

Introduction

Killing people is wrong. Please end the death penalty in Ohio.

—*January 8, 2007, letter to newly elected Governor Ted Strickland*

Please don't mess with the death penalty. It is the only tool that we have left to deal with killers.

—*January 20, 2007, e-mail to Strickland*

LEWIS “LITTLE Lew” Williams, an inmate at the Southern Ohio Correctional Institution for one day in the winter of 2004, did not seem the type of person destined to make headlines around the world. Diminutive at five feet three inches, rough-spoken and defiant, he had been quietly incarcerated for nearly two decades. His only claim to fame until that January was his barely remembered reputation as a Cleveland street punk—a punk whose career was cut short by his arrest and conviction for the robbery and murder of Leoma Chmielewski, a seventy-six-year-old woman on the city's east side for whom he'd occasionally done odd jobs. Sentenced to die, he had been on Ohio's death row for twenty years before finally exhausting his appeals and receiving an execution date of January 14, 2004.

The only thing remarkable about his scheduled execution was that it would be the first in which the entire procedure would be public. During the state's previous eight executions by lethal injection, the first sight of the condemned inmate that reporters, lawyers, and witnesses for both the accused and the victim's family had was when a curtain opened in the

death chamber and the inmate was revealed lying on a gurney, strapped down with an intravenous shunt in his arm and prepared to give a final statement. It was a tidy presentation—a tableau of calm inevitability that in a morbid way recalled the beginning of life, the stereotypical viewing of the newborn through a nursery window, the viewers spared the messy struggle that had preceded this peaceful moment.

Mindful of this contradiction, the Ohio chapter of the American Civil Liberties Union had sued in 2003, arguing that the state was preventing full public access to executions by beginning, as it were, at the end. In response, the Department of Rehabilitation and Correction agreed, beginning with Williams's execution, to broadcast on closed-circuit TV the process under which guards in an adjoining room inserted the shunts into an inmate's arm before leading the inmate to the death chamber. The procedure was not taped, and, under already existing rules, no recording of the event was allowed. To this day reporters are barred from bringing their own notebooks into the death chamber and must use state-issued paper and pencils.¹

In Williams's case, it was clear from the instant the first images appeared on the TV screen in the witnesses's viewing room that something unusual was happening. A struggle was underway. Williams was kneeling on the floor, gripping the edge of the table he was supposed to be lying on and refusing to be lifted up. Disembodied hands from all sides of the screen were grabbing him and trying to pull him onto the table. It was a surreal and confusing image, made even more disturbing by the lack of sound—the closed-circuit process didn't include audio—and trying to figure out exactly what was happening.

After two minutes, the execution team finally hoisted Williams up from his knees, pried his hands free, and placed him on the table. Several guards held him down as the shunts were inserted; it then took four guards to carry him into the death chamber. As soon as the door to the room opened, Williams's voice became audible for the first time, a combination of groaning and cries for help: "I'm not guilty. I'm not guilty. God, please help me." His pleading continued for the next few minutes while he struggled with the guards strapping him down. Those of us reporting the execution—it was my second as a witness for the Associated Press—strained to catch every nuance of what was happening, aware we were watching grotesque history being made. A few feet away in the viewing

room, Williams's mother, sixty-six-year-old Bonnie Williams, of Columbus, sobbed as she watched. Standing next to her, prisons spokeswoman Andrea Dean, a veteran of the execution process, gently rubbed her shoulder.²

Williams made no final statement as such; he just pleaded and groaned until the drugs kicked in and silenced him. Officially, the words he said at 10:07 AM were recorded as his last statement: "God, please help me. God, please hear my cry." But in fact, after Warden James Haviland pulled the microphone away, Williams continued yelling until 10:08 AM, when he abruptly stopped speaking. As the muscle relaxant Pavulon took effect, Williams's chest rose and fell a couple of times, as is common in executions. He was declared dead a few minutes later, at 10:15 AM. "I'm just glad that it's over," said Dorothy Beverly, Chmielewski's stepdaughter, informed of the outcome. "It still shouldn't take that long for the justice system to work."³

In hindsight, it's difficult to figure out exactly what was going on that day at the prison in Lucasville. Williams's outburst surprised everyone, including public defender Stephen Farrell, who had spoken to him as recently as that morning and described him as calm. A prison log of Williams's minute-by-minute activities his last day also gives no hint of a struggle in the offing. ("Inmate Williams laughing and talking with his attorney and his spiritual advisor," reads the entry at 8:21 AM, ninety minutes before the execution was scheduled to begin.) There was an element of exhibitionism about the behavior, as though Williams were not actually begging to be spared but consciously giving a demonstration of an inmate pleading for his life. On the other hand, it's possible his cries for help were genuine. Williams had changed his story several times but generally had professed his innocence of the crime, though his explanations—he wasn't there, or he was there but he fired after the victim's dog attacked—tended to fall flat. Maybe something in him snapped. Maybe he figured, what have I got to lose?

