

CHOOSING LIFE IN A DEATH PENALTY STATE

A Birmingham News editorial series

Many murders, few executions

THE ISSUE *Alabama's application of the death penalty is unfair and arbitrary.*

Michael Landrum hired a hit man in 2003 to kill his own 3-year-old daughter and her grandmother. Ida Little was shot in the head and stomach; young Mikayla Little was shot in the face. The child's mother, who was not Landrum's wife, was serving in Iraq at the time.

Prosecutors claimed Landrum wanted Mikayla dead to keep his wife from learning about his extramarital affair — and to get out of paying child support. The hit man, who pleaded guilty and testified against Landrum, said he got \$500 for the killings in rural Marengo County.

The same year, Julian and Florence McKinnon were found bludgeoned to death in their Elmore County home — the day after they received \$10,000 for selling some land in Clio. Soon after, police found the McKinnons' longtime handyman, Charlie Washington, with a sizable sum of cash and crack cocaine. He was ar-



Michael Landrum
Received life sentence



Charlie Washington
Sentenced to death

rested and convicted of killing the couple.

Both the Washington and Landrum cases more than qualified for a death sentence under Alabama law. Washington had multiple victims who were killed in the course of a robbery or burglary. Landrum's crime met even more of the criteria for capital murder: a murder-for-hire, with multiple victims, one of them younger than 14.

A Marengo County jury and judge spared Landrum's life, sentencing him to life in prison with no chance for parole. An Elmore County jury and judge sentenced Washington to death.

What separated the cases? Both defendants were black. Both claimed innocence. Neither had criminal histories. Each was convicted of a brutal crime resulting in two deaths.

But there were key differences: Landrum was a football star, the first black quarterback ever to play at the University of Alabama. He had a good job, a respected family and the resources to hire his own lawyer. Washington was a poor high-school dropout who had to rely on court-appointed lawyers.

In addition, there's this: Landrum's victims were black; Washington's were white.

The contradictory results are hardly a fluke.

The death penalty isn't applied fairly in Alabama. If it were, the horror of a particular crime and the guilt of a particular defendant would determine whether a case ended with a sentence of death. Instead, the outcomes often hinge on the status of the accused, the quality of the defense, the race of the victim, even the location of the crime.

Deep defects

Those who revere life in all its precious forms, as this editorial board does, should be troubled by the deep defects in Alabama's system of dealing with cases that can end in death.

Who gets the death penalty — and who doesn't — is a monumental issue across the country. It's especially important in Alabama, a state that sentences more people to death and has more death penalty crimes than most other states. Eighteen varieties of murder, from killing someone in a

car, to killing a police officer, can buy you a 5-by-8 cell on Death Row. But not everyone who commits one of these crimes is condemned to die — not by a long shot.

In 2003, Alabama logged close to 300 homicides, according to the Alabama Criminal Justice Information Center. That same year, more than 130 people were charged with capital murder. Of the cases that had been resolved by late summer, less than half ended with a capital murder conviction — and only three ended with death sentences, according to the Administrative Office of Courts.

Those who get the ultimate punishment are not necessarily the worst of the worst.

For every classic psychopath on Death Row, there are others who killed in a fit of rage, in the throes of mental illness, in a fog of drugs, or in a garden-variety holdup gone terribly awry. And for every person sentenced to die for a perfectly horrendous crime, there are dozens spared despite equally horrendous crimes.

In cases from 2003, the three people condemned to die were Washington; Jimmy Lee Brooks, who killed a 12-year-old and buried the boy's father alive; and Christopher Shane Hyde, who killed three people at a funeral home robbery in Walker County. For each of these defendants, many more also could have gotten the death penalty that year: defendants including Shanta Phillips, who shot a 6-year-old during an apparent attempt to ambush police officers in Pritchard; Rashad Woods, who shot a 30-year-old Ensley woman between the eyes for her necklace and VCR; and, of course, Landrum.

There were almost as many scenarios as there were murders that year. But at least one common thread united the cases ending in a death sentence: The victims were white. This isn't a coincidence.

