was "the youngest person to be electrocuted in Ohio,"³²³ this is the same error they made in Pupera's case. Neither Ross nor Pupera were as young as Haas either when they committed their crimes or when they were executed.

Floyd Hewitt; January 6, 1928

Floyd Hewitt at age sixteen was a paradox. At six feet three inches tall, he had the body of a large man.³²⁴ Mentally retarded from birth, Hewitt's attorneys described him as "a moron with a ten-year-old's intellect."³²⁵ His crimes earned him the press-endowed nickname of "boy clubber."³²⁶

Hewitt lived in a rural area near Conneaut, Ohio, and was a neighbor of the Brown family.³²⁷ On the evening of February 14, 1927, Hewitt visited the Brown home.³²⁸ Fred Brown was at work in Conneaut and would not return home until after midnight.³²⁹ Apparently Hewitt attempted a sexual familiarity with Fred's wife, Celia Brown, age 24.³³⁰ A fight ensued, ending when Hewitt struck Celia Brown on the head with a poker and she fell down the stairs.³³¹ Hewitt then chased the Brown's five-year-old son down to the cellar and killed him with a baseball bat he found there.³³² Hewitt left and walked home before 9:00 p.m. that evening.³³³

Mr. Brown returned home from work soon after midnight on February 15 and found his wife's body.³³⁴ Neighbors and the police soon arrived, and his

³²²Cleveland Plain Dealer, Nov. 26, 1926, at 6, col. 1.

³²³Cleveland Plain Dealer, Aug. 24, 1926, at 5, col. 6.

³²⁴Cleveland Plain Dealer, April 5, 1927, at 3, col. 1.

³²⁵Cleveland Plain Dealer, Jan. 5, 1928, at 8, col. 3.

³²⁶Cleveland Plain Dealer, Feb. 18, 1927, at 3, col. 5; *Id.*, Feb. 16, 1927, at 1, col. 3.

³²⁷Cleveland Plain Dealer, Feb. 16, 1927, at 1, col. 3.

³²⁸Cleveland Plain Dealer, April 16, 1927, at 4, col. 4.

³²⁹Cleveland Plain Dealer, April 14, 1927, at 7, col. 5.

³³⁰Cleveland Plain Dealer, Jan. 7, 1928, at 1; Cleveland Plain Dealer, *supra* note 327.

³³¹Cleveland Plain Dealer, *supra* note 328.

³³²*Id.*

³³³*Id.*

³³⁴Cleveland Plain Dealer, *supra* note 329.

son's body was found in the cellar.³³⁵ By late morning of that same day, suspicion had focused upon Hewitt.³³⁶ He was arrested as he casually walked by the police station and confessed a few hours later.³³⁷

Even though Hewitt was only sixteen years old, the prosecutor announced from the beginning that he would seek a murder conviction and the death sentence.³³⁸ Hewitt was indicted for first degree murder on February 25, 1927, and his trial opened on April 4, 1927, in Jefferson, Ohio.³³⁹ Although indicted for two first degree murders (mother and son), he was tried only for the first degree murder of the five-year-old boy.³⁴⁰

During the three week trial, the state relied heavily upon Hewitt's signed confession while the defense stressed Hewitt's mental disabilities.³⁴¹ On April 26, the jury returned a verdict of guilty without a recommendation of mercy.³⁴² Within minutes, the trial judge imposed the death sentence and set August 10, 1927, as the date of execution.³⁴³

Hewitt's appeals to the Court of Appeals, the Ohio Supreme Court and the board of clemency were unsuccessful.³⁴⁴ As is almost always the case, these efforts did result in several stays of execution and delays of the execution date.³⁴⁵ The final consideration was by the board of clemency on January 5, 1928, and that board refused to recommend mercy to the Governor.³⁴⁶

Hewitt was executed at 7:38 p.m. on January 6, 1928, at the Ohio Penitentiary Annex in Columbus.³⁴⁷ Press headlines that Hewitt was the "Youngest Ever Executed in Ohio"³⁴⁸ were apparently correct this time, since Hewitt was younger even than Haas had been when he was executed. Hewitt's chronological age at execution was seventeen, but his mental age remained forever fixed at ten.³⁴⁹

³³⁵*Id.*

³³⁶Cleveland Plain Dealer, Jan. 7, 1928, at 1, col. 1; Cleveland Plain Dealer, *supra* note 327.

³³⁷Cleveland Plain Dealer, *supra* note 336; Cleveland Plain Dealer, *supra* note 327.

³³⁸Cleveland Plain Dealer, Feb. 17, 1927, at 3, col. 1.

³³⁹Cleveland Plain Dealer, Jan. 7, 1928, at 1, col. 1; *Id.*, April 7, 1927, at 2, col. 3; *Id.*, *supra* note 324.

³⁴⁰Cleveland Plain Dealer, Jan. 7, 1928, at 1, col. 1; *Id.*, July 7, 1927, at 3, col. 3.

³⁴¹Cleveland Plain Dealer, Jan. 5, 1928, at 8, col. 3; *Id.*, April 16, 1927, at 3, col. 3; *Id.*, *supra* note 328.

³⁴²Cleveland Plain Dealer, April 27, 1927, at 1, col. 1.

³⁴³*Id.*

³⁴⁴Cleveland Plain Dealer, Jan. 7, 1928, at 1, col. 1.

³⁴⁵*Id.*

³⁴⁶Cleveland Plain Dealer, Jan. 6, 1928, at 1, col. 7.

³⁴⁷Cleveland Plain Dealer, *supra* note 344.

³⁴⁸*Id.*

³⁴⁹Cleveland Plain Dealer, April 21, 1927, at 2, col. 1.

John Coverson; January 9, 1928

Almost exactly seventy-two hours later, John Coverson was executed in the same electric chair.³⁵⁰ Coverson was a black seventeen-year-old male who lived in the black section of Cincinnati for ten months preceding his crime.³⁵¹ Coverson knew most of the people who lived in this neighborhood, including the black police officer he murdered.³⁵²

On May 14, 1927, someone (apparently Coverson) fired several shots at the house windows of Mary Easley who lived in this black section of Cincinnati.³⁵³ Patrolman Olin Wilson, off duty and not in uniform, was summoned by Ms. Easley and told of the shootings.³⁵⁴ Coverson was one of the spectators to this conversation and Ms. Easley pointed out Coverson to Patrolman Wilson as the person who had shot at her windows.³⁵⁵ Wilson then approached Coverson, stating "I am the law."³⁵⁶ As Wilson approached, Coverson shot the officer three times.³⁵⁷

Wilson died the next day from the effects of the gunshots but he identified Coverson as his assailant before he died.³⁵⁸ Coverson was arrested and indicted for "murder with deliberate and premeditated malice [and] . . . with having murdered a police officer while the latter was in the discharge of his duty."³⁵⁹ He was tried in the fall of 1927 and convicted of both counts, with the sentence being death.³⁶⁰

The Ohio Court of Appeals for Hamilton County heard Coverson's appeal but affirmed the convictions and the sentence.³⁶¹ The court had no hesitation in finding the evidence sufficient to support the verdict³⁶² but seemed less confident of the conviction of knowingly killing a police officer.³⁶³ While not finding error in this second conviction, the court thought it prudent to point out that the first conviction was sufficient for the death sentence by itself, rendering somewhat superfluous its holding on the second conviction.³⁶⁴

³⁵⁰The Enquirer (Cincinnati), Jan. 10, 1928, at 22, col. 3.

³⁵¹Coverson v. State, 27 Ohio App. 166, 168, 161 N.E. 221, 222 (Ct. App. 1927).

³⁵²*Id.*

³⁵³The Enquirer (Cincinnati), *supra* note 348.

³⁵⁴*Id.*

³⁵⁵*Id.*

³⁵⁶Coverson v. State, 27 Ohio App. at 167, 161 N.E. at 222.

³⁵⁷The Enquirer (Cincinnati), *supra* note 350.

³⁵⁸*Id.*

³⁵⁹Coverson v. State, 27 Ohio App. at 167, 161 N.E. at 222.

