

FAIR PUNISHMENT PROJECT



PRISONERS ON OHIO’S EXECUTION LIST DEFINED BY INTELLECTUAL IMPAIRMENT, MENTAL ILLNESS, TRAUMA, AND YOUNG AGE

INTRODUCTION

On July 26, 2017, Ohio ended its three-year execution moratorium and put Ronald Phillips to death. Phillips, 19 at the time he committed his crime, had the intellectual functioning of a juvenile, had a father who sexually abused him, and grew up a victim of and a witness to unspeakable physical abuse – information his trial lawyers never learned or presented to a jury.¹

Ohio intends to execute three more people in 2017 and then 23 more between 2018 and 2020.² We examined the cases of these 26 men, relying on available legal pleadings, court opinions, and where accessible, trial testimony. We found that these men are among the most impaired and traumatized among us – a pattern replicated across America’s death rows. At least 17 out of the 26 men experienced serious childhood trauma – horrifying instances of extensive physical and sexual abuse. At least 6 men appear to suffer from a mental illness, and at least 11 have evidence of intellectual disability, borderline intellectual disability, or a cognitive impairment, including brain injury. Three were under the age of 21 at the time they committed their offenses, a period during which an individual’s brain, especially the section related to impulse control and decision-making, is still undeveloped. Many of these men fall within several of these categories, which compounds the impairments.

We use the term “at least” because three of these men waived the presentation of mitigation at their trials. And several had lawyers who conducted little to no investigation at both the trial and post-conviction phase or failed to seek the assistance of psychologists and other experts, despite the presence of familial mental illness, which is often hereditary. Therefore, in those cases, we know very little about existing impairments, even though execution dates are looming.

¹ See *Phillips v. Bradshaw*, 607 F.3d 199, 211-15 (6th Cir. 2009).

² Mark Berman, *Ohio Executes Ronald Phillips, Resuming Lethal Injections after Three-Year Break*, WASHINGTON POST (July 26, 2017), available at https://www.washingtonpost.com/news/post-nation/wp/2017/07/26/ohio-prepares-to-resume-execution-s-seeking-to-end-three-year-lull/?utm_term=.49389cff17f6

The Constitution mandates that the state restrict the use of the death penalty to only those “whose extreme culpability makes them ‘the most deserving of execution,’”³ regardless of the severity of their crimes. The individuals identified here have been convicted of horrible crimes, and they must be held to account. But the evidence suggests that Ohio has not met its constitutional obligation. It is instead planning to execute nearly two dozen individuals with substantial impairments, rather than reserving the punishment for those with the greatest culpability.

Below, we describe some of the stories we uncovered while researching these 26 Ohio cases. We have grouped them by category of impairment which includes serious trauma, mental illness and intellectual disability, and youth. These distinctions, however, are artificial – many of these men have heartbreaking stories falling within multiple categories. For each example of a debilitating impairment, we could have included other equally terrifying stories of others facing a sentence of death.

SEVERE CHILDHOOD TRAUMA

Of the 26 Ohio men currently awaiting execution, at least 17 experienced significant childhood trauma – physical abuse, sexual abuse, neglect, and exposure to serious violence. Their personal histories reflect the kind of “severe privation and abuse” that the Supreme Court described as “powerful” mitigating evidence.⁴

The effects of trauma on emotional and cognitive development, including impulse control, are well documented. Childhood abuse, neglect, and deprivation can stunt a person’s psychological functioning, emotional development, and even alter what his or her brain looks like.⁵ Prominent

³ *Roper v. Simmons*, 543 U.S. 551, 568 (2005) (barring the death penalty for juveniles) (quoting *Atkins v. Virginia*, 536 U.S. 304, 319 (2002) (barring the death penalty for the intellectually disabled)).

⁴ *Wiggins v. Smith*, 539 U.S. 510, 534-35 (2003).

