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

by

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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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1 OHIO REV. CODE ANN. § 2929.02 (Page 1982).
2 See 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.\(^1\) Given these premises, teenagers and even younger children could be and were convicted of crimes and received criminal sentences, including capital punishment.\(^2\) This was one of the primary political and social issues that gave rise to the advent of the juvenile justice system.\(^3\)

Following Illinois' 1899 lead,\(^4\) 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,\(^5\) with the federal government joining this movement in 1938.\(^6\) 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.\(^7\)

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.\(^8\) 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 court.\(^9\)

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\(^{4}\) Illinois Juvenile Court Act of 1899.

\(^{5}\) See generally V. Streib, *Juvenile Justice in America* 5-7 (1978).


\(^{7}\) V. Streib, *supra* note 7, at 5-13.

\(^{8}\) This 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. 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. And more recently in 1975, the Supreme Court noted in passing that "an overwhelming majority of jurisdictions permit transfer in certain instances."

The Supreme Court's first direct consideration of juvenile justice issues, in Kent v. United States in 1966, 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. For many jurisdictions, the transfer from juvenile to criminal court can trigger the possibility of the death penalty.

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. 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.

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. 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

11In re Gault, 387 U.S. at 50-51.
15Id. at 550.
16In 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.
11S. DAVIS, supra note 11, at 2-15 to 2-17.
11S. 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. This constitutionality of the death penalty seems to have been an accepted premise upon which the United States Supreme Court relied since that time. Welcomed by some and harshly criticized by others, 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 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, in which a majority found that the death penalty does not

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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).


R. BERGER, DEATH PENALTIES (1982).

408 U.S. 238 (1972).

per se violate the eighth amendment. In 1976 and 1977, the Court struck down statutes incorporating mandatory death sentences, and the Court rejected the death penalty for rape cases in 1977. The next year in *Lockett v. Ohio*, 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.” The youth of the offender as an appropriate mitigating factor was also mentioned in passing by the Supreme Court in *Gregg v. Georgia,* *Jurek v. Texas,* *Roberts v. Louisiana,* and *Bell v. Ohio.*

The most recent Supreme Court decision on this issue is *Eddings v. Oklahoma.* The Court granted certiorari 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?

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

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30Lockett, 438 U.S. at 604.
31Id. 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).
34But 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.
petitioner inserted the issue of whether the sentencing judge had refused to consider appropriate mitigating evidence. It was this second, "'eleventh-hour' claim" 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.

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." 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." The constitutional question is thus left in limbo. However, despite wishes to the contrary, 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." Even though the Model Penal Code 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, seventeen or eighteen. Nineteen other statutes have ex-
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 statute 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. 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. Although the death sentence for treason was abolished in 1824, Ohio's first degree murder statute remained basically unchanged until 1898. The 1898 statute 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. In 1843 in Clark v. State, 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. 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."

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. These statutes provided ex-
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. However, it appears that the Ohio juvenile code did not preclude concurrent jurisdiction over felony cases by the Court of Common Pleas. 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. The new statute 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 \textit{Lockett v. Ohio}, the United States Supreme Court found the Ohio statute to be unconstitutional because it permitted only three mitigating factors.

A companion case to \textit{Lockett} was \textit{Bell v. Ohio}, 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. Two years before \textit{Bell} the Ohio Supreme Court had expressly held that juveniles could receive the death penalty in Ohio.

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

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." 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.

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V. NATIONWIDE EXECUTIONS, 1642-1964

Almost 14,000 legal executions have occurred in our nation’s history. At least 287 of them have been for crimes committed while under age eighteen. 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.

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. The two ten-year-olds were executed in the last century. Since 1900, the youngest has been thirteen-year-old Fortune Ferguson, Jr., electrocuted at the Florida State Prison on April 27, 1927. The unmistakable
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. 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. Contrast this with the fact that only eight of these 287 children were female. All eight girls were Black or Indian. The last execution of a female child occurred in 1912.

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. 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.

Executions of children have been much more common in some states and regions than others. 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 particulary striking. The south region 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%
have been black, while for those children outside of the south region, 23% have been black.  

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.  

VI. OHIO EXECUTIONS, 1880-1956

Ohio now has twenty-eight adults on death row but has discontinued the practice of sentencing children to death. 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. 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. 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.

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

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1Streib, supra note 4.
2Thirty-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).
5These 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).
6For a detailed but somewhat fictionalized account of this, see J. ARTZNER, THE BLACK MINUTE (1981).
7Id. and Plain Dealer (Cleveland), Apr. 4, 1976, at 2, col. 1.
8Cleveland Plain Dealer, June 26, 1880, at 1, col. 8.
9Id.
10Id.
Mann's capital crime occurred during one of these instances of running away from home, this time at age sixteen. Mann adopted the life of the railroad tramp and began to travel with fifteen-year-old Gustave Ohr and an older man, John Watmough. 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.

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. Ohr and Mann then took Watmough's watch, money and clothes and ran away from the scene. Watmough recovered consciousness just long enough to crawl to a nearby house and utter a few words before he died.

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

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. 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. After a separate trial, Ohr was convicted on December 13, 1879. On New Year's Eve, December 31, 1879, the trial judge sentenced both Mann and Ohr to be hanged.

Their original execution date was set as May 7, 1880, but on May 2, 1880, Governor Foster granted a temporary reprieve. 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.
thrust of the petitions for communation was sympathy "with the youth of the condemned."\textsuperscript{12}

Mann's hopes for commutation were not realized and he was hanged in Canton, Ohio, at 11:35 a.m. on June 25, 1880.\textsuperscript{13} 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.\textsuperscript{14} A circus was part of the extravaganza and the night before the hangings included much music, cannon firing, speech making and similar merriment.\textsuperscript{15} 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.\textsuperscript{16}

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.\textsuperscript{17} The public viewing lasted almost four hours, with the doors being closed at 3:30 p.m.\textsuperscript{18}

\textbf{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,\textsuperscript{19} 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.\textsuperscript{20} His father died when he was still a child and he lived in Chicago with his mother who remarried.\textsuperscript{21} Ohr left Chicago in the late Spring of 1879 and joined up with Mann and Watmough in Fort Wayne, Indiana, while riding the rails.\textsuperscript{22} The three proceeded to Alliance, Ohio, where the killing of Watmough was committed.\textsuperscript{23}