³⁶⁰*Id.* and The Enquirer (Cincinnati), *supra* note 350.

³⁶¹Coverson v. State, 27 Ohio App. at 168, 161 N.E. at 222.

³⁶²*Id.* at 167, 161 N.E. at 222.

³⁶³*Id.* at 168, 161 N.E. at 222.

³⁶⁴*Id.*

Subsequent petitions to the Ohio Board of Clemency and the governor were pursued but were unsuccessful.³⁶⁵ Coverson was executed in the electric chair at the Ohio Penitentiary Annex in Columbus at 7:37 p.m. on January 9, 1928, having spent only a few months in Ohio's death row.³⁶⁶

James (Sleepy) Coleman; July 5, 1928

The age of James Coleman at the time of his crime, his arrest or his execution, was the subject of some confusion. When he was arrested, Coleman gave his name as Green and his age as 30.³⁶⁷ His correct name was soon discovered and it apparently was agreed later that he was age eighteen when executed.³⁶⁸ Since his execution occurred five months after his crime, it is assumed for the purposes of this article that he was seventeen at the time of his crime.³⁶⁹

Coleman was a black man born and raised in North Carolina.³⁷⁰ He moved to Portsmouth, Ohio, in 1927 and apparently became involved in several theft crimes.³⁷¹ On the evening of February 6, 1928, Coleman met with William Wilson at a pool hall and they decided to walk over to a railroad yard either to look for legitimate jobs or to commit a robbery.³⁷² As they walked along the street, they were stopped and questioned by a police officer.³⁷³ Without warning or apparent reason, Coleman shot the officer with a concealed handgun and the officer died almost immediately.³⁷⁴

Coleman and Wilson ran from the scene but were captured twenty minutes later by the police.³⁷⁵ According to the local newspaper report of the arrest, Coleman resisted arrest somewhat and ". . . was a badly battered man when he reached police headquarters."³⁷⁶ Both Coleman and Wilson confessed to involvement in the crime, but each claimed the other had fired the fatal shots.³⁷⁷

Coleman and Wilson were indicted by a special grand jury for Scioto County on two counts, first degree murder and killing a police officer while in

³⁶⁵Cleveland Plain Dealer, Jan. 10, 1928, at 1, col. 1.

³⁶⁶*Id.*

³⁶⁷Portsmouth Daily Times, Feb. 7, 1928, at 5, col. 1.

³⁶⁸W. BOWERS, *supra* note 79, at 337; Cleveland Press, July 6, 1928, § 2, at 1, col. 5; Portsmouth Daily Times, July 6, 1928, at 2, col. 1.

³⁶⁹W. BOWERS, *supra* note 79, at 337; Cleveland Press, *supra* note 368; Portsmouth Daily Times, *supra* note 368.

³⁷⁰Portsmouth Daily Times, July 5, 1928, at 2, col. 1.

³⁷¹*Id.* and Portsmouth Daily Times, *supra* note 367.

³⁷²Portsmouth Daily Times, *supra* note 370; Portsmouth Daily Times, *supra* note 367.

³⁷³Portsmouth Daily Times, *supra* note 367.

³⁷⁴*Id.*

³⁷⁵*Id.*

³⁷⁶*Id.* at col. 2.

³⁷⁷*Id.*

the discharge of duty.³⁷⁸ At separate trials, both were convicted without a jury recommendation of mercy.³⁷⁹ The trial judge sentenced them to die in the electric chair on July 5, 1928.³⁸⁰ Evidence at the trials indicated that although Coleman had fired the fatal shots, he did so with a gun furnished to him by Wilson and upon a pre-arranged signal to shoot given him by Wilson.³⁸¹

Wilson appealed and sought clemency to no avail, but Coleman admitted his guilt and did not appeal or seek clemency from the board of pardons or the governor.³⁸² Wilson and Coleman were executed on schedule in the electric chair at the Ohio Penitentiary Annex in Columbus.³⁸³ Coleman was placed in the chair at 9:13 p.m. and died at 9:18 p.m. on July 5, 1928, almost exactly five months after he shot and killed the Portsmouth police officer at 9:50 p.m. on February 6, 1928.³⁸⁴

Coleman's 1928 execution was the last of Ohio's five executions of children in the 1920s, this five being far more than in any other decade in Ohio's history. This decade also produced the highest total executions of any in Ohio's history; eighty-five persons were executed in Ohio from 1920 through 1929.³⁸⁵

Lee Akers; June 13, 1930

Lee Akers was a seventeen-year-old black male who was wanted by the police in St. Louis for robbery and burglary.³⁸⁶ He came to Cleveland to live with his sister and continued his crimes to get money for "eats, whiskey and craps."³⁸⁷ This time his robbery ended in homicide on Christmas Day.³⁸⁸

On December 25, 1928, Akers watched the activity around the gasoline service station in northeast Cleveland until the station manager closed the station in the evening.³⁸⁹ When Akers approached the manager and demanded the money, the manager resisted and chased Akers out of the station office.³⁹⁰ Akers shot and killed the manager and then took about one hundred dollars from the manager's pockets and the cash register.³⁹¹

³⁷⁸Portsmouth Daily Times, July 6, 1928, at 2, col. 1.

³⁷⁹*Id.*

³⁸⁰*Id.*

³⁸¹*Id.*

³⁸²Portsmouth Daily Times, *supra* note 370.

³⁸³Portsmouth Daily Times, *supra* note 378.

³⁸⁴*Id.* and Portsmouth Daily Times, *supra* note 367.

³⁸⁵W. BOWERS, *supra* note 79, at 335-37; see Table 6 and accompanying text, *infra*.

³⁸⁶Cleveland Plain Dealer, April 4, 1929, at 6, col. 3; *Id.*, Jan. 8, 1929, at 10, col. 1.

³⁸⁷Cleveland Plain Dealer, Jan. 8, 1929, at 10, col. 1.

³⁸⁸Akers v. State, 8 Ohio L. Abs. 106 (1929).

³⁸⁹Cleveland Plain Dealer, *supra* note 387.

³⁹⁰*Id.*

³⁹¹Cleveland Plain Dealer, Dec. 27, 1928, at 1, col. 8.

During the week after the crime, the police first arrested and questioned three prime suspects and then arrested 295 more suspects a few days later.³⁹² One week after the crime, the police were still holding the three prime suspects and 150 other suspects.³⁹³ This dragnet approach produced information from the detainees about Akers, and he was arrested on January 7, 1929.³⁹⁴

Akers confessed to the police after he was arrested and he was indicted for first degree murder on January 10, 1929³⁹⁵ On January 16, Akers entered a plea of not guilty and filed a motion to test his sanity.³⁹⁶ When the jury determined that Akers was sane, he filed a motion to transfer the case to juvenile court.³⁹⁷ Akers reasserted this motion on April 1 but was denied the transfer.³⁹⁸

Akers' trial began on April 1, 1929, taking one day to select a jury and two days to hear the evidence.³⁹⁹ On April 3, the jury ". . . returned a death chair verdict in twenty minutes."⁴⁰⁰ Although Akers had asked mercy from the court on a guilty plea, he was forced to stand trial in order to have a chance of avoiding the death penalty.⁴⁰¹ Akers' motion for a new trial was denied and the trial judge entered judgment upon the verdict on April 6, 1929.⁴⁰²

The Ohio Court of Appeals affirmed the conviction and sentence on December 9, 1929.⁴⁰³ Akers had argued that the trial court should have granted his motions to transfer the case to juvenile court but the appeals court did not agree.⁴⁰⁴ The court held that the Juvenile Court Act⁴⁰⁵ does not give juvenile courts jurisdiction over indictable felonies such as first degree murder nor does it change the common law⁴⁰⁶ rule as to the capacity of a minor to commit a

³⁹²Cleveland Plain Dealer, Dec. 28, 1928, at 8, col. 2.

³⁹³Cleveland Plain Dealer, Dec. 31, 1928, at 6, col. 2.

³⁹⁴Cleveland Plain Dealer, *supra* note 387.

³⁹⁵Akers v. State, 8 Ohio L. Abs. 106 (1929); Cleveland Plain Dealer, Jan. 11, 1929, at 7, col. 1; Cleveland Plain Dealer, *supra* note 385.