An obvious role

We use cases from 2003 because it's the most recent year in which a sizable number of death penalty cases have been resolved. But year in and year out, race has played an obvious role in who gets the state's most severe punishment.

It's not so much that blacks are disproportionately sent to Death Row, although they are. They make up a quarter of the state's population and half of Death Row.

But the more striking disparity involves the race of the victim. Blacks are much more likely than whites to be murder victims. In 2003, for instance, blacks made up 60 percent of the homicide deaths.

But Death Row doesn't reflect that lopsided statistic. Indeed, it's just the opposite. Of murder victims whose killers were sentenced to death over the past 30 years, more than 75 percent were white, according to the Equal Justice Initiative of Alabama, a Montgomery-based nonprofit group that represents Death Row inmates.

Attorney General Troy King says race isn't a factor in how his office handles cases. "I believe we are seeking justice regardless of the color of the person's skin," he said. "I believe the death penalty is a strong signal that we value life."

But if putting killers to death is a way of expressing how strongly society feels about the lives of victims, as King argues, the only way to interpret our state's record is that we treasure white lives much more than black lives.

"Even if it's not intentional, it has that image," said Richard Dieter, executive director of the Death Penalty Information Center in Washington, D.C.

Even biases that are buried can emerge in capital cases because humans make the call about who gets life and who gets death.

Local district attorneys decide whether to charge people with capital crimes, whether to let defendants plead (as most do) to lesser offenses and whether to seek the death penalty. Juries decide guilt and recommend a sentence. Judges make the ultimate call about punishment. At each step, there are openings for unfairness to creep in.

Start with the prosecutors, who each have their own approach to death-penalty cases.

Jefferson County District Attorney David Barber says his philosophy is to charge any crime that meets any of the legal criteria as capital murder — and to seek the death penalty. "That way we won't get in a situation of picking and choosing," he said.

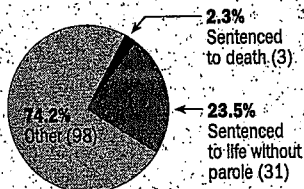
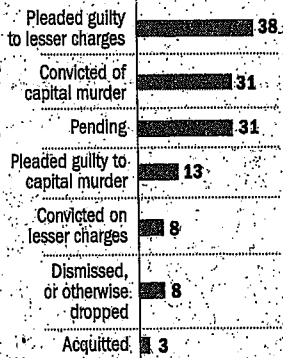
Yet one county away, Shelby County's Robby Owens does pick and choose. He says he doesn't go after the death penalty unless the murder was calculated, there's no question of guilt and he believes the defendant isn't worth saving.

Owens believes his approach reserves Death Row for the worst of the worst. But that leaves Shelby County open to questions of fairness.

Murder by numbers

In 2003, there were 132 people charged with capital murder in Alabama.

Results since charges filed*



* As of late summer

Judges discretion

In Alabama, 83 death sentences have been imposed against a jury's recommendation. Three judges account for 20 percent of judicial overrides.