While Williams will be best remembered for the way he went to his death, in the long run he played a more significant role in the modern history of the death penalty. He and his criminal justice experience are emblematic of the ways in which capital punishment is carried out unevenly, not only in Ohio but across the country. This unevenness manifests itself in three general areas: race, both of the perpetrators of crimes and of the

victims; the discretion of prosecutors from county to county; and public sentiment, or more precisely, the way juries specifically and the entire justice system generally react to death penalty cases depending on the demographics of the counties where judgment is served.

Williams's home of Ohio is also a useful place to study these trends, since the state—sometimes to the surprise of both death penalty supporters and opponents—had one of the most active death chambers in the country during the first decade of the new century. In 2006, Ohio executed five people, second-highest in the nation after Texas, which executed twenty-four. From 2002 through 2006, Ohio executed twenty-two people, a tie for third with North Carolina and behind only Texas and Oklahoma. It is a state where support for the death penalty remains strong, though not overwhelmingly so. In early 2007, after newly elected Governor Ted Strickland temporarily delayed three executions to give himself time to study their cases, a poll taken by Quinnipiac University found Ohioans supported his decision by a two-to-one ratio. The same poll found that voters still supported the death penalty over life without parole, but only by 48 percent to 38 percent. This may reflect Ohio's reputation as a politically moderate bellwether state, another factor that makes it useful as a laboratory for examining the history of capital punishment. While voters in the state returned President George W. Bush to the White House in 2004 and at the same time enacted one of the country's most restrictive gay-marriage bans, for example, they also chose two years later to dump almost the entire statewide Republican power structure in favor of a new slate of Democrats.

In Williams's case, to begin with, he was black, like almost half the men on death row in Ohio and across the country, a rate far out of proportion to the actual population of African Americans, about 11 percent of Ohioans and about 13 percent across the country. Although statistics show that African American men commit violent crime at a higher rate than whites, the overrepresentation of blacks on death row has been a hallmark of the capital punishment system in this and most other states. Far more important than Williams's own skin color, however, was that of his victim, Leoma Chmielewski, who was white. Researchers have known for years that the chances of facing a death sentence in the United States vary considerably based on the race of the victim. A groundbreaking study of murders

in Georgia in the 1970s by David Baldus of Iowa State University found that killers of white victims were far more likely to end up on death row than killers of blacks. More recently, University of Maryland researcher Ray Paternoster found a nearly identical pattern in Maryland. Similarly, a 2005 study of a decade of capital cases in California by researcher Glenn Pierce found that offenders who killed whites were more than four times more likely to be sentenced to death than those who killed Latinos and more than three times more likely than those who killed blacks. And in Ohio, a three-year analysis that I conducted for the Associated Press of capital indictments between 1981 and 2002—including the case of Williams—found that people who had killed one or more white people and been charged with a capital crime were twice as likely to be sentenced to death than those whose victims were black. As Paternoster puts it, killers of whites are always “more likely to have death sought. More likely to have their case advance to the penalty phase. More likely to have death imposed.”⁴

Secondly, Williams’s case intersected with another death penalty inequity: prosecutors’ use of plea bargains. Ohio lawmakers rewriting the state’s capital punishment law in 1981 wanted the death penalty for the worst of the worst, killers whose crimes were so heinous that nothing short of execution was appropriate. Over the years, however, prosecutors charged with administering the law had treated the statute less as a cudgel than as a bargaining chip. A capital indictment, after all, was a powerful negotiating tool, especially in a case with multiple offenders. In Ohio, as my analysis found, half of all capital indictments were resolved with plea bargains over the first twenty years of the new death penalty law, including dozens of crimes with multiple victims and some twenty-five cases in which at least three people had been killed.

Excessive plea bargains create disparities in the system because of both who accepts them and who doesn’t. In 1983, the year Williams was indicted, fifty-three other offenders in Cuyahoga County were also charged with death penalty crimes. Thirty of those individuals accepted plea bargains to escape the death sentence. But Williams refused to discuss a plea, insisted on a trial, and ended up on death row, even as more than half the county’s capital offenders that year, accused of crimes just as bad or worse, went to prison and served sentences that in some cases were up by the time Williams was executed. As Timothy Miller, criminal division chief

for the county prosecutor's office, would put it, death sentences can be avoided at many stages of a capital case based on decisions made by a judge, the jury, or the accused, as well as prosecutors. Had Williams made a different decision, he might have been free in January 2004 instead of facing death.⁵

Prosecutors may offer plea bargains when the strength of the evidence changes between the time of indictment and the time of trial. They may be reluctant to risk a jury trial and possible acquittal against the certainty of a long prison term that could in itself be a death sentence. They may be willing to listen to the victim's family, which, more often than is realized, asks for a plea agreement to avoid the pain of a drawn-out trial and the equally painful possibility of years or decades of further litigation if a death sentence is achieved.