³⁹⁶Akers v. State, 8 Ohio L. Abs. 106 (1929).

³⁹⁷*Id.*

³⁹⁸*Id.*

³⁹⁹Cleveland Plain Dealer, April 4, 1929, at 1, col. 3; *Id.*, April 2, 1929, at 8, col. 5.

⁴⁰⁰Cleveland Plain Dealer, April 4, 1929, at 1, col. 3.

⁴⁰¹*Id.*

⁴⁰²Akers v. State, 8 Ohio L. Abs. 106 (1929).

⁴⁰³*Id.* at 107.

⁴⁰⁴*Id.* at 106.

⁴⁰⁵Juvenile Court Act, 8 OHIO REV. CODE ANN. § 1639 *et. seq.* (Throckmorton 1929).

⁴⁰⁶*See, e.g.* 4 W. BLACKSTONE, *supra* note 3, at 23-24; M. HALE, *supra* note 3, at 25-28. In general, persons under age seven were conclusively presumed to be incapable of entertaining criminal intent. For persons age seven to age fourteen, the presumption was rebuttable, and if rebutted, such a person could be convicted. No special presumption whatsoever applied to persons age fourteen or over. In this case, Akers was age seven at the time of his crime.

felony.⁴⁰⁷ In any event, the adult criminal court which tried, convicted and sentenced Akers had at least concurrent jurisdiction to do so.⁴⁰⁸

Akers obtained five reprieves or stays of execution during his appeals and petitions for clemency.⁴⁰⁹ However, he was not successful in overturning his conviction or sentence. Akers died in Ohio's electric chair at 9:03 p.m. on June 13, 1930.⁴¹⁰ He had been held at the Columbus city jail until his execution date because of a fire at the Ohio Penitentiary but was executed at the penitentiary as required by the current Ohio statute.⁴¹¹ Akers was eighteen years old when he died, having spent over fourteen months on Ohio's death row.⁴¹²

Joseph Murphy; August 14, 1933

Relatively little information was found about the crime and resulting criminal process for Joseph Murphy. It is known that Joseph and his older brother James were executed for their crimes and were visited on death row just before their executions by yet another brother, William, who was serving a life sentence for robbery.⁴¹³

At the time of his crime, Joseph Murphy, a black male, was seventeen years old.⁴¹⁴ On October 8, 1932, he and his brother James Murphy, six years older than Joseph, attempted to rob a bank in Silverton, Ohio, a suburb of Cincinnati.⁴¹⁵ During this robbery attempt they shot and killed the bank cashier.⁴¹⁶ They were arrested soon thereafter when the Cincinnati police learned that they had been boasting about their crimes.⁴¹⁷

They were tried and convicted of first degree murder of the bank cashier, presumably on a felony-murder theory.⁴¹⁸ The Murphy brothers continued to maintain their innocence even after they were convicted, and an eye-witness to the crime later filed a sworn affidavit that they were not the men she saw leaving the bank on that day.⁴¹⁹ This resulted in a reprieve of thirty days but it

⁴⁰⁷Akers v. State, 8 Ohio L. Abs. at 106. On this point, see also Gerak v. State, 22 Ohio App. 357, 153 N.E. 902 (1920).

⁴⁰⁸Akers v. State, 8 Ohio L. Abs. at 106.

⁴⁰⁹Cleveland Plain Dealer, June 14, 1930, at 1, col. 8.

⁴¹⁰*Id.*

⁴¹¹3 OHIO REV. CODE ANN. § 13728 (Throckmorton 1929) (requiring all executions be "within the walls of the Ohio Penitentiary").

⁴¹²Cleveland Plain Dealer, *supra* note 409.

⁴¹³The Enquirer (Cincinnati), Aug. 15, 1933, at 1, col. 7.

⁴¹⁴At least it can be said that he was eighteen years old at his execution date ten months later. *Id.*

⁴¹⁵Cleveland Press, Aug. 15, 1933, at 10, col. 3.

⁴¹⁶The Enquirer (Cincinnati), *supra* note 413.

⁴¹⁷Cleveland Plain Dealer, Aug. 15, 1933, at 2, col. 1.

⁴¹⁸*Id.*

⁴¹⁹The Enquirer (Cincinnati), July 15, 1933, at 20, col. 2.

was only temporary.⁴²⁰

They were executed at the Ohio Penitentiary Annex on the evening of August 14, 1933.⁴²¹ Joseph Murphy died at 8:50 p.m. and his brother died ten minutes thereafter.⁴²² Both were highly critical of the criminal justice process which had brought them to this end and continued to maintain that they had not committed these crimes.⁴²³

Pang Young: July 12, 1939

Even less information was found about the case of Pang Young. What does seem clear, though, is that he was the first oriental executed at the Ohio Penitentiary Annex in Columbus⁴²⁴ and apparently the only oriental ever executed in Ohio's history, at least since 1885.⁴²⁵

Young came to the United States from Canton, China, in 1922 at the age of two.⁴²⁶ At age seventeen on the evening of July 12, 1938, he attempted a holdup in Cincinnati.⁴²⁷ His victim was black laundryman James King.⁴²⁸ When King did not do as Young instructed, a struggle ensued and King was fatally shot.⁴²⁹ Young later characterized this as an accidental killing and claimed that he did not intend to shoot the victim.⁴³⁰ Young apparently tried to poison himself with strychnine later on the night he killed King but was unsuccessful.⁴³¹

Young was tried and convicted of first degree murder, coming to Ohio's electric chair exactly one year after his crime was committed.⁴³² Various descriptions of him as "a childlike oriental"⁴³³ and a "Sobbing Chinese"⁴³⁴ he died in Ohio's electric chair at 8:16 p.m. on July 12, 1939.⁴³⁵ Even the press media of that time seemed distantly curious, noting that no one ever knew much about Pang Young and that he had been "one of the loneliest figures who ever waited out the hours in the death row of Ohio Penitentiary."⁴³⁶

⁴²⁰Cleveland Press, *supra* note 415.

⁴²¹*Id.*

⁴²²The Enquirer (Cincinnati), *supra* note 413.

⁴²³*Id.*

⁴²⁴The Enquirer (Cincinnati), July 13, 1939, at 10, col. 1.

⁴²⁵See W. BOWERS, *supra* note 79, at 332-42.

⁴²⁶The Enquirer (Cincinnati), *supra* note 424.

⁴²⁷Cleveland Press, July 13, 1939, at 3, col. 3.

⁴²⁸The Enquirer (Cincinnati), *supra* note 424.

⁴²⁹*Id.*

⁴³⁰*Id.*

⁴³¹Cleveland Press, *supra* note 427.

⁴³²The Enquirer (Cincinnati), *supra* note 424.

⁴³³Cleveland Press, *supra* note 427.

⁴³⁴*Id.*

⁴³⁵The Enquirer (Cincinnati), *supra* note 424.

⁴³⁶Cleveland Press, *supra* note 427.

Louis Vernon Hand; January 14, 1944

Louis Hand was seventeen years old when executed and perhaps only sixteen at the time of his crime.⁴³⁷ Hand had been placed in a state children's home at the age of eighteen months when his parents separated.⁴³⁸ He spent the next fifteen years either in state-operated children homes or in the Boy's Industrial School and at the time of his crime was on parole from a commitment to the Boy's Industrial School for automobile theft.⁴³⁹ While on parole, Hand worked and apparently lived on the Stober family farm near Celina, Ohio, in Mercer County.⁴⁴⁰ On July 3, 1943, Hand was reprimanded by Mr. Stober for not properly greasing a farm implement.⁴⁴¹ Following this reprimand, Mr. Stober's six-year-old grandson, Richard, began to tease Hand for the error and the reprimand.⁴⁴² In retaliation, Hand beat the child to death with a hammer and hid the body in the barn.⁴⁴³

When the child's body was found, Hand was reported missing.⁴⁴⁴ He was arrested in Greenville, Ohio, soon thereafter by the Chief of Police in Greenville.⁴⁴⁵ Hand confessed that he had killed the child and was charged with first degree murder.⁴⁴⁶

In September, 1943, Hand was tried in Celina, Ohio.⁴⁴⁷ The jury convicted him of first degree murder without a recommendation of mercy.⁴⁴⁸ This verdict made the death penalty mandatory, and the trial judge sentenced Hand to death on September 26, 1943.⁴⁴⁹

The trial judge originally set the execution date for January 14, 1944, and this was not to be changed.⁴⁵⁰ No record could be found of any appeals in Hand's case, and he was electrocuted in Ohio's electric chair at 8:01 p.m. on January 14, 1944.⁴⁵¹ He remained calm yet defiant at his death as he had been during his three and one-half months on death row.⁴⁵²

⁴³⁷Cleveland Plain Dealer, Jan. 15, 1944, at 1, col. 3.