⁵ See, e.g., Craig Haney, *The Social Context of Capital Murder: Social Histories and the Logic of Mitigation*, 35 SANTA CLARA L. REV. 547, 591 (1995), available at <http://digitalcommons.law.scu.edu/cgi/viewcontent.cgi?article=1572&context=lawreview> (“[M]ost people recognize intuitively that background experiences can shape and influence who we are and what we are capable of becoming. Indeed, whatever effort our society now devotes to the prevention and prosecution of child abuse derives in large part out of the recognition that such early traumatic experiences can tragically alter the life course of those who are victimized by them.”); David Lisak & Sara Beszterczey, *The Cycle of Violence: The Life Histories of 43 Death Row Inmates*, 8 PSYCHOL. OF MEN & MASCULINITY 118 (2007), available at <http://www.davidlisak.com/wp-content/uploads/pdf/LifeHistoriesofDeathRowInmates.pdf>; James A. Reavis et al., *Adverse Childhood Experiences and Adult Criminality: How Long Must We Live before We Possess Our Own Lives?*, 17 THE PERMANENTE JOURNAL 44 (2013), available at <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3662280/> (finding that a group of criminal offenders “reported nearly four times as many adverse events in childhood as the control group”); Phyllis L. Crocker, *Childhood Abuse and Adult Murder: Implications for the Death Penalty*, 77 N.C. L. REV. 1143, 1157-66 (1999), available at http://engagedscholarship.csuohio.edu/cgi/viewcontent.cgi?article=1278&context=fac_articles

psychiatrist Frank Ochberg has explained that “early adverse situations reduce the resilience of human biology and they change us in very fundamental ways. Our brains are altered. And that’s what this research is bearing out.”⁶

Raymond Tibbetts

Raymond Tibbetts’ biological parents were alcoholics who failed to provide for their children’s most basic needs.⁷ Tibbetts’ mother likely suffered from a borderline personality disorder⁸ and was “cold, distant and uncaring” towards her children.⁹ On the rare occasion Tibbetts’ father was present, he severely beat Tibbetts’ mother.¹⁰

Tibbetts’ parents permanently abandoned him at age two, and he was moved to Ohio’s foster care system along with his four siblings.¹¹ In the first placement, Tibbetts and his siblings were malnourished and treated worse than animals.¹² The family locked them outside for long periods of time without access to a toilet, forced them to sit in the corner for hours on end when allowed inside the house, and tied Tibbetts and his siblings to their beds with ropes at night.¹³ The foster family often put their four biological children in charge of Tibbetts and his siblings – they “brutalized’ Tibbetts and his siblings by kicking them down the stairs, beating them with spatulas, and burning their hands on heat registers, which sent at least one child the hospital.” (sic).¹⁴

The Ohio Department of Human Services knew Tibbetts’ foster parents were abusive and failed to care for him, but did nothing about it for years.¹⁵ At least one social worker noted the impact of this abuse on Tibbetts, who was “afraid of water because someone had tried to hold him under.”¹⁶ Another suspected that “Tibbetts’ time with the [foster family] ‘created [his] nervous

(reviewing psychological and medical “research on the correlation between childhood abuse and adult violence”).

⁶ Alex Hannaford, *Letters from Death Row: The Biology of Trauma*, TEXAS OBSERVER, June 22, 2015, available at <http://www.texasobserver.org/letters-from-death-row-childhood-trauma/>; see also Kathleen Wayland, *The Importance of Recognizing Trauma throughout Capital Mitigation Investigations and Presentations*, 36 Hofstra L. REV. 923 (2008), available at <http://scholarlycommons.law.hofstra.edu/hlr/vol36/iss3/11>.

⁷ Death Penalty Clemency Report, In re: Raymond Tibbetts, CCI #A363-178, State of Ohio Adult Parole Authority (published March 10, 2017) (“Tibbetts Clemency Report”) at 11.

⁸ *Tibbetts v. Bradshaw*, 633 F.3d 436, 454 (6th Cir. 2011) (Moore, J., dissenting).

⁹ Tibbetts Clemency Report, *supra* note 7 at 11.

¹⁰ *Id.*

¹¹ *Id.*

¹² *Tibbetts*, 633 F.3d at 450, 453.

¹³ *Id.* at 454.

¹⁴ *Id.*

¹⁵ See Hamilton County Department of Human Services, Children’s Services Records, 1961–1974 (“Children’s Services Records”).

¹⁶ *Tibbetts*, 633 F.3d at 450.

disposition,¹⁷ and noted that contact with the [foster family] led Tibbetts to rock himself to sleep at night.”¹⁷ Tibbetts and his siblings were finally removed after Tibbetts’ brother “sustain[ed] a severe burn,”¹⁸ but their next foster placement was no better. Tibbetts and his siblings were subjected to beatings, all documented by the social workers.¹⁹

Tibbetts repeatedly tried to run away from his abusive, neglectful environment, attempts that landed him in juvenile detention facilities notorious for mistreating its charges.²⁰ The State continually returned Tibbetts to his foster placement following his discharge from these facilities, where he remained for a decade. When he was finally removed, Ohio placed him in group homes and orphanages.²¹ Unsurprisingly, by age 14, Tibbetts had begun drinking alcohol and using drugs.²²