Mann claimed until his death that Ohr had been the person who actually struck and killed Watmough.\textsuperscript{24} The truth was never revealed as Ohr steadfast-

\textsuperscript{11}\textit{Id.} at col. 6 and J. ARTZNER, \textit{supra} note 92, at 247.
\textsuperscript{12}\textit{Id.} at col. 6.
\textsuperscript{13}\textit{Cleveland Plain Dealer}, \textit{supra} note 94, at col. 6.
\textsuperscript{14}\textit{Plain Dealer (Cleveland), Apr. 4, 1976, at 2, col. 1.}
\textsuperscript{15}\textit{Cleveland Plain Dealer}, \textit{supra} note 94.
\textsuperscript{16}\textit{Id.}
\textsuperscript{17}\textit{Id.} at col. 7.
\textsuperscript{18}\textit{Id.}
\textsuperscript{19}\textit{Id.} at col. 8.
\textsuperscript{20}\textit{Id.}
\textsuperscript{21}\textit{Id.}
\textsuperscript{22}\textit{Id.} at col. 7.
\textsuperscript{23}\textit{See} notes 99-105, \textit{supra}, and accompanying text.
\textsuperscript{24}\textit{Cleveland Plain Dealer}, \textit{supra} note 94, at col. 8.
ly refused to exonerate Mann. Following Mann’s conviction on December 6, 1879, Ohr’s trial was conducted. Ohr was convicted on December 13, 1879, and Judge Mayers sentenced Mann and Ohr together at a hearing on December 31, 1879.

Appeals and petitions for commutation were unsuccessful. 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. 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.

**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. 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. He and his family were of German extraction. Sammett’s mother died when he was very young and his father remarried and moved to Columbus, Ohio. The family returned to live in Massillon in 1877. Sammett continued to live with his father and stepmother but came to be involved in criminal activities.

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

\#122 \textsuperscript{Id.}
\#123 \textsuperscript{Id. at col. 7.}
\#124 \textsuperscript{Id.}
\#125 \textsuperscript{Id.}
\#126 \textsuperscript{Id.; Cleveland Plain Dealer, supra note 111; J. ARTZNER, supra note 92, at 247.}
\#127 \textsuperscript{Cleveland Plain Dealer, supra note 94, at col. 7.}
\#128 \textsuperscript{Id.}
\#129 \textsuperscript{Id. at col. 8.}
\#130 \textsuperscript{Id.}
\#131 \textsuperscript{Id. at col. 7.}
\#132 \textsuperscript{Id. at col. 8.}
\#133 \textsuperscript{Id.}
\#134 \textsuperscript{Id. at col. 7.}
\#135 \textsuperscript{Id. at col. 8.}
\#136 \textsuperscript{Id.}
\#137 \textsuperscript{Plain Dealer (Cleveland), supra note 114; J. ARTZNER, supra note 92, at 71.}
\#138 \textsuperscript{Plain Dealer (Cleveland), supra note 114.}
\#139 \textsuperscript{Id.}
not to testify against him. Unsuccessful and presumably frustrated, Sammett shot Spahler in the chest and he died as a result of the wound. This killing occurred a little after 7 p.m. on the evening of November 25, 1879.

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

A preliminary hearing before the Mayor of Massillon produced strong circumstantial evidence against Sammett and he was remanded to jail without bail. 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.

Sammett was indicted on the murder charge by the Grand Jury of Stark County (Ohio) and his trial began on February 18, 1880. On March 2, 1880, the jury returned a verdict of first degree murder. 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.

Appeals and pleas for mercy were unsuccessful for Sammett. 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. In the late morning hours of June 25, 1880, the three teenaged boys were led out of the jail and toward the scaffold. Sammett came out first and led the procession. All three boys were hanged at 11:35 a.m. and were dead before noon.
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" Otto Leuth, had been labeled a born criminal by the prominent phrenologists of that time. Born in Berlin, Germany, on February 3, 1873, Leuth was only sixteen at the time of his crimes. 

Leuth emigrated to the United States with his parents in 1883. Living in Cleveland, Ohio, the Leuth family members were known as "honest, respectable people" whose two-story frame home displayed "unmistakable marks of thrift." However, their family bore the heavy burden of congenital epilepsy which had burdened them through three generations. Leuth's maternal grandmother suffered convulsions from the age of five, his mother's sister was apoplectic and sonambulistic, and his mother's brother had "attacks of madness." This family medical history was inherited by Leuth's mother and passed on to her son.

Leuth's mother had suffered convulsions regularly since age ten. Her nervous disorder resulted in headaches, spasms, convulsions and occasionally unconsciousness, and may have contributed to her suicidal tendencies. She reportedly had homicidal tendencies toward her son Otto and had beaten him savagely over several years. 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.

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."

Although an apt scholar

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157 Cleveland Plain Dealer, June 15, 1889, at 8, col. 1.
158 Id.
159 Id.
160 H. Fogle, supra note 156, at 53.
161 Cleveland Plain Dealer, June 10, 1889, at 8, col. 1.
162 Cleveland Plain Dealer, Dec. 17, 1889, at 6, col. 5; Id., Dec. 20, 1889, at 6, col. 5.
163 Cleveland Plain Dealer, Dec. 17, 1889, at 6, col. 5.
164 Id.
165 Id.
166 Cleveland Plain Dealer, Dec. 19, 1889, at 6, col. 5.
167 Cleveland Plain Dealer, Dec. 29, 1889, at 6, col. 5
168 Cleveland Plain Dealer, supra note 163.
169 Cleveland Plain Dealer, supra note 166.
170 Id.; Cleveland Plain Dealer, supra note 163.
171 Cleveland Plain Dealer, Dec. 25, 1889, at 6, col. 4 (statement by Leuth's attorney during closing argument to the jury).
adept at languages and mathematics as well as a welcomed fiddler at local dances, he nevertheless was described as not only having a "bad reputation for general cussedness" but even as "the most depraved creature ever confined behind the walls of the Penitentiary."

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

Leuth lured Maggie into the bedroom where he raped her and bashed in her skull with a tinsmith's sledgehammer. Leuth left the dead girl's body on the bed for six days before he decided something must be done. 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.

Leuth's attempt to cover up the evidence of his crime was successful for a month. 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. Leuth was one of the most conscientious and untiring searchers and at first no one suspected his involvement in the crime.