⁴³⁸*Id.*

⁴³⁹*Id.*

⁴⁴⁰Greenville Daily Advocate, Jan. 15, 1944, at 1, col. 4.

⁴⁴¹*Id.*

⁴⁴²*Id.*

⁴⁴³Cleveland Plain Dealer, *supra* note 437.

⁴⁴⁴*Id.*

⁴⁴⁵*Id.*

⁴⁴⁶Greenville Daily Advocate, *supra* note 440.

⁴⁴⁷*Id.*

⁴⁴⁸Cleveland Plain Dealer, *supra* note 437, at 2, col. 5.

⁴⁴⁹*Id.*

⁴⁵⁰*Id.*

⁴⁵¹Greenville Daily Advocate, *supra* note 440.

⁴⁵²Cleveland Plain Dealer, *supra* note 437.

William Henry Hagert; October 3, 1945

William Hagert's crimes were perhaps the most sensational and deserving of punishment. Hagert was a violent psychopath who tended toward homosexual rape and murder of young boys.⁴⁵³ Nonetheless, his case took the longest to get to execution of any of those analyzed in this article.⁴⁵⁴

Hagert was born on September 15, 1925, and was left emotionally disturbed from brain fever and double pneumonia at age seven.⁴⁵⁵ His troubled childhood included an eleven month stay at the Boy's Industrial School in Lancaster, Ohio, for automobile theft.⁴⁵⁶ It was at this institution that Hagert "learned bad sexual practices from other boys"⁴⁵⁷ and practiced "sexual perversion."⁴⁵⁸

Following release from the school, Hagert lived for a short time with his family but had violent quarrels with his mother and fist fights with his father.⁴⁵⁹ After several months of this, he was committed by his mother to the psychopathic ward of the city hospital on July 7, 1943.⁴⁶⁰ He was released from there on August 9, 1943, and immediately began engaging in his final crimes.⁴⁶¹

Hagert took his father's gun on the day he was released from the hospital.⁴⁶² He began to engage in his previous behavior of picking up young boys and either raping them or killing them or both.⁴⁶³ Within two days he had kidnapped and forcibly sodomized two local boys, ages nine and twelve.⁴⁶⁴ On August 12, 1943, Hagert picked up twin twelve-year-old boys who were hitchhiking to the local country club to work as caddies.⁴⁶⁵

Using his father's gun to force their acquiescence, Hager took the twin boys to a wooded area in suburban Bay Village near Cleveland.⁴⁶⁶ There he attempted to commit sodomy on one of the boys but was repulsed by him.⁴⁶⁷ He

⁴⁵³See generally *State v. Hagert*, 58 N.E.2d 399, 401-02 (Ct. App. 1944).

⁴⁵⁴Hagert's crime occurred on August 12, 1943, and he was executed on October 3, 1945, almost twenty-six months later.

⁴⁵⁵Cleveland Plain Dealer, Aug. 14, 1943, at 3, col. 3.

⁴⁵⁶*Id.*

⁴⁵⁷*Id.* at 2, col. 1.

⁴⁵⁸*Id.* at 3, col. 3.

⁴⁵⁹*Id.* at 3, col. 3.

⁴⁶⁰*Id.* at 3, col. 3.

⁴⁶¹*Id.* and *State v. Hagert*, 58 N.E.2d at 401.

⁴⁶²Cleveland Plain Dealer, *supra* note 455, at 3, col. 5.

⁴⁶³Hagert was later to admit that on March 9 or 10, 1943, he had raped and murdered a fifteen-year-old boy in Cleveland. Cleveland Plain Dealer, Aug. 16, 1943, at 1, col. 8.

⁴⁶⁴*State v. Hagert*, 58 N.E.2d at 401-02.

⁴⁶⁵*Id.* at 401; Cleveland Plain Dealer, *supra* note 455.

⁴⁶⁶*State v. Hagert*, 58 N.E.2d at 401.

⁴⁶⁷*Id.*

shot and killed both boys and left their bodies there.⁴⁶⁸ He later reported his motive for the killings as being “for the heck of it.”⁴⁶⁹

The next day, August 13, 1943, Hagert was seen at the scene of the previous kidnapping and sodomizing of the nine-year-old boy.⁴⁷⁰ Police became suspicious of Hagert and arrested him even before they were to learn of the deaths of the twelve-year-old twins.⁴⁷¹ After being arrested, Hagert confessed not only to the crimes with the nine-year-old boy but also led the police to the bodies of the twins.⁴⁷² The next morning’s newspaper devoted almost the entire front page to various stories about the dangers of hitchhiking, the crimes of psychopaths and the urgent need to curb degenerates.⁴⁷³

The investigating detectives filed a juvenile court complaint on August 14, 1943, and a hearing was held in that court on August 25, 1943.⁴⁷⁴ Although the juvenile court judge believed Hagert to be insane, he ordered him held for investigation by the grand jury.⁴⁷⁵ Hagert then was indicted by the grand jury for first degree murder of the twin boy he had attempted to rape and then had killed.⁴⁷⁶ Arraigned on this indictment, Hagert entered a plea of not guilty by reason of insanity.⁴⁷⁷

In addition, Hagert claimed that he was presently insane and thus could not be tried.⁴⁷⁸ The court appointed physicians to examine Hagert and conducted a preliminary hearing before a jury to determine this issue.⁴⁷⁹ While the physicians were quite varied in their opinions as to Hagert’s sanity, on October 27, 1943, the jury returned a unanimous verdict that Hagert was sane at that time and thus could stand trial.⁴⁸⁰

Hagert’s trial began in late November and ended on December 1, 1943.⁴⁸¹ At this trial on the merits the state was allowed to present as evidence the verdict of the jury finding that Hagert was sane at the time of the preliminary

⁴⁶⁸Cleveland Plain Dealer, *supra* note 455, at 1, col. 7; 2, col. 1.

⁴⁶⁹*Id.* at 1, col. 6.

⁴⁷⁰*Id.* at 2, col. 1.

⁴⁷¹*Id.*

⁴⁷²*Id.* and State v. Hagert, 144 Ohio St. 316, 58 N.E.2d 764 (1944).

⁴⁷³Cleveland Plain Dealer, *supra* note 455, at 1, col. 7. The various articles generally stressed that “immediate action was necessary to cope with the mounting series of murders linked with sex crimes that have been perpetrated on Cleveland children by degenerates and psychopathic persons.” *Id.* at 1, col. 7.

⁴⁷⁴Cleveland Plain Dealer, Aug. 26, 1943, at 1, col. 2; *Id.*, Aug. 15, 1943, at 1, col. 5.

⁴⁷⁵Cleveland Plain Dealer, Aug. 26, 1943, at 1, col. 2, at 3, col. 5.

⁴⁷⁶State v. Hagert, 144 Ohio St. 316, 58 N.E.2d 764 (1944).

⁴⁷⁷State v. Hagert, 58 N.E.2d 399, 401 (Ct. App. 1944).

⁴⁷⁸*Id.*

⁴⁷⁹*Id.*

⁴⁸⁰Cleveland Plain Dealer, Oct. 28, 1943, at 1, col. 2.