Incredibly, Tibbetts’ trial attorneys failed to thoroughly explore the psychological and cognitive effect such astounding abuse surely had on him. The attorneys called one psychiatrist to testify, but because the attorneys provided him with little direct knowledge of Tibbetts’ social history, the doctor’s testimony was largely incomplete.²³

Cleveland Jackson

Like Tibbetts, Cleveland Jackson’s childhood was marred by extraordinary physical violence, poverty, and neglect. When he was either three or four years old, Jackson’s mother killed his father with a knife; according to his mother, she acted in self-defense.²⁴ She explained that she did so when Cleveland Jackson, Sr. turned violent, a frequent event when he was drinking.²⁵ All of the children, including Cleveland Jackson, Jr., witnessed the killing.²⁶

Children’s services’ records describe his home as “filthy, with garbage and dirty clothes on his floor,” where the children played on “floors littered with broken glass.”²⁷ The children frequently had no beds to sleep in and the house lacked furniture because his mother sold it to buy drugs.²⁸ Jackson sometimes ate only one meal a day – a breakfast of bread and honey.²⁹ Records also

¹⁷ *Id.* at 451.

¹⁸ Tibbetts Clemency Report, *supra* note 7, at 12.

¹⁹ Children’s Services Records, Aug. 26, 1974, *supra* note 15, at p. 67.

²⁰ Children’s Services Records, Summary from Aug 1970 to Feb. 1972, *supra* note 15, at p. 61.

²¹ Tibbetts Clemency Report, *supra* note 7, at 12.

²² *Id.*

²³ *Id.* at 17.

²⁴ *State v. Jackson*, 107 Ohio St. 3d 53, 83 (Ohio 2012).

²⁵ *See id.*

²⁶ *See id.*

²⁷ *Id.* at 84.

²⁸ *Id.*

²⁹ *Id.*

suggest physical abuse, in addition to the extraordinary neglect.³⁰ Children’s services removed Jackson and his siblings from his mother’s custody on numerous occasions, placing him intermittently in foster homes or with his grandmother.³¹ One of Jackson’s aunts reported that during one stint in foster care, Jackson was raped.³²

Jackson’s aunt testified that his mother “had been a heavy drinker, had physically abused her children, and had attempted suicide. . . . [A]t times, there had been no food in the house and no furniture because Betty had sold it to buy drugs.”³³ She did not shield her kids from her drug habit. Jackson told the defense team’s expert that “his mother would smoke crack cocaine and blow the smoke in his face.”³⁴ Additionally, his mother suffered from a lengthy history of mental health problems.³⁵

Douglas Coley

During his childhood, Douglas Coley experienced extraordinary neglect and possible sexual abuse. His mother, Victoria Coley, suffered from a debilitating mental illness, paranoid schizophrenia with borderline personality disorder, and likely intellectual disability, with an IQ between 65-68.³⁶ She abused drugs and alcohol and worked as a prostitute. Between 1977—when Douglas was two years old—and 1991, Victoria “was hospitalized in state mental hospitals some fifteen times”³⁷ In 1989, the government charged her with arson on her own home and child endangerment, but a jury found her not guilty by reason of insanity.³⁸ Her sister-in-law, Martha Jean Davis, gave a deeply disturbing description of Victoria. She testified that Victoria was:

“‘[an] oversexed mental patient * * * [who] wouldn’t keep her clothes on.’ She ‘would strip and run down * * * the street with no clothes on. * * * [S]he would have sex with anyone, anybody, anywhere.’”

It is also possible that Victoria sexually abused her children.³⁹ According to Martha Davis’s testimony, Victoria had sex with Davis’s ten-year-old son. Davis also accused Victoria of

³⁰ *See id.* .

³¹ *Id.* at 83.

³² *Id.*

³³ *Id.* .

³⁴ *Id.* at 84.

³⁵ *Id.* at 86.

³⁶ *State v. Coley*, 93 Ohio St. 3d 253, 271 (Ohio 2001).

³⁷ *Id.* .