Leuth was undone by the stench that began to emanate from underneath his house. A patrolman walking by the house was alerted by a neighbor and a crowd formed which included Maggie’s parents, Mr. and Mrs. Thompson. Otto's father, Henry Leuth, was home at the time and he found the body first. 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, supra note 156.
175H. FOGLE, supra note 156, at 53.
176Cleveland Plain Dealer, June 12, 1889, at 6, col. 5.
177Cleveland Plain Dealer, June 11, 1889, at 8, col. 1.
178Cleveland Plain Dealer, June 10, 1889, at 1, col. 2, and at 8, col. 1.
179Id. at 1, col. 3.
180Id.
181Id.; Cleveland Plain Dealer, supra note 176; see also H. FOGLE, supra note 156, at 54.
182Cleveland Plain Dealer, supra note 177.
183Id.
184Id.
185Id. and H. FOGLE, supra note 156, at 54.
186Cleveland Plain Dealer, supra note 156.
187Id.
188Id.
of young Maggie Thompson.\textsuperscript{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.\textsuperscript{190} Soon thereafter, Otto Leuth made a full confession while at the Ninth Precinct Station and the other persons were released.\textsuperscript{191}

After his arrest and confession on June 9, 1889, Leuth had his preliminary hearing the next day.\textsuperscript{192} The preliminary charge was murder and he was bound over without bail to await action by the grand jury.\textsuperscript{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.\textsuperscript{194}

The grand jury returned a four count murder indictment against Leuth on June 14, 1889.\textsuperscript{195} Leuth entered a not guilty plea at his arraignment the next day.\textsuperscript{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.\textsuperscript{197}

Jury selection began on December 2, 1889.\textsuperscript{198} Testimony began one week later and was covered in great detail each day by local newspapers.\textsuperscript{199} The trial lasted almost four weeks.\textsuperscript{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.\textsuperscript{201} Apparently Leuth's attorney was presenting a diminished capacity defense even

\textsuperscript{189}\textit{Id.}

\textsuperscript{190}\textit{Id. at col. 3; Cleveland Plain Dealer, Dec. 10, 1889, at 6, col. 1.}

\textsuperscript{191}\textit{Cleveland Plain Dealer, supra note 177, at col. 3.}

\textsuperscript{192}\textit{Cleveland Plain Dealer, supra note 176, at 8, col. 1.}

\textsuperscript{193}\textit{Id.}

\textsuperscript{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.\textit{Id.}

\textsuperscript{195}\textit{Cleveland 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.}

\textsuperscript{196}\textit{Cleveland Plain Dealer, June 16, 1889, at 5, col. 1.}

\textsuperscript{197}\textit{Cleveland Plain Dealer, June 19, 1889, at 6, col. 3.}

\textsuperscript{198}\textit{Cleveland Plain Dealer, Dec. 3, 1889, at 6, col. 1.}

\textsuperscript{199}\textit{Cleveland 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.}

\textsuperscript{200} Jury 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.

\textsuperscript{201}\textit{Cleveland Plain Dealer, Dec. 24, 1889, at 6, col. 3.}
though that legal doctrine probably was not extant in Ohio at that time. 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.

The jury returned its verdict on December 27, 1889, after four and one-half hours of deliberation. 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. He was sentenced to death for this crime of murder.

Leuth was originally sentenced to die on April 20, 1890, but appeals resulted in stays of that execution date. His appeal to the circuit court of appeal was unsuccessful and the Ohio Supreme Court refused to grant certiorari. 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. Despite some pressure from citizen's groups, the majority of the general public seemed to support the execution of Leuth.

Leuth was hanged at the Ohio Penitentiary Annex in Columbus, Ohio, at 12:05 a.m. on August 29, 1890. 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. He was

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202 Diminished 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).

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

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

205 Id.

206 Id.

207 The 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.

212 Cleveland 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.\textsuperscript{213} Limited by "a very low order of mind,"\textsuperscript{214} Taylor began to perform menial labor for a prosperous farmer who lived a few miles north of Columbus near Worthington, Ohio.\textsuperscript{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.\textsuperscript{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.\textsuperscript{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.\textsuperscript{218} Yoakum was severely injured by this blow and died a few days later.\textsuperscript{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.\textsuperscript{220}

Taylor escaped temporarily to Caperton, West Virginia, but was captured there nine days later at the home of his stepfather.\textsuperscript{221} He was arraigned in Worthington and stood trial in Columbus.\textsuperscript{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.\textsuperscript{223} He was convicted of murder under a felony-murder theory and sentenced to death.\textsuperscript{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.\textsuperscript{225} Due to a trend to modernize executions in Ohio, Taylor was the last of Ohio's child executions by hanging.\textsuperscript{226}

\textsuperscript{213}\textit{Columbus Dispatch}, Dec. 29, 1894, at 6, col. 1.
\textsuperscript{214}\textit{Cleveland Plain Dealer}, \textit{supra} note 212, at col. 3-4.
\textsuperscript{215}\textit{Columbus Dispatch}, Dec. 21, 1894, at 7, col. 3; H. FOGLE, \textit{supra} note 156, at 121-23.
\textsuperscript{216}H. FOGLE, \textit{supra} note 156, at 121-23.
\textsuperscript{217}Id. at 123; \textit{Cleveland Plain Dealer}, \textit{supra} note 212; \textit{Columbus Dispatch}, \textit{supra} note 215.
\textsuperscript{218}\textit{Columbus Dispatch}, \textit{supra} note 215.
\textsuperscript{219}\textit{Columbus Dispatch}, Dec. 22, 1894, at 7, col. 4.
\textsuperscript{220}\textit{Cleveland Plain Dealer}, \textit{supra} note 212.
\textsuperscript{221}\textit{Columbus Dispatch}, \textit{supra} note 213.
\textsuperscript{222}\textit{Columbus Dispatch}, Dec. 31, 1894, at 7, col. 3.
\textsuperscript{223}\textit{Cleveland Plain Dealer}, \textit{supra} note 212, at col. 3-4.
\textsuperscript{224}Id. and \textit{Columbus Dispatch}, \textit{supra} note 222.
\textsuperscript{225}H. FOGLE, \textit{supra} note 156, at 122; \textit{Cleveland Plain Dealer}, \textit{supra} note 212; \textit{Columbus Dispatch}, July 26, 1895, at 6, col. 1.
\textsuperscript{226}H. FOGLE, \textit{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 Cummins, 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.
\(^{228}\)H. FOGLE, supra note 156, at 135.
\(^{229}\)Id. at 136-37; Plain Dealer (Cleveland), supra note 227, at col. 2.
\(^{230}\)The Enquirer (Cincinnati), April 21, 1897, at 12, col. 1.
\(^{231}\)Id.; Cleveland Plain Dealer, April 21, 1897, at 2, col. 6.
\(^{232}\)The Enquirer (Cincinnati), supra note 230; Cleveland Plain Dealer, supra note 231.
\(^{233}\)Cleveland Plain Dealer, supra note 223.
\(^{234}\)Cleveland Plain Dealer, July 5, 1896, at 9, col. 3.
\(^{235}\)Id.; Cleveland Press, April 20, 1897, at 1, col. 6.
\(^{236}\)Cleveland Plain Dealer, supra note 233; Cleveland Press, supra note 235.
\(^{237}\)H. FOGLE, supra note 156, at 139; Cleveland Press, supra note 235.
\(^{238}\)Cleveland 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.\textsuperscript{241} His case was heard jointly by two judges in Cincinnati and he was found guilty of murder in the first degree.\textsuperscript{242} Despite his youth and deprived background, he was sentenced to death for his crimes.\textsuperscript{243}