⁴⁸¹Cleveland Plain Dealer, Dec. 2, 1943, at 1, col. 1.

hearing.⁴⁸² The other two boys previously molested by Hagert were allowed to testify about those experiences, apparently as evidence of Hagert's mens rea for the crime in issue at the trial.⁴⁸³ On December 1, the jury rejected Hagert's insanity defense and found him guilty of first degree murder without any recommendation of mercy.⁴⁸⁴ The trial judge overruled Hagert's motion for a new trial, entered judgment on the verdict and sentenced him to death.⁴⁸⁵

Hagert's case was the only one of these nineteen that involved appellate reversal of the first conviction.⁴⁸⁶ After his original conviction on December 1, 1943, Hagert's case came before Ohio's court of appeals where both his conviction and sentence were affirmed on May 2, 1944.⁴⁸⁷ In a subsequent four-to-three decision on December 27, 1944, the Ohio Supreme Court found prejudicial error by the trial court in admitting the state's evidence on the insanity finding from the preliminary hearing.⁴⁸⁸ Although no other prejudicial error was found, that court reversed Hagert's conviction and remanded the case for retrial.⁴⁸⁹

Hagert's second trial was before three Common Pleas Court judges, a jury trial having been waived.⁴⁹⁰ Hagert was convicted again and this time his appeals and petitions for clemency were unsuccessful.⁴⁹¹ He was executed in Ohio's electric chair at 7:08 p.m. on October 3, 1945, almost twenty-six months after he killed the young boy.⁴⁹² Only seventeen-years-old when he committed his crimes, he had reached the age of twenty before being executed.⁴⁹³

Donald Edward Frohner; August 20, 1948

Donald Frohner was a fairly typical high school junior, complete with a hesitancy in making friends and with a tendency to formulate elaborate and adventurous schemes for gaining some desired end.⁴⁹⁴ This particular scheme was to steal an automobile and use it to kidnap for ransom a high school

⁴⁸²State v. Hagert, 144 Ohio St. 316, 58 N.E.2d 764 (1944).

⁴⁸³State v. Hagert, 58 N.E.2d at 402 (Ct. App. 1944).

⁴⁸⁴*Id.* at 401; Cleveland Plain Dealer, *supra* note 481.

⁴⁸⁵State v. Hagert, 58 N.E.2d at 401; Cleveland Plain Dealer, *supra* note 481.

⁴⁸⁶State v. Hagert, 144 Ohio St. 316, 59 N.E.2d 764 (1944).

⁴⁸⁷State v. Hagert, 58 N.E.2d 399 (Ct. App. 1944).

⁴⁸⁸State v. Hagert, 144 Ohio St. 316, 58 N.E.2d 764 (1944).

⁴⁸⁹*Id.*

⁴⁹⁰Cleveland Plain Dealer, Oct. 4, 1945, at 1, col. 3, at 3, col. 3.

⁴⁹¹*Id.*

⁴⁹²*Id.*

⁴⁹³*Id.*

⁴⁹⁴State v. Frohner, 150 Ohio St. 53, 60-69, 80 N.E.2d 868, 874-77 (1948).

acquaintance, but the automobile theft went awry and Frohner's scheme led him to Ohio's death row.⁴⁹⁵

Frohner was born on May 9, 1930, in Youngstown, Ohio, and lived on a thirty-acre farm near there with his parents and older brother until the time of his crime.⁴⁹⁶ He was doing well in school, had been a baby sitter for the neighbors, was a member of the Christian Science Church and seemed to have no particular behavior problems.⁴⁹⁷ However, subsequent testimony at trial revealed that Frohner's parents often quarrelled and his father was cruel toward Frohner, having ordered Frohner out of the house at one point about two weeks before the crimes.⁴⁹⁸ When he embarked upon the automobile theft and kidnapping scheme, Frohner took with him some poison to ingest if things didn't go well.⁴⁹⁹

On Monday, January 13, 1947, Frohner brought a handgun to school that he had taken from his father's bedroom the day before.⁵⁰⁰ After school that day, the sixteen-year-old Frohner and his seventeen-year-old friend Arthur Chapman embarked upon their scheme.⁵⁰¹ The two boys took buses and hitched rides to get to the outskirts of Youngstown.⁵⁰²

Frohner and Chapman finally hitched a ride in an automobile driven by William Spieth, with Chapman riding in the right front passenger seat and Frohner riding in the back seat.⁵⁰³ Frohner was well equipped for the planned activities, with his father's revolver, a blackjack, substitute license plates for the automobile to be stolen and ransom notes for the kidnapping.⁵⁰⁴

Frohner's plan went awry when he ordered Spieth to stop the automobile and Spieth refused to do so.⁵⁰⁵ Frohner then struck Spieth with his blackjack but it broke in his hands.⁵⁰⁶ Frohner began to strike Spieth with his gun, resulting in either intentionally or unintentionally discharging the weapon and shooting Spieth.⁵⁰⁷ Spieth died from two gunshots in the back.⁵⁰⁸

⁴⁹⁵*Id.* at 75, 80 N.E.2d at 880; Youngstown Vindicator, Jan. 17, 1947, at 1, col. 8.

⁴⁹⁶State v. Frohner, 150 Ohio St. at 57, 80 N.E.2d at 872; Youngstown Vindicator, Feb. 25, 1947, at 1, col. 8, at 6, col. 3.

⁴⁹⁷State v. Frohner, 150 Ohio St. at 61, 64, 80 N.E.2d at 874-75; Youngstown Vindicator, Feb. 25, 1947, at 1, col. 8, at 6, col. 2.

⁴⁹⁸Youngstown Vindicator, Feb. 25, 1947, at 1, col. 8.

⁴⁹⁹Youngstown Vindicator, Jan. 18, 1947, at 1, col. 8, at 2, col. 1; *Id.*, Jan. 17, 1947, at 1, col. 8.

⁵⁰⁰State v. Frohner, 150 Ohio St. at 57-58, 80 N.E.2d at 872-73.

⁵⁰¹*Id.*

⁵⁰²*Id.*

⁵⁰³*Id.*

⁵⁰⁴*Id.* at 56, 80 N.E.2d at 872-72.

⁵⁰⁵*Id.* at 57-58, 80 N.E.2d at 872-73.

⁵⁰⁶*Id.*; Youngstown Vindicator, Jan. 14, 1947, at 1, col. 7, at 6, col. 2.

⁵⁰⁷State v. Frohner, 150 Ohio St. at 57-58, 80 N.E.2d at 872-73; Youngstown Vindicator, Jan. 18, 1947, at 1, col. 8, at 2, col. 1.

⁵⁰⁸State v. Frohner, 150 Ohio St. at 56, 80 N.E.2d at 871-72.

A passing bus stopped near the automobile in response to the activity and Frohner and Chapman ran from the automobile and across an adjoining field.⁵⁰⁹ After hiding in a wooded area for four hours, the boys were arrested while walking down a nearby road.⁵¹⁰ The next morning a search of the area in which they were hiding revealed the murder weapon, ransom notes and other evidence.⁵¹¹

Soon after their arrest and incarceration, first Chapman and then Frohner gave full confessions prompted by intense questioning by the sheriff and the prosecuting attorney.⁵¹² The day after the crime, complaints were filed against both Frohner and Chapman in the Juvenile Division of the Court of Common Pleas.⁵¹³ Following two weeks of psychiatric evaluations and other investigations, they were found to be sane and were transferred to adult criminal court on January 18, 1947.⁵¹⁴

Frohner and Chapman were jointly indicted for first degree murder while attempting a robbery.⁵¹⁵ At their arraignment on February 3, 1947, each entered a plea of not guilty.⁵¹⁶ Subsequently, they waived jury trials and elected instead a three judge panel to hear their case.⁵¹⁷ The decision to waive a jury trial was in response largely to the pervasive adverse public opinion aroused and maintained by various press coverage of the crime and subsequent proceedings.⁵¹⁸

Although both defendants subsequently changed their pleas to guilty, the court nevertheless was required to "examine the witnesses, determine the degree of the crime and pronounce sentence accordingly."⁵¹⁹ Following this evidentiary hearing, on February 28, 1947, the trial court found both Frohner and Chapman guilty of first degree murder but extended mercy only to Chapman.⁵²⁰ As a result, Frohner was sentenced to die in Ohio's electric chair.⁵²¹

On March 7, 1947, the trial court denied Frohner's motions for a new

⁵⁰⁹*Id.* and Youngstown Vindicator, Jan. 14, 1947, at 1, col. 6, at 6, col. 2.