³⁸ *Id.*

³⁹ *Id.*

having sex with her own children.”⁴⁰

Douglas was largely “neglected and malnourished.”⁴¹ He and his brother “were forced to fend for themselves” by “panhandling and stealing and selling dope.”⁴² Coley’s father was absent, imprisoned for five years when he was just a few months old.⁴³ He served several different prison terms throughout Coley’s life and was largely absent, either in prison or abusing drugs.⁴⁴

Archie Dixon

Archie Dixon, only 20 at the time of the offense, experienced sexual abuse, horrendous childhood physical abuse, and neglect.⁴⁵ In federal court, Mr. Dixon’s lawyers presented evidence that his father severely abused him, hitting him with a baseball bat, kicking him, smacking him, and regularly losing control. On one occasion, Dixon’s father “put his steel toed boots on and kicked Dixon like a man,” resulting in a deformity to Dixon’s ribs.⁴⁶

Dixon’s father also badly mistreated Dixon’s mother, once firing “six rounds of his shotgun from inside the home;” she filed several domestic violence charges over the course of their relationship but later dropped them.⁴⁷ Archie’s father had a reputation for violence outside of the family, too. “Dixon’s foster mother described how employees at the local court feared Dixon’s father because he had once made a death threat to a court employee.”⁴⁸ Archie’s father was “arrested between seven and ten times for driving under the influence of alcohol”⁴⁹

Evidence also suggested occurrences of incest and familial sexual abuse.⁵⁰ Archie’s maternal grandfather “repeatedly” molested his sister.⁵¹ A caseworker indicated that there may have been sexual intercourse between both brothers and their sister, and between their father and sister. He documented “how the Dixon family was given the worst score regarding ‘family system pathology’ from ‘day one,’ never improved, and was one of the worst families with which he had worked.”⁵²

⁴⁰ *Id.*

⁴¹ *Id.*

⁴² *Id.* at 272.

⁴³ *See id.* a

⁴⁴ *Id.*

⁴⁵ *Dixon v. Houk*, 627 F.3d 553, 566 (6th Cir. 2010)(Cole, J., concurring), *cert. granted, judgment rev'd sub nom. Bobby v. Dixon*, 565 U.S. 23 (2011) .

⁴⁶ *Id.* at 566.

⁴⁷ *Id.* .

⁴⁸ *Id.*

⁴⁹ *Id.*

⁵⁰ *Id.* at 567.

⁵¹ *Id.*

⁵² *Id.*

Nixon's trial attorneys failed to present this compelling mitigating evidence at trial.⁵³ The penalty phase lasted just one day, with the defense presenting one witness who explained how long Mr. Dixon would remain locked up before receiving parole should the jury spare his life.⁵⁴

Stanley Adams

Stanley Adams's "father 'was a brutal and seriously disturbed personality,' who beat Adams's mother and his children regularly and sexually abused his sons and daughters. At one point, Adams's father took Adams and his siblings out of town and hid them for six months."⁵⁵ He told them their mother was dead.⁵⁶ During that time, Adams' father "taught the young children about sex, not only by having sex himself with the children, but by instructing and requiring [them] to have incestuous sexual relations with each other."⁵⁷ Adams was also rejected by his mother, who favored her other children, taking Adams' possessions and clothing, giving them to his siblings, then forcing Adams to attend school in rags.⁵⁸ When Adams and his siblings exhibited disruptive behavior following the six months of severe sexual abuse inflicted by his father, his mother abandoned them entirely, and each was placed in foster care.⁵⁹ She singled Adams out specifically, noting that his behavior was interfering with her relationship with a new man. Adams eventually lived in 11 different foster homes,⁶⁰ during which he suffered additional abuse.⁶¹

Adams suffered from depression, suicidal ideation, and a personality disorder.⁶² He began abusing alcohol and other substances at the age of five or six.⁶³ These were not Adams's only problems. He received an IQ score of 77, which is "in the low average to borderline range and in the lowest 12 percent of the population."⁶⁴

MENTAL ILLNESS, INTELLECTUAL DISABILITY, AND OTHER COGNITIVE IMPAIRMENTS

⁵³ *Dixon v. Houk*, 737 F.3d 1003, 1011-12 (6th Cir. 2013).

⁵⁴ See *State v. Dixon*, No. L-96-004, 2000 WL 1713794, at *13 (Ohio Ct. App. Nov. 17, 2000), *aff'd*, *State v. Dixon*, 101 Ohio St. 3d 328 (Ohio 2004).

⁵⁵ *State v. Adams*, 103 Ohio St. 3d 508, 536 (Ohio 2004).

⁵⁶ Trial Transcript, *State v. Adams*, 00-CR-700 (Trumbull County, Ohio Court of Common Pleas) at 4307.