Appeals to higher courts are not reported but a petition for commutation of the death sentence was presented to the Governor.\textsuperscript{244} Despite sympathy prompted by his "very weak mind and extreme youthfulness,"\textsuperscript{245} commutation was not granted.\textsuperscript{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."\textsuperscript{247} He was electrocuted at 12:30 a.m. on April 21, 1897, at the Ohio Penitentiary Annex in Columbus.\textsuperscript{248} The execution was described in glowing terms as a "complete success"\textsuperscript{249} and received major coverage in the press.\textsuperscript{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.\textsuperscript{251}

\textbf{Harley Beard; December 4, 1914}

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

\begin{footnotes}
\item[241] Cleveland Press, \textit{supra} note 235.
\item[242] The Enquirer (Cincinnati), \textit{supra} note 230.
\item[243] H. Fogle, \textit{supra} note 156, at 139.
\item[244] Cleveland Plain Dealer, April 21, 1897, at 1, col. 3.
\item[245] The Enquirer (Cincinnati), \textit{supra} note 230, at 8, col. 3.
\item[246] \textit{Id.}
\item[247] This phrase was part of the headline of an article written almost eighty-four years after the execution of Haas. Bean, \textit{Old Thunderbolt: Farm Boy was the First Victim of Ohio's Electric Chair}, Plain Dealer (Cleveland), March 8, 1981, at 25.
\item[248] \textit{Id.} and Cleveland Plain Dealer, \textit{supra} note 244.
\item[249] Cleveland Plain Dealer, \textit{supra} note 244.
\item[250] The 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; \textit{id.} at 12, col. 1.
\item[251] H. Fogle, \textit{supra} note 156, at 140.
\item[252] Cleveland Plain Dealer, Dec. 4, 1914, at 13, col. 6.
\item[253] The 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:
\begin{quote}
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.
\end{quote}
\textit{Id.}
\end{footnotes}
me to my Father this way.”

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. 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. 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. Beard later claimed that his mistreatment by the Massie family had “brought him to a pitch of frenzy.”

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

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. Permission was denied and the execution was carried out as scheduled shortly after midnight on December 4, 1914.

**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. True to

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254 Id. at 1, col. 7.
255 Cleveland Plain Dealer, May 16, 1914, at 1, col. 2.
256 Id.
257 Id. and Cleveland Plain Dealer, supra note 252.
258 Cleveland Plain Dealer, supra note 255.
259 Id.
260 Id.
261 Cleveland Plain Dealer, supra note 252.
262 Id.
263 Id.
264 Governor 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).
265 Cleveland Plain Dealer, supra note 252.
266 Ignatius (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.\textsuperscript{267}

Pupera was born in Pittsburgh on February 21, 1904, of parents who had emigrated from Sicily only a few years earlier.\textsuperscript{268} Raised in the poorest parts of Pittsburgh and Cleveland, Pupera left school at age fifteen and began to study the trade of barbering.\textsuperscript{269} He was arrested for car theft in early December, 1920, but escaped from the Boy's Detention Home on December 13.\textsuperscript{270} Arrested almost immediately in Pittsburgh on an alcohol charge he then jumped bail.\textsuperscript{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.\textsuperscript{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.\textsuperscript{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.\textsuperscript{274} Meanwhile, the would-be robbers had stolen another automobile which Pupera was now driving with four of his cohorts as passengers.\textsuperscript{275}

At a prearranged time and place, Pupera drove this automobile around the payroll automobile and forced it off of the road.\textsuperscript{276} The two occupants of the payroll automobile, the company president and the superintendent, were shot and killed immediately.\textsuperscript{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.\textsuperscript{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.\textsuperscript{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.

\textsuperscript{267}Cleveland Plain Dealer, Jan. 1, 1921, at 1, col. 1.
\textsuperscript{268}Cleveland Plain Dealer, March 26, 1921, at 1, col. 1.
\textsuperscript{269}Id. and Cleveland Plain Dealer, May 19, 1921, at 1, col. 6.
\textsuperscript{270}Cleveland Plain Dealer, March 17, 1921, at 1, col. 8.
\textsuperscript{271}Id.
\textsuperscript{272}Cleveland Plain Dealer, May 2, 1921, at 2, col. 4.
\textsuperscript{273}Id.
\textsuperscript{274}Cleveland Plain Dealer, supra note 267.
\textsuperscript{275}Id. and Cleveland Plain Dealer, supra note 272.
\textsuperscript{276}Cleveland Plain Dealer, supra note 267.
\textsuperscript{277}Id.
\textsuperscript{278}Cleveland Plain Dealer, May 18, 1921, at 1, col. 5.
\textsuperscript{279}Cleveland Plain Dealer, supra note 267.
included Boston, Chicago, El Paso and Juarez before ending in Los Angeles.\textsuperscript{280} Pupera was arrested in Los Angeles on a California automobile theft charge and then was recognized as being wanted for murder in Cleveland.\textsuperscript{281} His California arrest occurred on March 11, 1921.\textsuperscript{282}