⁵¹⁰State v. Frohner, 150 Ohio St. at 57, 80 N.E.2d at 872-73; Youngstown Vindicator, Jan. 14, 1947, at 1, col. 6.

⁵¹¹Youngstown Vindicator, Jan. 17, 1947, at 1, col. 8.

⁵¹²Youngstown Vindicator, Jan. 14, 1947, at 1, col. 6.

⁵¹³State v. Frohner, 150 Ohio St. at 69, 80 N.E.2d at 877.

⁵¹⁴*Id.* and Youngstown Vindicator, Jan. 18, 1947, at 1, col. 8.

⁵¹⁵State v. Frohner, 150 Ohio St. at 69, 80 N.E.2d at 877.

⁵¹⁶*Id.*

⁵¹⁷*Id.* at 69-71, 80 N.E.2d at 877-78.

⁵¹⁸*Id.* at 84, 98, 80 N.E.2d at 884, 890.

⁵¹⁹*Id.* at 75, 80 N.E.2d at 880.

⁵²⁰*Id.* at 72-73, 80 N.E.2d at 878-79; Youngstown Vindicator, Mar. 1, 1947, at 1, col. 7.

⁵²¹*Id.*

trial, to withdraw his guilty plea, and to retract his waiver of a jury trial.⁵²² His subsequent appeals and petitions for clemency were described as “one of the most energetic attempts to rescue a condemned man ever staged in Ohio.”⁵²³ His first appeal, to the court of appeals, resulted in the conviction and death sentence being affirmed.⁵²⁴

Frohner’s case was decided by the Ohio Supreme Court on July 21, 1948.⁵²⁵ In addition to several lesser issues, the court held that Frohner entered his guilty plea knowingly and intelligently,⁵²⁶ that his waiver of trial by jury was valid,⁵²⁷ that Frohner was not legally insane⁵²⁸ and that the trial judges did not abuse their discretion refusing to extend mercy to Frohner.⁵²⁹ Justice Hart dissented without opinion⁵³⁰ and in so doing was the only judge of thirteen judges who heard the case at the trial, court of appeals and supreme court level to vote against the death penalty for Frohner.⁵³¹

A major effort ensued to obtain clemency from the parole commission and the governor.⁵³² These attempts were unsuccessful and Frohner was executed on schedule.⁵³³ He died in Ohio’s electric chair at the Ohio Penitentiary Annex in Columbus at 9:09 p.m. on August 20, 1948, the sixteen-year-old killer by then having turned eighteen while on Ohio’s death row.⁵³⁴

Bernard Schreiber; March 15, 1956

Bernard Schreiber was the last of Ohio’s executed children, ending a practice that had begun over seventy-five years earlier. Schreiber seemed unlike most of the others in that he was a typical seventeen-year-old high school senior who had never been in trouble before.⁵³⁵

Schreiber and a twelve-year-old boy companion made an indecent proposal to a seventeen-year-old girl as she rode past them on her bicycle on August 11, 1954.⁵³⁶ Rejected by the girl, they decided to wait for her to ride by

⁵²²State v. Frohner, 150 Ohio St. at 73-74, 80 N.E.2d at 879.

⁵²³Youngstown Vindicator, Aug. 21, 1948, at 1, col. 8.

⁵²⁴See State v. Frohner, 150 Ohio St. at 74, 80 N.E.2d at 879.

⁵²⁵State v. Frohner, 150 Ohio St. 53, 80 N.E.2d 868 (1948).

⁵²⁶*Id.* at 91, 80 N.E.2d at 886-87.

⁵²⁷*Id.* at 92, 97, 80 N.E.2d at 887, 889-90.

⁵²⁸*Id.* at 117, 80 N.E.2d at 898.

⁵²⁹*Id.* at 100, 80 N.E.2d at 891.

⁵³⁰*Id.* at 118, 80 N.E.2d at 898.

⁵³¹Youngstown Vindicator, Aug. 19, 1948, at 1, col. 2-3.

⁵³²Youngstown Vindicator, *supra* note 523, at 2, col. 1.

⁵³³*Id.* and Youngstown Vindicator, Aug. 19, 1948, at 1, col. 2.

⁵³⁴Youngstown Vindicator, *supra* note 523.

⁵³⁵Toledo Blade, Aug. 20, 1954, at 1, col. 4.

⁵³⁶*Id.*

again on the following day.⁵³⁷ When she arrived on August 12, 1954, they knocked her from her bicycle, chased her into a wooded area and knocked her unconscious with a club.⁵³⁸ Schreiber then raped the girl and stabbed her to death with his pocket knife.⁵³⁹

The victim's body was found later that evening by a neighborhood search party.⁵⁴⁰ After a week of intensive investigation, Schreiber's twelve-year-old accomplice confessed to the police and implicated Schreiber.⁵⁴¹ Schreiber was arrested and he confessed after failing a lie detector test.⁵⁴² The rape apparently was motivated in part by some teasing of Schreiber over his virginity and the killing of the victim resulted because Schreiber feared she might identify him later on.⁵⁴³

Indicted for first degree murder, Schreiber waived a jury trial and his trial before a three judge panel began on January 10, 1955.⁵⁴⁴ Three days later, Schreiber was convicted of first degree murder and sentenced to death, with the original execution date set for June 1, 1955.⁵⁴⁵

This execution date was stayed three times as Schreiber's appeals progressed.⁵⁴⁶ The court of appeals sustained his conviction and sentence and on December 14, 1955, the Ohio Supreme Court refused to review his case.⁵⁴⁷ Schreiber's clemency appeal was considered at length by the governor but also was unsuccessful.⁵⁴⁸

Schreiber was electrocuted at 8:02 p.m. on March 15, 1956, in the electric chair at the Ohio Penitentiary Annex in Columbus.⁵⁴⁹ Then nineteen years old, he had spent the last thirteen months of his life on Ohio's death row.⁵⁵⁰

Ohio continued capital punishment for exactly seven more years, ending with the execution of Donald L. Reinbolt on March 15, 1963.⁵⁵¹ However,

⁵³⁷*Id.*

⁵³⁸*Id.* and Toledo Blade, Jan. 12, 1955, at 1, col. 4.

⁵³⁹*Id.* and Toledo Blade, Aug. 13, 1954, at 1, col. 4.

⁵⁴⁰Toledo Blade, Aug. 13, 1954, at 1, col. 4.

⁵⁴¹Toledo Blade, *supra* note 535.

⁵⁴²*Id.*

⁵⁴³*Id.* and Plain Dealer (Cleveland), March 16, 1956, at 1, col. 2.

⁵⁴⁴Toledo Blade, Jan. 10, 1955, at 1, col. 4.

⁵⁴⁵Toledo Blade, March 15, 1956, at 1, col. 4-5.

⁵⁴⁶*Id.*

⁵⁴⁷*Id.* and State v. Schreiber, 164 Ohio St. 389, 131 N.E.2d 396 (1955).

⁵⁴⁸Toledo Blade, *supra* note 545.

⁵⁴⁹Plain Dealer (Cleveland), March 16, 1956, at 1, col. 2.

⁵⁵⁰Toledo Blade, March 16, 1956, at 1, col. 2.

⁵⁵¹W. BOWERS, *supra* note 73, at 486.

Schreiber was the last person executed in Ohio for crimes committed while under age eighteen. And, while Ohio once again has a valid capital punishment statute and has twenty-four people on death row, this new statute excludes crimes committed while under age eighteen. Children are no longer being placed on Ohio's death row.

VII. COMPARING OHIO CASES WITH NATIONWIDE CASES

Ohio's nineteen executions for crimes committed while under age eighteen comprise 6.6% of the nationwide total of 287 such executions. For most considerations these Ohio cases tend to parallel the nationwide cases but differ strikingly in some significant considerations.