⁵⁷ *State v. Adams*, No. 2001-2072 (Ohio), Merit Brief of Appellant Stanley Adams ("Adams Merit Brief"), at 136.

⁵⁸ *Id.* at 137.

⁵⁹ Trial Transcript, *State v. Adams*, 00-CR-700 (Trumbull County, Ohio Court of Common Pleas), at 4348-50.

⁶⁰ *Id.* at 4305.

⁶¹ *Adams*, 103 Ohio St. 3d at 536.

⁶² *Id.* at 535-36.

⁶³ *Id.*

⁶⁴ *Id.* at 535.

There are at least three defendants awaiting death who may well be intellectually disabled.⁶⁵ At least seven more have significantly sub-average intellectual functioning, with IQ scores below 85. These cases present similar concerns about lessened culpability and an inability to help counsel develop a compelling mitigation case. Six, if not more, suffer from a mental illness, and some of these men have a dual-diagnosis.

Fifteen years ago, the Supreme Court ruled that those who suffer from intellectual disability are insufficiently culpable to warrant a death sentence due to their “diminished capacities to understand and process information, to communicate, to abstract from mistakes and learn from experience, to engage in logical reasoning, to control impulses, and to understand others’ reactions.”⁶⁶ The same can be said of those who suffer from mental illness or other cognitive impairments, which also often restrict a person’s ability to control impulses and appreciate the consequences of his actions, particularly when untreated. For this reason, legislatures across the country have proposed bills to preclude the imposition of the death penalty for those who suffer from these impairments. In 2014, an Ohio task force recommended enacting legislation to make those who suffer from serious mental illness ineligible for the death penalty.⁶⁷

Stanley Fitzpatrick

Stanley Fitzpatrick suffers from mental illness – a major depressive disorder with psychotic features and substance-induced psychotic disorder – and intellectual disability.⁶⁸ Around the time Fitzpatrick committed his crimes, he suffered from both auditory and visual hallucinations accompanied by anxiety, depression, paranoia, and mental confusion.⁶⁹ He made a call to 911, for example, complaining about phantoms in his yard,⁷⁰ and the murders he committed followed a hallucination where he reported “the devil appeared, had a conversation with [Fitzpatrick], and seemed to suck the life out of [him]; that [Fitzpatrick] saw demons, and drug dealers who were not there, and heard people who were not there walking around upstairs.”⁷¹

Fitzpatrick also likely suffers from intellectual disability. Even though his IQ is a devastatingly low 69, his trial attorneys did not mount this defense, which today would make him categorically

⁶⁵ See *State v. White*, 118 Ohio St. 3d 12, 14 (2008) (The intellectually disabled show “(1) significantly subaverage intellectual functioning, (2) significant limitations in two or more adaptive skills, such as communication, self-care, and self-direction, and (3) onset before the age of 18.”).

⁶⁶ *Atkins v. Virginia*, 536 U.S. 304, 305 (2002).

⁶⁷ JAMES A. BROGAN, JOINT TASK FORCE TO REVIEW THE ADMINISTRATION OF OHIO’S DEATH PENALTY, FINAL REPORT & RECOMMENDATION 6-7 (2014), available at <http://www.sc.ohio.gov/Boards/deathPenalty/resources/finalReport.pdf>.

⁶⁸ *State v. Fitzpatrick*, 102 Ohio St. 3d 321, 335 (2004).

⁶⁹ *Fitzpatrick v. Bradshaw*, No. 1:06-cv-356, 2008 WL 7055605, at *18 (S.D. Ohio Oct. 14, 2008).

⁷⁰ Merit Brief of Appellant, *State v. Fitzpatrick*, (No. 2002-0506), 2002 WL 34183339, at *27.

⁷¹ *Id.*

ineligible for the death penalty.⁷² They did not pursue further evaluations or investigate whether he met the other criteria for intellectual disability, and incredibly, did not introduce any evidence of his low IQ during the penalty phase.⁷³

James Frazier

James Frazier's intellectual troubles started early. He failed the first grade,⁷⁴ and was designated a "slow learner" and attended "special classes."⁷⁵ Even in the special education environment, Frazier earned almost all "D's," and he dropped out of high school at the age of 19 while in the tenth grade.⁷⁶ According to expert trial testimony, Frazier has an IQ of 72, "which places him in the borderline [intellectually disabled] range of intelligence."⁷⁷ As an adult, the government awarded Mr. Frazier social security benefits based on a mental retardation diagnosis.⁷⁸