Extradited back to Cleveland, Pupera was indicted by a grand jury on two counts of first degree murder.\textsuperscript{283} Several witnesses had identified Pupera and other gang members, but Pupera was the first to be located and arrested.\textsuperscript{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.\textsuperscript{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?"\textsuperscript{286}

Pupera's trial began on May 16, 1921.\textsuperscript{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.\textsuperscript{288} The prosecution apparently proceeded under a felony-murder theory, the killing of the victims having been an integral part of the armed robbery.\textsuperscript{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.\textsuperscript{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.\textsuperscript{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.\textsuperscript{292}

\begin{footnotes}
\item[280] Cleveland Plain Dealer, supra note 278; \textit{id.}, supra note 268.
\item[281] Cleveland Plain Dealer, supra note 270.
\item[282] Cleveland Plain Dealer, supra note 268.
\item[283] Cleveland Plain Dealer, supra note 270.
\item[284] Id. and Cleveland Plain Dealer, March 28, 1921, at 1, col. 6.
\item[285] Cleveland Plain Dealer, supra note 268; Cleveland Plain Dealer, supra note 270.
\item[286] Cleveland Plain Dealer, supra note 268.
\item[287] Cleveland Plain Dealer, May 16, 1921, at 1, col. 2.
\item[288] Id.
\item[289] Cleveland Plain Dealer, supra note 278; Cleveland Plain Dealer, May 17, 1921, at 1, col. 8.
\item[290] Cleveland Plain Dealer, May 19, 1921, at 1, col. 7; Cleveland Plain Dealer, supra note 278.
\item[291] Cleveland 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." \textit{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." \textit{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."

\textit{id.} at 4, col. 3.
\item[292] Cleveland Plain Dealer, May 21, 1921, at 1, col. 8. \textit{id.}, May 19, 1921, at 1, col. 6.
\end{footnotes}
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
November 5, 1925, Ross and a companion, Slim Young, decided to commit a robbery. The target for their robbery was a confectionary store owned by Isadore Steck on Central Avenue in Cleveland. During the robbery the owner Steck resisted, so Ross shot and killed Steck, and Young took the money from the cash register.

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

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

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

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. One of the stays of execution was granted so that this question could be litigated in a state habeas corpus proceeding. 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.

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306 Id.
307 Id. and Cleveland Plain Dealer, Nov. 6, 1925, at 1, col. 1.
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.
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.
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. 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,” 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. Mentally retarded from birth, Hewitt’s attorneys described him as “a moron with a ten-year-old’s intellect.” His crimes earned him the press-endowed nickname of “boy clubber.”

Hewitt lived in a rural area near Conneaut, Ohio, and was a neighbor of the Brown family. On the evening of February 14, 1927, Hewitt visited the Brown home. Fred Brown was at work in Conneaut and would not return home until after midnight. Apparently Hewitt attempted a sexual familiarity with Fred’s wife, Celia Brown, age 24. A fight ensued, ending when Hewitt struck Celia Brown on the head with a poker and she fell down the stairs. Hewitt then chased the Brown’s five-year-old son down to the cellar and killed him with a baseball bat he found there. Hewitt left and walked home before 9:00 p.m. that evening.

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

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322 Cleveland Plain Dealer, Nov. 26, 1926, at 6, col. 1.
323 Cleveland Plain Dealer, Aug. 24, 1926, at 5, col. 6.
324 Cleveland Plain Dealer, April 5, 1927, at 3, col. 1.
325 Cleveland Plain Dealer, Jan. 5, 1928, at 8, col. 3.
326 Cleveland Plain Dealer, Feb. 18, 1927, at 3, col. 5; Id., Feb. 16, 1927, at 1, col. 3.
327 Cleveland Plain Dealer, Feb. 16, 1927, at 1, col. 3.
328 Cleveland Plain Dealer, April 16, 1927, at 4, col. 4.
329 Cleveland Plain Dealer, April 14, 1927, at 7, col. 5.
330 Cleveland Plain Dealer, Jan. 7, 1928, at 1; Cleveland Plain Dealer, supra note 327.
331 Cleveland Plain Dealer, supra note 328.
332 Id.
333 Id.
334 Cleveland Plain Dealer, supra note 329.
son’s body was found in the cellar. By late morning of that same day, suspicion had focused upon Hewitt. He was arrested as he casually walked by the police station and confessed a few hours later.

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. Hewitt was indicted for first degree murder on February 25, 1927, and his trial opened on April 4, 1927, in Jefferson, Ohio. 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.

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

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

Hewitt was executed at 7:38 p.m. on January 6, 1928, at the Ohio Penitentiary Annex in Columbus. Press headlines that Hewitt was the “Youngest Ever Executed in Ohio” 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.

135 Id.
136 Cleveland Plain Dealer, Jan. 7, 1928, at 1, col. 1; Cleveland Plain Dealer, supra note 327.
137 Cleveland Plain Dealer, supra note 336; Cleveland Plain Dealer, supra note 327.
138 Cleveland Plain Dealer, Feb. 17, 1927, at 3, col. 1.
139 Cleveland Plain Dealer, Jan. 7, 1928, at 1, col. 1; Id., April 7, 1927, at 2, col. 3; Id., supra note 324.
140 Cleveland Plain Dealer, Jan. 7, 1928, at 1, col. 1; Id., July 7, 1927, at 3, col. 3.
141 Cleveland Plain Dealer, Jan. 5, 1928, at 8, col. 3; Id., April 16, 1927, at 3, col. 3; Id., supra note 328.
142 Cleveland Plain Dealer, April 27, 1927, at 1, col. 1.
143 Id.
144 Cleveland Plain Dealer, Jan. 7, 1928, at 1, col. 1.
145 Id.
146 Cleveland Plain Dealer, Jan. 6, 1928, at 1, col. 7.
147 Cleveland Plain Dealer, supra note 344.
148 Id.
149 Cleveland 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. Coverson was a black seventeen-year-old male who lived in the black section of Cincinnati for ten months preceding his crime. Coverson knew most of the people who lived in this neighborhood, including the black police officer he murdered.

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. Patrolman Olin Wilson, off duty and not in uniform, was summoned by Ms. Easley and told of the shootings. 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. Wilson then approached Coverson, stating "I am the law." As Wilson approached, Coverson shot the officer three times.

