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Deborah Denno

Fordham University School of Law, DDENNO@law.fordham.edu

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How Many Lives Has Victor Streib Saved? A Tribute

DEBORAH W. DENNO*

This tribute to Victor Streib focuses on just a few of his standout achievements. Particularly noteworthy are Professor Streib's landmark contributions to litigation and scholarship in two distinct areas of the death penalty involving two distinct categories of defendants: juveniles and women. For any lawyer to have accomplished so much in either of these realms would be extraordinary, but Professor Streib centered on both with definitive, life-saving, results. During it all, he has worn an unusual variety of professional hats—professor, scholar, litigator, and law school dean, each hat requiring its own particular skills and expertise.

With respect to juveniles, Streib is a large part of a litigation story that has finally ended, at least as far as the death penalty is concerned, and Streib can take much credit for that outcome. Of course I'm talking about *Roper v. Simmons*,¹ where the Supreme Court of the United States held that the Eighth and Fourteenth Amendments prohibit the execution of persons younger than age eighteen at the time their crimes were committed.² According to *Roper*, there are three “general” differences between adults and juveniles under age eighteen that explain why juveniles “cannot with reliability be classified among the worst offenders.”³ Juveniles are relatively more (1) immature and irresponsible, (2) vulnerable to negative pressures from their peers and environment, and (3) fragile and unstable in their identities.⁴ These disparities not only heighten the likelihood that juveniles will engage in impulsive thinking and conduct, but they also strengthen arguments explaining why juveniles may be less culpable. In the *Roper* Court's eyes, the crimes of juveniles, however heinous, are less likely to be indicative of their character or intent.⁵

Streib's work was critical to the Court's decision in *Roper* and his research was cited throughout the various opinions.⁶ Just as importantly, Streib served as appellate counsel in some of the key death penalty cases

* Arthur A. McGivney Professor of Law, Fordham University School of Law. I am grateful to Julie Salwen for comments.

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

2. *Id.* at 578.

3. *Id.* at 569.

4. *Id.* at 569-70.

5. *Id.* at 570.

6. *Roper*, 543 U.S. at 565, 595, 596, 614-15.

upon which *Roper* was built. Those cases include *Thompson v. Oklahoma*,⁷ a groundbreaking 1988 decision in which the Court prohibited the execution of individuals under age sixteen at the time of the crime.⁸ After *Thompson*, *Roper*'s age extension seemed like the Court's next logical step. Through Streib's analyses of statistical information on states' changes in and uses of the death penalty for juveniles, the *Roper* Court's majority was able to effectively portray the national consensus against the death penalty for those under eighteen and thereby justify abolishment of the penalty for that age group.⁹ By navigating the real-world of lawyering with an academic focus, Streib could compare the legal and interdisciplinary nuances of juvenile culpability with the ways this country has punished young people.

This successful bridging of academics and litigation is also evidenced by the hugely prolific and influential body of scholarship that Streib produced throughout the modern Supreme Court's examination of the death penalty in the context of juveniles. In Streib's groundbreaking book, *DEATH PENALTY FOR JUVENILES*,¹⁰ for instance, strategically published a year before *Thompson*, Streib intertwines a wide-array of research on the history, philosophy, and warped legitimacy of the death penalty for juveniles over three centuries, from the late 1600s to the late 1900s. The book also includes a statistical study of the 281 juveniles who were executed over those centuries, documenting the overwhelming preponderance of minorities. Such compelling content enables Streib to raise forceful arguments suggesting that the constitutional limit for juveniles should be age eighteen, thus opening the door for the Court's decision in *Roper* years later. Particularly effective is Streib's investigation of statistics and case studies to demonstrate the random nature of juvenile executions. While this finding coincides with the arbitrariness of the punishment as applied to adults, the results are even more egregious when the spotlight is on juveniles, whose lesser levels of culpability and maturity make for striking biographies of disparity. The story of George Stinney provides a potent illustration.¹¹ Stinney was a black male of fourteen years who stood at five-feet-one-inches and weighed ninety-five pounds. On the day he was executed he was so small he could barely fill South Carolina's electric chair, which was built for adults. In sum, *DEATH PENALTY FOR JUVENILES* is so impeccable in its research, case studies, and arguments, that the outcomes in *Thompson* and *Roper* appear to follow neatly from Streib's work.

7. 487 U.S. 815 (1988).

8. *Id.* at 838.

9. *Roper*, 543 U.S. at 595.

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

11. *Id.* at 107-09.

Streib's take on female offenders is comparably impressive, a result all the more notable because the questions raised about females differ from those directed toward juveniles. Females constitute less than two percent of all inmates on death row and only one percent of all inmates executed since 1973.¹² Streib asks why there are so few of them when females constitute approximately thirteen percent of the arrests for murder.¹³ While criminologists have long studied the differences between male and female offenders, Streib's approach is especially powerful because he puts these investigations in the context of the death penalty along with a lawyer's understanding of that penalty's particular demands and requirements. What's more, for over twenty-five years Streib has documented every female sentenced to death and executed in the United States, thereby offering insightful data about state and national trends as well as individual demographics and the lives of the inmates themselves.¹⁴

In Streib's book, *THE FAIRER DEATH: EXECUTING WOMEN IN OHIO*,¹⁵ for example, Streib gives an overview of the extent of sex bias in the death penalty nationally and the numerical differences between men and women executed over time before narrowing in on the personal stories of the women executed and sentenced to death in Ohio. While Streib recognizes that the numbers of women are not sufficiently large to make a statistical point, the vividness of their personal vignettes makes a different kind of statement—one that stresses the incredible arbitrariness of the penalty when it is applied to so few who hardly seem the worst of their sex. These women's stories illustrate the differential impact of such factors as race (a continual theme in Streib's work), mental deficiency, confessions, and physical demeanor at trial, among others. In all, Streib probes the legal reasons why these women were selected over the hundreds who were not, lamenting that their numbers are so small they could be forgotten. Of course, with Streib's account, their stories will be preserved.

Victor Streib may be retiring from academia, but his academic work will stay put, guiding generations to come as it has impacted on current and past generations. Consider this question, for example: How many juvenile lives have already been saved by *Thompson* and *Roper* alone? While statistical projections are speculative, we know the numbers would have

12. *Women and the Death Penalty*, DEATH PENALTY INFO. CENTER, <http://www.deathpenaltyinfo.org/women-and-death-penalty> (last visited Feb. 19, 2012).

13. Victor L. Streib, *Sentencing Women to Death*, 16 CRIM. JUST. 24, 25 (2001).

14. Victor Streib, *Death Penalty for Female Offenders, January 1, 1973, through October 31, 2010*, DEATH PENALTY INFO. CENTER, no. 65, 2010 at 10, <http://www.deathpenaltyinfo.org/documents/femaledeathrow.pdf>.

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

been substantial. They would also have included a disproportionate number of poor minority youths with inadequate legal representation residing in southern states. Clearly, some percentage of those juveniles would have been innocent. Preventing these youths' executions is an amazing legacy for Streib to leave. In addition, Streib's work exposes the injustices of sex differences in the death penalty, both between males and females and within the female population itself. Altogether, these findings fuel more general doubts about the death penalty's persistence.

This tribute to Professor Streib is modest compared to what he has accomplished. Additional triumphs will be celebrated by, among many others, the faculty and students of the Claude W. Pettit College of Law. For them, Streib leaves the imprint of professor, mentor, colleague, dean, and galvanizer. For all of us in the legal profession, Victor Streib sets the highest, most inspirational, standard we could possibly hold.