Like many on death row, Frazier had other obstacles to overcome. Frazier was raised with five siblings in a household that brought in a weekly wage of \$64.⁷⁹ His parents provided no supervision, but his father did issue periodic "whoopings."⁸⁰ Frazier was also a victim of sexual abuse. According to one expert, "when [Frazier] was 13 or 14 years old, a man abducted him while he was getting off a bus and sodomized him." The expert testified that Frazier's trust in other people "evaporated after that experience."⁸¹

James Derrick O'Neal

At least one defense expert has identified O'Neal as borderline intellectually disabled,⁸² functioning in the "lower two to three percent of the general population,"⁸³ while another described him "as suffering from both low intelligence and 'minimal cerebral dysfunction,' or a basic problem in the 'hard wiring' of his brain."⁸⁴ A school psychologist who evaluated O'Neal at 14 years old – when he was having trouble keeping up in the sixth grade – reported he had a "full-scale IQ score of 64 and well-below-grade-level academic achievement;" she recommended

⁷² Fitzpatrick v. Robinson, 723 F.3d 624, 637 (6th Cir. 2013).

⁷³ *Id.*

⁷⁴ State v. Frazier, 115 Ohio St. 3d 139, 176-77 (2007).

⁷⁵ *Id.*

⁷⁶ *See id.*

⁷⁷ *Id.* at 179.

⁷⁸ *See id.* at 177-78.

⁷⁹ *See id.* at 177.

⁸⁰ *Id.*

⁸¹ *Id.*

⁸² State v. O'Neal, 87 Ohio St. 3d 402, 419 (2000)

⁸³ *Id.* at 420.

⁸⁴ *Id.* at 419.

the school place O'Neal in a "slow learner" program.⁸⁵ On other IQ tests, O'Neal scored a 63, 67, and 71.⁸⁶

David Sneed

David Sneed suffers from a mental illness and has impaired cognitive functioning that borders on intellectual disability. He has been diagnosed with "severe manic bipolar disorder and a schizo-affective disorder involving hallucinations and delusions."⁸⁷ In the months leading up to Sneed's crime, "a treating physician concluded Sneed was 'suffering from a mental illness of a severity requiring hospitalization.'"⁸⁸ The psychiatrist described Sneed as "psychotic, delusional, and . . . assaultive."⁸⁹ After his arrest, Sneed was initially found incompetent to stand trial.⁹⁰ Once stabilized on psychotropic drugs, Sneed regained his competency and became a "model prisoner."⁹¹

In addition to this debilitating mental illness, Sneed also has a significantly below-average IQ, and doctors described him as having "borderline intellectual functioning."⁹² Two psychiatrists who testified at Sneed's penalty phase both agreed that Sneed's mental illness and impaired intellectual abilities combined to prevent him from appreciating the criminality of his actions.⁹³

Like others discussed in this report, Sneed also suffered from serious physical and sexual abuse and neglect. Sneed's mother, his sole caregiver, "was taken to prison for child endangerment because she was absent from the home when a fire occurred there. Sneed and his siblings were then placed in foster care."⁹⁴ Sneed was just a toddler when he was sexually abused by members of his foster family, and later, while in elementary school, experienced "severe, prolonged sexual abuse between the ages of seven and ten" at the hands of a neighbor, who forced him to perform fellatio and repeatedly fondled him.⁹⁵ Sneed was also sexually abused by his mother's male friend "who during walks together would sometimes take [Sneed] into an abandoned home,

⁸⁵ State v. O'Neal, No. C-050840, 2006 WL 3457703, at *1 (Ohio Ct. App. Dec. 1, 2006). At trial, "Chiappone noted that appellant completed twelve years of education but was passed academically only because he was a very good basketball player." *O'Neal*, 87 Ohio St. 3d at 418..

⁸⁶ Based largely on the single IQ score above 70 and a State expert who attributed Mr. O'Neal's life skills deficits to psychological problems rather than intellectual disability, the appellate court rejected the *Atkins* claim. See *O'Neal*, 2006 WL 3457703, at *2-*5.

⁸⁷ Sneed v. Johnson, No. 1:-4CV 558, 2007 WL 709778, at *34 (N.D. Ohio Mar. 2, 2007).

⁸⁸ *Id.* at *57.

⁸⁹ *Id.*

⁹⁰ *Id.* at *34.

⁹¹ *Id.* at *58.

⁹² State v. Sneed, 63 Ohio St. 3d 3, 20 (1992).

⁹³ *Id.*

⁹⁴ *Sneed*, 2007 WL 709778, at *58.