Wilson died the next day from the effects of the gunshots but he identified Coverson as his assailant before he died. 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." He was tried in the fall of 1927 and convicted of both counts, with the sentence being death.

The Ohio Court of Appeals for Hamilton County heard Coverson's appeal but affirmed the convictions and the sentence. The court had no hesitation in finding the evidence sufficient to support the verdict but seemed less confident of the conviction of knowingly killing a police officer. 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.

350 The Enquirer (Cincinnati), Jan. 10, 1928, at 22, col. 3.
352 Id.
353 Id.
355 Id.
356 The Enquirer (Cincinnati), supra note 348.
357 Id.
358 The Enquirer (Cincinnati), supra note 348.
359 Id.
360 Id.
362 The Enquirer (Cincinnati), supra note 350.
363 Id.
365 Id. and The Enquirer (Cincinnati), supra note 350.
367 Id. at 167, 161 N.E. at 222.
368 Id. at 168, 161 N.E. at 222.
369 Id.
Subsequent petitions to the Ohio Board of Clemency and the governor were pursued but were unsuccessful. 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.

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. His correct name was soon discovered and it apparently was agreed later that he was age eighteen when executed. 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.

Coleman was a black man born and raised in North Carolina. He moved to Portsmouth, Ohio, in 1927 and apparently became involved in several theft crimes. 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. As they walked along the street, they were stopped and questioned by a police officer. Without warning or apparent reason, Coleman shot the officer with a concealed handgun and the officer died almost immediately.

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

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

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34Cleveland Plain Dealer, Jan. 10, 1928, at 1, col. 1.
35Id.
37W. 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.
38W. Bowers, supra note 79, at 337; Cleveland Press, supra note 368; Portsmouth Daily Times, supra note 368.
40Id. and Portsmouth Daily Times, supra note 367.
41Portsmouth Daily Times, supra note 370; Portsmouth Daily Times, supra note 367.
42Portsmouth Daily Times, supra note 367.
43Id.
44Id.
45Id. at col. 2.
46Id.
the discharge of duty. At separate trials, both were convicted without a jury recommendation of mercy. The trial judge sentenced them to die in the electric chair on July 5, 1928. 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.

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. Wilson and Coleman were executed on schedule in the electric chair at the Ohio Penitentiary Annex in Columbus. 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.

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.

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. He came to Cleveland to live with his sister and continued his crimes to get money for "eats, whiskey and craps." This time his robbery ended in homicide on Christmas Day.

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. When Akers approached the manager and demanded the money, the manager resisted and chased Akers out of the station office. Akers shot and killed the manager and then took about one hundred dollars from the manager's pockets and the cash register.

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379Id.
380Id.
381Id.
382Portsmouth Daily Times, supra note 370.
383Portsmouth Daily Times, supra note 378.
384Id. 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.
390Id.
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.\textsuperscript{392} One week after the crime, the police were still holding the three prime suspects and 150 other suspects.\textsuperscript{393} This dragnet approach produced information from the detainees about Akers, and he was arrested on January 7, 1929.\textsuperscript{394}

Akers confessed to the police after he was arrested and he was indicted for first degree murder on January 10, 1929\textsuperscript{395} On January 16, Akers entered a plea of not guilty and filed a motion to test his sanity.\textsuperscript{396} When the jury determined that Akers was sane, he filed a motion to transfer the case to juvenile court.\textsuperscript{397} Akers reasserted this motion on April 1 but was denied the transfer.\textsuperscript{398}

Akers' trial began on April 1, 1929, taking one day to select a jury and two days to hear the evidence.\textsuperscript{399} On April 3, the jury "... returned a death chair verdict in twenty minutes."\textsuperscript{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.\textsuperscript{401} Akers' motion for a new trial was denied and the trial judge entered judgment upon the verdict on April 6, 1929.\textsuperscript{402}

The Ohio Court of Appeals affirmed the conviction and sentence on December 9, 1929.\textsuperscript{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.\textsuperscript{404} The court held that the Juvenile Court Act\textsuperscript{405} does not give juvenile courts jurisdiction over indictable felonies such as first degree murder nor does it change the common law\textsuperscript{406} rule as to the capacity of a minor to commit a

\textsuperscript{392}Cleveland Plain Dealer, Dec. 28, 1928, at 8, col. 2.
\textsuperscript{393}Cleveland Plain Dealer, Dec. 31, 1928, at 6, col. 2.
\textsuperscript{394}Cleveland Plain Dealer, supra note 387.
\textsuperscript{395}Akers v. State, 8 Ohio L. Abs. 106 (1929); Cleveland Plain Dealer, Jan. 11, 1929, at 7, col. 1; Cleveland Plain Dealer, supra note 385.
\textsuperscript{396}Akers v. State, 8 Ohio L. Abs. 106 (1929).
\textsuperscript{397}Id.
\textsuperscript{398}Id.
\textsuperscript{399}Cleveland Plain Dealer, April 4, 1929, at 1, col. 3; Id., April 2, 1929, at 8, col. 5.
\textsuperscript{400}Cleveland Plain Dealer, April 4, 1929, at 1, col. 3.
\textsuperscript{401}Id.
\textsuperscript{402}Akers v. State, 8 Ohio L. Abs. 106 (1929).
\textsuperscript{403}Id. at 107.
\textsuperscript{404}Id. at 106.
\textsuperscript{405}Juvenile Court Act, 8 OHIO REV. CODE ANN. § 1639 et. seq. (Throckmorton 1929).
\textsuperscript{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 seventeen at the time of his crime.
In any event, the adult criminal court which tried, convicted and sentenced Akers had at least concurrent jurisdiction to do so.

Akers obtained five reprieves or stays of execution during his appeals and petitions for clemency. 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. 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. Akers was eighteen years old when he died, having spent over fourteen months on Ohio’s death row.

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.

At the time of his crime, Joseph Murphy, a black male, was seventeen years old. 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. During this robbery attempt they shot and killed the bank cashier. They were arrested soon thereafter when the Cincinnati police learned that they had been boasting about their crimes.