Table 1 encapsulates these nineteen offenders and their personal characteristics. Two-thirds of them were age seventeen when they committed their crimes. A different two-thirds of them were white, so far as could be determined from available reports. Four of these children were foreign-born, but only one since 1890. Approximately one-third of them lived in reasonably stable, lower-class homes, but more than half were either orphans, runaways and/or otherwise from substantially deprived backgrounds.

TABLE 1

Ohio Offenders by Race, Age at Crime and Childhood Background

<i>Offender</i>	<i>Race</i>	<i>Age at Crime</i>	<i>Childhood Background</i>
Mann	white	16	born in England; mother died; ran away; became hobo.
Ohr	white	15	born in Bavaria; father died; ran away; became hobo.
Sammett	white	17	born in Ohio; mother died; prior burglary.
Leuth	white	16	born in Germany; family epilepsy; parental beatings.
Taylor	black	17	born in Ohio; illegitimate and fatherless; dull mentality; farm worker.
Haas	white	16	orphan; ran away; lived with foster parents.

TABLE I (continued)

Ohio Offenders by Race, Age at Crime and Childhood Background

<i>Offender</i>	<i>Race</i>	<i>Age at Crime</i>	<i>Childhood Background</i>
Beard	white	17	orphan; dull mentality; farm worker.
Pupera	white	16	born in Pennsylvania; raised in ghetto; prior auto theft and alcohol offense.
Ross	black	17	born in Mississippi; father deserted; dishwasher; prior crimes.
Hewitt	white	16	mental age of ten; lived on small farm.
Coverson	black	17	recently moved to black section of Cincinnati.
Coleman	black	17	born in North Carolina; recently moved to Ohio; prior thefts.
Akers	black	17	wanted in St. Louis for robbery and burglary.
Murphy	black	17	unknown
Young	oriental	17	born in China; attempted suicide after crime.
Hand	white	17	raised in state children's homes; prior auto theft; on parole from Boy's School; farm worker.
Hagert	white	17	violent psychopath; homosexual; prior auto theft; just released from mental ward of hospital.
Frohner	white	16	born in Ohio; lived on family farm; minor quarrels with father.
Schreiber	white	17	no prior trouble with authorities.

Table 2 compares these nineteen Ohio offenders to the 287 nationwide offenders. The most striking difference is the race of the offenders. Nationwide, blacks make up over two-thirds of all children executed but only one-third of the Ohio children executed. One particular oddity is that Ohio accounts for one of the three Chinese children executed, particularly given the very low percentage of Chinese people in Ohio's population.

TABLE 2
*Comparison of Ohio Cases and Nationwide Cases
 According to Offender's Race and Age at Crime*

<i>Race of Offender</i>	<i>Ohio Cases</i>	<i>Nationwide Cases*</i>	<i>Age at Crime</i>	<i>Ohio Cases</i>	<i>Nationwide Cases*</i>
White	12 (63%)	59 (23%)	17	12 (63%)	196 (69%)
Black	6 (32%)	179 (69%)	16	6 (32%)	52 (18%)
Hispanic	0 (0%)	7 (3%)	15	1 (5%)	17 (6%)
American Indian	0 (0%)	10 (4%)	14	0 (0%)	5 (2%)
Oriental	1 (5%)	3 (1%)	13	0 (0%)	5 (2%)
			12	0 (0%)	4 (1%)
Totals:	19 (100%)	258 (100%)**	11	0 (0%)	1 (0%)
			10	0 (0%)	2 (1%)
			Totals:	19 (100%)	282 (100%)***

*Source of Date: Streib, *Death Penalty for Children: The American Experience with Capital Punishment for Crimes Committed While Under Age Eighteen*, 36 OKLA. L. REV. 613, 619-20 (1983).

**An additional 29 offenders executed for crimes committed while under age eighteen were of unknown race, making a total of 287 such executed offenders nationwide.

***An additional 5 offenders executed for crimes committed while under age eighteen were of unknown precise age at the time of their crimes, making a total of 287 such executed offenders nationwide.

Ohio tends to match the national experience fairly closely in the category of age of the offender. For both groups of offenders, about two-thirds of them were age seventeen when they committed their offenses. No record could be found of Ohio ever executing any person for a crime committed while younger than age fifteen, but nationwide seventeen such children age ten to fourteen have been executed.

Table 3 lists Ohio's nineteen cases according to certain facts about the crimes involved. These crimes were scattered throughout the state of Ohio, with five being in or near Cleveland, three in or near Cincinnati, one near Columbus, one in Toledo and one in Youngstown. The other eight crimes occurred in small towns or rural areas throughout the state.

TABLE 3

Ohio Crimes by Date, Place, Victim, Weapon and Category of Crime

<i>Offender</i>	<i>Date</i>	<i>Place</i>	<i>Victim(s)</i>	<i>Weapon(s)</i>	<i>Category of Crime</i>
Mann	6-27-1879	Alliance	white adult male	club	robbery-murder
Ohr	6-27-1879	Alliance	white adult male	club	robbery-murder
Sammett	11-25-1879	Massillon	white teenaged male	rifle	murder
Leuth	5- 9-1889	Cleveland	white girl	hammer	rape-murder
Taylor	12-20-1894	Worthington	white adult male	club	robbery-murder
Haas	7- 2-1896	Cloverdale	white adult male	razor and club	rape-murder
Beard	5-11-1914	Irontown	2 white adult females and white adult male	razor and club	murders
Pupera	12-31-1920	Cleveland	2 white adult males	handgun	robbery-murders
Ross	11- 5-1925	Cleveland	white adult male	handgun	robbery-murder
Hewitt	2-14-1927	Conneaut	white adult female and white boy	club	attempted rape-murder
Coverson	5-14-1927	Cincinnati	black policeman	handgun	murder
Coleman	2- 6-1928	Portsmouth	white policeman	handgun	murder
Akers	12-25-1928	Cleveland	white adult male	handgun	robbery-murder
Murphy	10- 8-1932	Silverton	white adult male	handgun	robbery-murder
Young	7-12-1938	Cincinnati	black adult male	handgun	robbery-murder
Hand	7- 3-1943	Mercer Co.	white boy	hammer	murder
Hagert	8-12-1943	Bay Village	2 white boys	handgun	murder
Frohner	1-13-1947	Youngstown	white adult male	handgun	robbery-murder
Schreiber	8-12-1954	Toledo	white teenaged female	club and knife	rape-murder

In almost every case the victim was white, which generally tends to increase the severity of punishment in criminal cases and increases the probability of capital punishment. In only two of the nineteen cases were the victims black, and one of those victims was a black police officer. The other was Pang Young's victim, a black laundryman working at the store Young robbed. The weapons used varied considerably but since 1920, three-fourths of these murders were committed by the use of handguns.

Table 3 also reveals that fourteen of the nineteen cases involved a felony-murder prosecution in which the offender was involved in the felony of robbery or rape when the killing occurred. Only five of the cases involved an isolated murder fact situation. Four of the cases involved multiple victims and three cases involved the murder of young children. Six of the cases involved sexual aggression by young boys against women or girls.

Table 4 compares these Ohio crimes to those of the nationwide cases. While in comparison to Ohio, only 81% of the nationwide cases involved murders, note that the non-homicide cases are almost all limited to the southeastern states and/or to the period before 1880.

TABLE 4
Comparison of Ohio Cases and Nationwide Cases

<i>Type of Offense</i>	<i>Ohio Cases</i>	<i>Nationwide Cases*</i>
murder	19 (100%)	229 (81%)
rape	0 (0%)	31 (11%)
assault	0 (0%)	11 (4%)
robbery	0 (0%)	4 (1%)
arson	0 (0%)	3 (1%)
bestiality	0 (0%)	2 (1%)
treason	0 (0%)	1 (0%)
Totals:	19 (100%)	281 (100%)**

*Source of Data: Steib, *Death Penalty for Children: The American Experience with Capital Punishment for Crimes Committed While Under Age Eighteen*, 36 OKLA. L. REV. 613, 621 (1983).

**An additional 6 offenders executed for crimes committed while under age eighteen committed unknown crimes, making a total of 287 such executed offenders nationwide.