Another reason prosecutors allow plea bargains, though they generally won't talk about it because of its explosive political ramifications, is the cost of a death penalty trial, especially for a small county. Sending a person to death row can mean hundreds of thousands of dollars in legal expenses as well as untold hours of preparation. David Yost, prosecutor in suburban Delaware County in the middle of the state, said that half his office's resources were tied up for three months for the 2003 trial of Gerald Hand, a serial killer who had arranged the deaths of three of his four wives. David Landefeld, prosecutor in southeastern Fairfield County, described the price tag on a capital case as "a fiscal horror-fantasy."⁶

The financial burden that capital punishment places on local government was brought home in 2002 when a judge threw out the death penalty charges against a man accused of killing two people in rural Vinton County, an Appalachian area among the state's poorest. The judge said the county's financial problems could hurt defendant Gregory McKnight's hopes for a fair trial. In the uproar that followed—including the appearance of the prosecutor and one of the victim's parents on the *Today* show—the judge overturned his decision, and, tellingly, the state agreed to help with the prosecution. McKnight was sentenced to death later that year, though questions about his case lingered, including a discrepancy in the way he was charged with killing a white college student—a murder that carried the death penalty charge—and a black acquaintance, which did not merit a capital indictment.

The variables of race and prosecutorial discretion underscore perhaps the most subtle way in which the death penalty is applied unevenly in Ohio and beyond, and that is the role of simple geography. Hamilton County, home to Cincinnati in the southwest corner of the state, is not more than a three-and-a-half-hour drive from Cuyahoga County, home to Cleveland, along the shores of Lake Erie. Ohioans cheer on both the Cincinnati Reds and the Cleveland Indians, the Cincinnati Bengals and the Cleveland Browns. Cincinnati's chili is as much a part of the state's culinary claim to fame as pierogies in Cleveland. Yet during the first twenty years of the state's new death penalty law, 43 percent of all capital indictments in Hamilton County resulted in death sentences, the highest rate of any county in the state. During the same period, just 8 percent of people indicted in Cuyahoga County for crimes punishable by death ended up on death row. That, despite the fact that prosecutors in Cuyahoga County, a Democratic stronghold, indicted more than 700 individuals with capital crimes during that time span, contrasted with just 130 in conservative Hamilton County. In the middle of the state, in Franklin County, whose largest city, Columbus, is a moderate Democratic seat of state government, only 5 percent of 330 capital indictments resulted in a death sentence. While these three counties and their big cities—Cincinnati, Columbus, and Cleveland—have their differences, and while their murder rates are not identical, there is no evidence that the number of death sentences bore any relationship to the actual number of homicides committed in a given year.

Proponents of the death penalty in Ohio look at these disparities and say the system works fine because it relies on the judgment and standards of local communities, the violent crime equivalent of the community standards that rule obscenity laws. Jim Canepa, the former capital crimes division chief for the state attorney general, put it this way: "So based on where you are in the state of Ohio you're going to get fair on crime, tough on crime, consistent on crime."⁷ Yet it's difficult to avoid the conclusion that a hardened criminal who knew what he was doing was better off committing his crime near the winding Cuyahoga River in northeast Ohio than along the wide expanse of the Ohio River in the southwest corner of the state.

Where the crime was committed mattered deeply, as did who prosecuted and defended the criminal and then who passed final judgment. By

1986, just five years after Ohio enacted its new capital punishment law, the state supreme court expressed its concern over the quality of lawyers representing death penalty defendants and the way judges appointed those lawyers. Indeed, incompetence by defense attorneys became the chief reason for death sentence reversals as cases slowly worked their way through the federal courts. In 1988, the state supreme court raised similar concerns about misconduct by prosecutors. Moreover, some county judges questioned the appropriateness of certain death sentences, rejecting juries' capital sentences on eight different occasions. Meanwhile, one of the chief architects of the new law, Republican state senator turned supreme court justice Paul Pfeifer, began to raise doubts about the law's fairness. And on the Sixth Circuit Court of Appeals, the chief review panel for Ohio death sentences, one judge, Boyce Martin, appointed by President Jimmy Carter, suggested the death penalty was so flawed as to be beyond repair, while another, Danny Boggs, appointed by President Ronald Reagan, famously complained that a majority of his colleagues would delay an inmate's execution based "on a hot dog menu."

A system meant to be fair turned out, contrary to lawmakers' expectations, to be subject to the same frailties as the rest of the criminal justice system—capricious, uneven, and dependent on that most nonjudicial of factors, human sentiment. State officials echoed this notion in the wake of Lewis Williams's execution, pointing out that a disagreement between Sixth Circuit judges over the constitution of the panel hearing Williams's case was nothing new. "Jurists often disagree on points of law and procedure," said Bob Beasley, a spokesman for then-Attorney General Jim Petro. "That's the way our system is set up."⁸

In the case of the death penalty, of course, there is no way to resolve those disagreements once the sentence has been carried out. Right or wrong, all decisions are final.