They were tried and convicted of first degree murder of the bank cashier, presumably on a felony-murder theory. 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. This resulted in a reprieve of thirty days but it

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408 Akers v. State, 8 Ohio L. Abs. at 106.
409 Cleveland Plain Dealer, June 14, 1930, at 1, col. 8.
410 Id.
411 3 OHIO REV. CODE ANN. § 13728 (Throckmorton 1929) (requiring all executions be “within the walls of the Ohio Penitentiary”).
412 Cleveland Plain Dealer, supra note 409.
413 The Enquirer (Cincinnati), Aug. 15, 1933, at 1, col. 7.
414 At least it can be said that he was eighteen years old at his execution date ten months later. Id.
415 Cleveland Press, Aug. 15, 1933, at 10, col. 3.
416 The Enquirer (Cincinnati), supra note 413.
417 Cleveland Plain Dealer, Aug. 15, 1933, at 2, col. 1.
418 Id.
419 The 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 hold-up 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 Variously described 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

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420Cleveland Press, supra note 415.
421Id.
422The Enquirer (Cincinnati), supra note 413.
423Id.
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.
429Id.
430Id.
431Cleveland Press, supra note 427.
432The Enquirer (Cincinnati), supra note 424.
433Cleveland Press, supra note 427.
434Id.
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. Hand had been placed in a state children's home at the age of eighteen months when his parents separated. 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. While on parole, Hand worked and apparently lived on the Stober family farm near Celina, Ohio, in Mercer County. On July 3, 1943, Hand was reprimanded by Mr. Stober for not properly greasing a farm implement. Following this reprimand, Mr. Stober's six-year-old grandson, Richard, began to tease Hand for the error and the reprimand. In retaliation, Hand beat the child to death with a hammer and hid the body in the barn.

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

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

The trial judge originally set the execution date for January 14, 1944, and this was not to be changed. 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. He remained calm yet defiant at his death as he had been during his three and one-half months on death row.

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437Cleveland Plain Dealer, Jan. 15, 1944, at 1, col. 3.
438Id.
439Id.
440Greenville Daily Advocate, Jan. 15, 1944, at 1, col. 4.
441Id.
442Id.
443Cleveland Plain Dealer, supra note 437.
444Id.
445Id.
446Greenville Daily Advocate, supra note 440.
447Id.
448Cleveland Plain Dealer, supra note 437, at 2, col. 5.
449Id.
450Id.
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. Nonetheless, his case took the longest to get to execution of any of those analyzed in this article.

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

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. After several months of this, he was committed by his mother to the psychopathic ward of the city hospital on July 7, 1943. He was released from there on August 9, 1943, and immediately began engaging in his final crimes.

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

Using his father's gun to force their acquiescence, Hager took the twin boys to a wooded area in suburban Bay Village near Cleveland. There he attempted to commit sodomy on one of the boys but was repulsed by him.
shot and killed both boys and left their bodies there. He later reported his motive for the killings as being "for the heck of it."

The next day, August 13, 1943, Hagert was seen at the scene of the previous kidnapping and sodomizing of the nine-year-old boy. Police became suspicious of Hagert and arrested him even before they were to learn of the deaths of the twelve-year-old twins. 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. 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.

The investigating detectives filed a juvenile court complaint on August 14, 1943, and a hearing was held in that court on August 25, 1943. Although the juvenile court judge believed Hagert to be insane, he ordered him held for investigation by the grand jury. 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. Arraigned on this indictment, Hagert entered a plea of not guilty by reason of insanity.

In addition, Hagert claimed that he was presently insane and thus could not be tried. The court appointed physicians to examine Hagert and conducted a preliminary hearing before a jury to determine this issue. 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.

Hagert's trial began in late November and ended on December 1, 1943. 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

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46supra note 455, at 1, col. 7; 2, col. 1.
47Id. at 1, col. 6.
48Id. at 2, col. 1.
49Id.
50Id. and State v. Hagert, 144 Ohio St. 316, 58 N.E.2d 764 (1944).
51supra 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.
52Id.
53Cleveland Plain Dealer, Aug. 26, 1943, at 1, col. 2; Id., Aug. 15, 1943, at 1, col. 5.
54Cleveland Plain Dealer, Aug. 26, 1943, at 1, col. 2; Id., Aug. 15, 1943, at 1, col. 5.
55State v. Hagert, 144 Ohio St. 316, 58 N.E.2d 764 (1944).
57Id.
58Id.
59Cleveland Plain Dealer, Oct. 28, 1943, at 1, col. 2.
60Cleveland Plain Dealer, Dec. 2, 1943, at 1, col. 1.
hearing. 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. On December 1, the jury rejected Hagert’s insanity defense and found him guilty of first degree murder without any recommendation of mercy. The trial judge overruled Hagert’s motion for a new trial, entered judgment on the verdict and sentenced him to death.

Hagert’s case was the only one of these nineteen that involved appellate reversal of the first conviction. 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. 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. Although no other prejudicial error was found, that court reversed Hagert’s conviction and remanded the case for retrial.

Hagert’s second trial was before three Common Pleas Court judges, a jury trial having been waived. Hagert was convicted again and this time his appeals and petitions for clemency were unsuccessful. 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. Only seventeen-years-old when he committed his crimes, he had reached the age of twenty before being executed.

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. This particular scheme was to steal an automobile and use it to kidnap for ransom a high school student.

482 State v. Hagert, 144 Ohio St. 316, 58 N.E.2d 764 (1944).
484 Id. at 401; Cleveland Plain Dealer, supra note 481.
485 State v. Hagert, 58 N.E.2d at 401; Cleveland Plain Dealer, supra note 481.
486 State v. Hagert, 144 Ohio St. 316, 59 N.E.2d 764 (1944).
487 Id.
489 State v. Hagert, 144 Ohio St. 316, 58 N.E.2d 764 (1944).
490 Id.
491 Cleveland Plain Dealer, Oct. 4, 1945, at 1, col. 3, at 3, col. 3.
492 Id.
493 Id.
494 State 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

495Id. 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.
500State v. Frohner, 150 Ohio St. at 57-58, 80 N.E.2d at 872-73.
501Id.
502Id.
503Id.
504Id. at 56, 80 N.E.2d at 872-72.
505Id. at 57-58, 80 N.E.2d at 872-73.
506Id.; 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. After hiding in a wooded area for four hours, the boys were arrested while walking down a nearby road. The next morning a search of the area in which they were hiding revealed the murder weapon, ransom notes and other evidence.

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. The day after the crime, complaints were filed against both Frohner and Chapman in the Juvenile Division of the Court of Common Pleas. 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.