The data concerning Ohio's executions are presented in Table 5. Ohio began use of the electric chair at the Ohio Penitentiary Annex in 1897, so the fourteen executions following that time all occurred there. The period these children spent on Ohio's death row is calculated as the period from the sentencing decision by the trial judge to the actual execution. This period ranged from three to twenty-six months, with a generally longer period due largely to the fact that his first conviction was overturned and he was retried and reconvicted.

TABLE 5

Ohio Executions by Method, Time, Date and Period on Death Row

<i>Offender</i>	<i>Method</i>	<i>Time</i>	<i>Date</i>	<i>Period on Death Row</i>
Mann	hanging	11:35 a.m.	6-23-1880	six months
Ohr	hanging	11:35 a.m.	6-23-1880	six months
Sammett	hanging	11:35 a.m.	6-23-1880	four months
Leuth	hanging	12:05 a.m.	8-29-1890	eight months
Taylor	hanging	12:06 a.m.	7-26-1895	six months
Haas	electrocution	12:30 a.m.	4-21-1897	six months
Beard	electrocution	12:10 a.m.	12- 4-1914	six months
Pupera	electrocution	12:10 a.m.	5- 9-1922	twelve months
Ross	electrocution	1:05 a.m.	11-26-1926	ten months
Hewitt	electrocution	7:38 p.m.	1- 6-1928	eight months
Coverson	electrocution	7:37 p.m.	1- 9-1928	three months
Coleman	electrocution	9:18 p.m.	7- 5-1928	three months
Akers	electrocution	9:03 p.m.	6-13-1930	fourteen months
Murphy	electrocution	8:50 p.m.	8-14-1933	nine months
Young	electrocution	8:16 p.m.	7-12-1939	eight months
Hand	electrocution	8:01 p.m.	1-14-1944	four months
Hagert	electrocution	7:08 p.m.	10- 3-1945	twenty-six months
Frohner	electrocution	9:09 p.m.	8-20-1948	nineteen months
Schreiber	electrocution	8:02 p.m.	3-15-1956	fourteen months

Table 6 arrays these executions according to the decade in which they occurred. Compared with the nineteen Ohio executions for crimes committed while under age eighteen are Ohio's total executions for offenders of any age and the nationwide executions of offenders whose crimes were committed while under age eighteen. While the cell-size for the Ohio child executions is too small for much comparative analysis, there seem to be a few differences within the Ohio data itself. The peak of child and adult executions in Ohio occurred in the 1920s and 1930s with almost half of all executions in Ohio's history occurring in those two decades.

TABLE 6

Comparison of Ohio Child Executions, Ohio Total Executions and Nationwide Child Executions According to Decade, 1880 to Present

<i>Decade</i>	<i>Ohio Child Executions</i>	<i>Ohio Total Executions*</i>	<i>Nationwide Child Executions**</i>
1880-89	3 (16%)	16 (5%)***	22 (9%)
1890-99	3 (16%)	28 (8%)	22 (9%)
1900-09	0 (0%)	25 (7%)	23 (10%)
1910-19	1 (5%)	26 (7%)	26 (11%)
1920-29	5 (26%)	85 (24%)	28 (12%)
1930-39	3 (16%)	82 (23%)	44 (19%)
1940-49	3 (16%)	51 (14%)	50 (21%)
1950-59	1 (5%)	32 (9%)	17 (7%)
1960-69	0 (0%)	7 (2%)	4 (2%)
1970-79	0 (0%)	0 (0%)	0 (0%)
1980-present	0 (0%)	0 (0%)	0 (0%)
Totals:	19 (100%)	352 (100%)	236 (100%)****

*Source of Data: W. BOWERS, *LEGAL HOMICIDE* 479-86 (1984).

**Source of Data: Streib, *Death Penalty for Children: The American Experience with Capital Punishment for Crimes Committed While Under Age Eighteen*, 36 OKLA. L. REV. 613, 630 (1983).

***The data reported by Bowers begin with 1885, with eight executions being reported for 1885-89. To more accurately estimate the total executions for this entire decade (1880-89), that number has been doubled to sixteen.

****An additional 51 offenders were executed prior to 1880 for crimes committed while under age eighteen, making a total of 287 such executed offenders throughout our nation's history.

Comparing Ohio child executions with nationwide child executions reveals a somewhat different pattern. While the peak for Ohio child executions came in the 1920s, the peak nationally did not come until the 1940s. However, the curves are fairly parallel and Ohio seems to have been fairly congruous with the rest of the nation in the frequency with which it executed persons for crimes committed while under age eighteen.

VIII. CONCLUSIONS

The legal environment surrounding this issue evolved for two centuries before reaching its present state. The advent of the juvenile justice system was a major effort to remove children from the harsh sanctions of criminal law but was unsuccessful in terminating capital punishment for at least some children. Ohio followed this legal progression with little deviation, even gaining some notoriety in the mid-1970s by sentencing to death an offender for murder committed when he was only sixteen-years-old.⁵⁵²

Ohio has departed rather clearly from the mainstream on this issue in the 1980's. Of the states with presumptively valid post-*Furman*⁵⁵³ death penalty statutes, about three-fourths continue to permit capital punishment for crimes committed while under age eighteen. The United States Supreme Court in *Eddings*⁵⁵⁴ came within one vote of holding such statutory provisions to be constitutional. In contrast, Ohio has chosen to expressly prohibit such executions under its new statute.⁵⁵⁵

Before enacting this new prohibition of capital punishment for children, Ohio was responsible for nineteen actual executions for crimes committed while under age eighteen. Probably many times that number of children were sentenced to death but never actually executed.

While racial discrimination did not seem to be a factor in these Ohio executions, most of these children were from deprived socioeconomic backgrounds and had little support in the community in which they lived. In contrast, their victims were typically white citizens of the community who had significant social standing.

The nineteen Ohio executions were not limited to Ohio's several urban areas but were scattered around the state. The frequency pattern of these executions over the years from 1880 through the present matches fairly well the pattern for these executions nationwide and the pattern of Ohio executions of offenders of all ages. However, unlike many states, Ohio no longer sentences its children to death.

⁵⁵²See *Bell v. Ohio*, 438 U.S. 637 (1978).

⁵⁵³*Furman v. Georgia*, 408 U.S. 238 (1972).

⁵⁵⁴*Eddings v. Oklahoma*, 455 U.S. 104 (1982).

⁵⁵⁵OHIO REV. CODE ANN. § 2929.01, § 2929.03(E) (Page 1982).

As the rest of the states and the United States Congress debate the provisions of pending and proposed bills to reinstate the death penalty in their respective jurisdictions, will they follow the mainstream or the Ohio minority? Drafters of the Model Penal Code idealistically assumed that "civilized societies will not tolerate the spectacle of execution of children."⁵⁵⁶ Whether or not this minority view may someday become the majority view is unclear, but the spectacle of a governmental justice system imposing capital punishment upon a child raises the most fundamental questions about the demands of justice versus the special nature of childhood in Ohio, the nation or anywhere.

After a century of executing its children, Ohio has risen above this unthinking reaction to crime and has ended this barbaric practice. The Ohio model, followed already by seven other states and endorsed by the American Bar Association,⁵⁵⁷ is a benchmark of a civilized society. Even if a majority of American jurisdictions are determined to retain capital punishment, the rejection of capital punishment for crimes committed while under age eighteen "is an absolute minimum standard that should be adopted."⁵⁵⁸

⁵⁵⁶MODEL PENAL CODE § 210.6 commentary at 133 (Official Draft and Revised Comments 1980).

⁵⁵⁷At its Annual Meeting in Atlanta, Georgia, in August, 1983, the American Bar Association adopted the following resolution:

Be it resolved, that the American Bar Association opposes, in principle, the imposition of capital punishment upon any person for any offense committed while under the age of eighteen (18).
ABA Opposes Capital Punishment for Persons Under 18, 69 A.B.A.J. 1925 (1983).

⁵⁵⁸Washington Post, Nov. 8, 1983, at 18, col. 1 (editorial opposing capital punishment for children).