⁹⁵ *Id.* at *59.

where he would give [Sneed] money to fondle him and perform oral sex.”⁹⁶

Angelo Fears

Angelo Fears has an IQ of 75.⁹⁷ Like many with impaired intellectual functioning, Fears’ personality was that of a “follower, easily manipulated.”⁹⁸ He comes from a family with a history of mental illness, which is often hereditary -- his mother suffered from depression and experiencing repeated psychiatric hospitalizations.⁹⁹

Like many discussed, Fears experienced serious childhood abuse. Fears’ father threw the children against walls, “beat[]them with his fists or a belt, sho[t] them with a BB gun, and [woke] them up for beatings.”¹⁰⁰ He made Fears and his brother urinate in a sleeping uncle’s mouth,¹⁰¹ and forced his sons to fight with older, larger cousins.¹⁰² “[W]hen Fears was very young, he accompanied his father on visits to the father’s various paramours. The father gave Fears copious quantities of alcohol to persuade Fears not to tell his mother about his father’s dalliances.”¹⁰³ In addition, when Fears was a teenager, he and his father would drink all night together.¹⁰⁴ By the age of twelve, Fears was regularly abusing alcohol.¹⁰⁵

YOUTH

Three of the twenty-six men committed their crimes before turning twenty-one years old. In *Roper v. Simmons*, the Supreme Court prohibited the execution of juveniles, concluding that their reduced culpability “render[ed] suspect any conclusion that a juvenile falls among the worst offenders.”¹⁰⁶ Because their brains have not fully developed, juveniles often engage “in impetuous and ill-considered actions and decisions,” and are “more vulnerable or susceptible to negative influences and outside pressures, including peer pressure.”¹⁰⁷ The “susceptibility of juveniles to immature and irresponsible behavior means their irresponsible conduct is not as

⁹⁶ *Id.* at *60.

⁹⁷ Brief of Petitioner-Appellant, *Fears v. Bagley*, (No. 08-4050), 2010 WL 6571052 (C.A.6) at *7.

⁹⁸ Reply Brief of Petitioner-Appellant, *Fears v. Bagley*, (No. 08-4050), 2011 WL 1461656 (C.A.6) at *8; *see also Atkins*, 536 U.S. at 318 (“[I]n group settings [the intellectually disabled] are followers rather than leaders.”).

⁹⁹ *Fears v. Bagley*, No. 1:01-cv-183, 2008 WL 2782888, at *25 (S.D. Ohio).

¹⁰⁰ Reply Brief of Petitioner-Appellant, *supra* note 98, at *8.

¹⁰¹ *State v. Fears*, No. C-990050, 1999 WL 1032592, at *8 (Ohio Ct. App. 1999).

¹⁰² *Fears v. Bagley*, No. 1:01-cv-183, 2008 WL 2782888, at *28.

¹⁰³ *Id.* at *26.

¹⁰⁴ *Id.* at *28.

¹⁰⁵ *State v. Fears*, 86 Ohio St.3d 329, 349 (1999).

¹⁰⁶ *Roper v. Simmons*, 543 U.S. 551, 570 (2005).

¹⁰⁷ *Id.* at 569 (quoting *Johnson v. Texas*, 509 U.S. 350, 367 (1993)).

morally reprehensible as that of an adult.”¹⁰⁸

Although the Court drew the line at barring executions to those below 18, scientific research on brain development demonstrates that maturation does not occur until an individual is well into his 20s.¹⁰⁹ Because the same deficiencies in cognitive processes, risk-reward evaluation, and emotional regulation exist in young adults,¹¹⁰ their culpability, relative to a mature adult, is likewise reduced. For this reason, a trial court in Kentucky recently found the death penalty was unconstitutional for those who committed their crimes before turning 21.¹¹¹

Gary Otte

One of these individuals is Gary Otte – the next man scheduled for execution – who committed his crime 25 years ago when he was just 20 years old. Otte also spent his lifetime suffering from chronic depression,¹¹² was regarded as a “very sad little boy” who was socially isolated, had psychological problems, developmental delays, learning disabilities, and was emotionally handicapped.¹¹³ Perhaps in response to these psychological difficulties, Otte began abusing alcohol and drugs at age 10,¹¹⁴ and first attempted suicide at age 14.¹¹⁵ Six years later, having received little help, he committed the offenses for which he was sentenced to death.¹¹⁶ During the last 25 years, Otte has received disciplinary punishment only a handful of times, which is remarkable compared to others with similar years behind bars. His record shows just how much an individual can change once his brain develops.¹¹⁷

William Montgomery

William Montgomery was only 20 years old at the time of the offense for which he was sentenced to death.¹¹⁸ Montgomery may be mentally ill, according to an evaluating psychologist,

¹⁰⁸ *Id.* at 570 (quoting *Thompson v. Oklahoma*, 487 U.S. 815, 835 (1988)) (internal quotations omitted).