Frohner and Chapman were jointly indicted for first degree murder while attempting a robbery. At their arraignment on February 3, 1947, each entered a plea of not guilty. Subsequently, they waived jury trials and elected instead a three judge panel to hear their case. 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.

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.” 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. As a result, Frohner was sentenced to die in Ohio’s electric chair.

On March 7, 1947, the trial court denied Frohner’s motions for a new...
trial, to withdraw his guilty plea, and to retract his waiver of a jury trial.\textsuperscript{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.”\textsuperscript{523} His first appeal, to the court of appeals, resulted in the conviction and death sentence being affirmed.\textsuperscript{524}

Frohner’s case was decided by the Ohio Supreme Court on July 21, 1948.\textsuperscript{525} In addition to several lesser issues, the court held that Frohner entered his guilty plea knowingly and intelligently,\textsuperscript{526} that his waiver of trial by jury was valid,\textsuperscript{527} that Frohner was not legally insane\textsuperscript{528} and that the trial judges did not abuse their discretion refusing to extend mercy to Frohner.\textsuperscript{529} Justice Hart dissented without opinion\textsuperscript{530} 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.\textsuperscript{531}

A major effort ensued to obtain clemency from the parole commission and the governor.\textsuperscript{532} These attempts were unsuccessful and Frohner was executed on schedule.\textsuperscript{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.\textsuperscript{534}

\textit{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.\textsuperscript{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.\textsuperscript{536} Rejected by the girl, they decided to wait for her to ride by

\textsuperscript{522}State v. Frohner, 150 Ohio St. at 73-74, 80 N.E.2d at 879.
\textsuperscript{523}Youngstown Vindicator, Aug. 21, 1948, at 1, col. 8.
\textsuperscript{524}See State v. Frohner, 150 Ohio St. at 74, 80 N.E.2d at 879.
\textsuperscript{525}State v. Frohner, 150 Ohio St. at 74, 80 N.E.2d at 879.
\textsuperscript{526}Id. at 91, 80 N.E.2d at 886-87.
\textsuperscript{527}Id. at 92, 97, 80 N.E.2d at 887, 889-90.
\textsuperscript{528}Id. at 117, 80 N.E.2d at 898.
\textsuperscript{529}Id. at 100, 80 N.E.2d at 891.
\textsuperscript{530}Id. at 118, 80 N.E.2d at 898.
\textsuperscript{531}Youngstown Vindicator, Aug. 19, 1948, at 1, col. 2-3.
\textsuperscript{532}Youngstown Vindicator, \textit{supra} note 523, at 2, col. 1.
\textsuperscript{533}Id. and Youngstown Vindicator, Aug. 19, 1948, at 1, col. 2.
\textsuperscript{534}Youngstown Vindicator, \textit{supra} note 523.
\textsuperscript{535}Toledo Blade, Aug. 20, 1954, at 1, col. 4.
\textsuperscript{536}Id.
again on the following day.\textsuperscript{337} 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.\textsuperscript{338} Schreiber then raped the girl and stabbed her to death with his pocket knife.\textsuperscript{339}

The victim’s body was found later that evening by a neighborhood search party.\textsuperscript{340} After a week of intensive investigation, Schreiber’s twelve-year-old accomplice confessed to the police and implicated Schreiber.\textsuperscript{341} Schreiber was arrested and he confessed after failing a lie detector test.\textsuperscript{342} 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.\textsuperscript{343}

Indicted for first degree murder, Schreiber waived a jury trial and his trial before a three judge panel began on January 10, 1955.\textsuperscript{344} Three days later, Schreiber was convicted of first degree murder and sentenced to death, with the original execution date set for June 1, 1955.\textsuperscript{345}

This execution date was stayed three times as Schreiber’s appeals progressed.\textsuperscript{346} The court of appeals sustained his conviction and sentence and on December 14, 1955, the Ohio Supreme Court refused to review his case.\textsuperscript{347} Schreiber’s clemency appeal was considered at length by the governor but also was unsuccessful.\textsuperscript{348}

Schreiber was electrocuted at 8:02 p.m. on March 15, 1956, in the electric chair at the Ohio Penitentiary Annex in Columbus.\textsuperscript{349} Then nineteen years old, he had spent the last thirteen months of his life on Ohio’s death row.\textsuperscript{350}

Ohio continued capital punishment for exactly seven more years, ending with the execution of Donald L. Reinbolt on March 15, 1963.\textsuperscript{351} However,
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 I 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>
<thead>
<tr>
<th>Offender</th>
<th>Race</th>
<th>Age at Crime</th>
<th>Childhood Background</th>
</tr>
</thead>
<tbody>
<tr>
<td>Mann</td>
<td>white</td>
<td>16</td>
<td>born in England; mother died; ran away; became hobo.</td>
</tr>
<tr>
<td>Ohr</td>
<td>white</td>
<td>15</td>
<td>born in Bavaria; father died; ran away; became hobo.</td>
</tr>
<tr>
<td>Sammett</td>
<td>white</td>
<td>17</td>
<td>born in Ohio; mother died; prior burglary.</td>
</tr>
<tr>
<td>Leuth</td>
<td>white</td>
<td>16</td>
<td>born in Germany; family epilepsy; parental beatings.</td>
</tr>
<tr>
<td>Taylor</td>
<td>black</td>
<td>17</td>
<td>born in Ohio; illegitimate and fatherless; dull mentality; farm worker.</td>
</tr>
<tr>
<td>Haas</td>
<td>white</td>
<td>16</td>
<td>orphan; ran away; lived with foster parents.</td>
</tr>
</tbody>
</table>
Table 1 (continued)

Ohio Offenders by Race, Age at Crime and Childhood Background

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

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


**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*

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

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


**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**

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

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

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***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.\textsuperscript{552}

Ohio has departed rather clearly from the mainstream on this issue in the 1980's. Of the states with presumptively valid post-\textsuperscript{Furman}\textsuperscript{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 \textsuperscript{Eddings}\textsuperscript{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.\textsuperscript{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.

\textsuperscript{552}See Bell v. Ohio, 438 U.S. 637 (1978).
\textsuperscript{553}Furman v. Georgia, 408 U.S. 238 (1972).
\textsuperscript{554}Eddings v. Oklahoma, 455 U.S. 104 (1982).
\textsuperscript{555}OHIO 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.” 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, 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.”

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