¹⁰⁹ See generally Jay N. Giedd, *The Amazing Teen Brain*, *Sci. AM.*, June 2015, at 36; Laurence Steinberg, *A Social Neuroscience Perspective on Adolescent Risk-Taking*, 28 *DEV. REV.* 78 (2008).

¹¹⁰ See Giedd, *supra* note 109, at 37; Steinberg, *supra* note 109.

¹¹¹ See Order Declaring Kentucky’s Death Penalty Statute as Unconstitutional, *State v. Bredhold*, No. 14-CR 161 (Ky. Cir. Ct. 7th Div. Aug. 1, 2017), available at <https://deathpenaltyinfo.org/files/pdf/TravisBredholdKentuckyOrderExtendingRopervSimmons.pdf>.

¹¹² Petition for Commutation of Sentence, *In re Gary Otte*, CCI #A264-667 (Jan. 26, 2017) at 12.

¹¹³ *Otte v. Houk*, No. 1:06CV1698, 2008 WL 408525, at *42 (N.D. Ohio Feb. 12, 2008).

¹¹⁴ *Id.* at *37, 40.

¹¹⁵ Petition for Commutation of Sentence, *supra* note 113, at 14.

¹¹⁶ *Otte v. Houk*, 654 F.3d 594, 598-99, 602-03 (6th Cir. 2011); Petition for Commutation of Sentence, *supra* note 112, at 18-19.

¹¹⁷ Death Penalty Clemency Report, *In re Gary Otte*, CCI #A264-667 (Feb. 10, 2017) at 7.

¹¹⁸ *State v. Montgomery*, 61 Ohio St. 3d 410, 419 (1991).

¹¹⁹ and he may also be innocent. The government alleged that both Montgomery and his friend, Glover Heard, committed the charged murder, but the only person to clearly implicate Montgomery was Heard, who testified in exchange for a lenient plea deal.¹²⁰ Almost all of the other evidence implicated Heard, not Montgomery – Heard drove off with the victim’s car;¹²¹ Heard had the victim’s wallet in his house;¹²² Heard gave the police five different conflicting stories, only the last of which implicated Montgomery; and Heard provided testimony that contradicted all other witness accounts.¹²³ Montgomery owned the murder weapon, but Heard had access to it on the night of the shooting.¹²⁴

CONCLUSION

Our research suggests that the 26 individuals that Ohio intends to execute each suffer from some combination of severe mental illness, intellectual disability, serious childhood trauma from physical and sexual abuse, or were young adults with impaired judgment when they committed their crimes. The only exceptions are the three men who refused to allow defense attorneys to present mitigating evidence – we simply do not know about their backgrounds, however, our experience tells us that their stories are likely not dissimilar from those highlighted in this report. The Eighth Amendment prohibits the execution of society’s most vulnerable and limits its imposition to the most culpable in our society. Unless the Governor or a Court intervenes, over the course of the next two years, Ohio is poised to violate that constitutional limitation by scheduling the executions of nearly a dozen individuals with devastating impairments, including mental illness, childhood abuse, and intellectual disability.

¹¹⁹ *Montgomery v. Bagley*, 482 F. Supp. 2d 919, 991-92 (N.D. Ohio 2007), *rev’d sub nom. Montgomery v. Bobby*, 654 F.3d 668 (6th Cir. 2011).

¹²⁰ *Montgomery v. Bobby*, 654 F.3d 668, 673-74 (6th Cir. 2011).

¹²¹ *Id.* at 673.

¹²² *Id.* at 680.

¹²³ *See id.* at 704 (Clay, J., dissenting) (describing several inconsistencies with other witnesses).

¹²⁴ *Id.* at 693 (Merritt, J., dissenting) and 703 (Clay, J., dissenting) (“Randleman's testimony indicates that both [Montgomery] and Heard had the opportunity to take the gun off of the top of Randleman's refrigerator on their way out of his house that night. However, as Randleman himself admitted, he ‘d[idn't] know who took [the gun] . . . [he] never s[aw] anybody take the gun. . . .”).