Judges with the most overrides

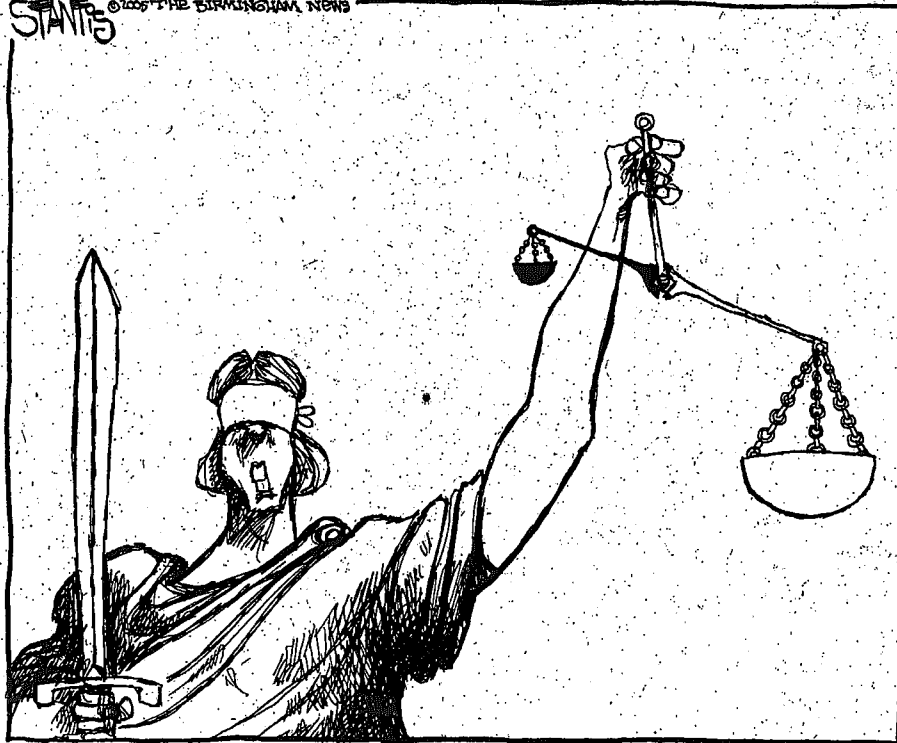
Braxton Kittrell, Mobile	7
Ferrill McRae, Mobile	5
Randall Thomas, Montgomery	5



Kittrell McRae Thomas

Sources: Alabama Administrative Office of Courts, Equal Justice Initiative

A BIRMINGHAM NEWSGRAPHIC



THE SCALES OF ALABAMA JUSTICE

Exhibit A

Indeed, Death Row inmates who complain of disparities like to point to one of Owens' cases as Exhibit A: the case of road-rage killer Shirley Henson.

Technically, the crime qualified as a death-penalty offense because Henson was in her car when she shot Genia Newell Foster on Interstate 65. But Owens didn't seek the death penalty, saying the crime wasn't "thought out."

Henson, a former legal secretary, hired one of the state's premier criminal lawyers to defend her. Instead of a death sentence, she was convicted of manslaughter and served four years in prison.

The point isn't that she deserved to die. The point is that her fate could have been different if the highway confrontation had occurred a county away — particularly in Talladega County.

Talladega is the 15th-largest county in Alabama, but has the third-largest contingent of inmates on Death Row. Talladega had 13 condemned inmates as of October, behind only Jefferson and Montgomery.

The reason is simple, Talladega County District Attorney Steve Giddens said: Those inmates committed crimes worthy of the ultimate punishment.

"They get the death penalty for themselves," Giddens said. "They're not picked out of the phonebook or picked up off the streets. I'm getting tired of hearing it's not fairly applied."

But how fair can it be when a crime in one county is deemed worthy of the state's worst punishment, while an almost identical crime in

another county is not?

The issue goes beyond the prosecutor. There's also the jury.

"I call it the uncommon denominator," Barber said. "You've got the eighth wonder of the world sitting in the jury box."

Giddens believes most jury decisions in death penalty cases are right. But there's no question jurors in some counties are more likely to recommend death sentences than jurors in other counties.

Bryan Stevenson, who represents a number of Death Row inmates through the Equal Justice Initiative, said the death penalty is more likely to come out of counties with mixed racial populations and wider income disparities. Stevenson

believes the death penalty is used in those counties as a way to enforce social order — a motivation that can lead to unfairness.

Judges, too, play a role — more so in Alabama than in most other states. Here, judges can impose a death sentence even when a jury recommends against it. That is a frightening power, considering Alabama judges are elected and under pressure to be tough on crime.

Lethal locales

More than half of Alabama's current 188 Death Row inmates come from these seven counties:

County	Death Row inmates
Jefferson*	33
Montgomery	15
Talladega	13
Houston	12
Mobile	12
Madison	8
Baldwin	8

* Includes Bessemer/Cutoff

Source: Alabama Department of Corrections
A BIRMINGHAM NEWSCHART.

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THE SERIES | WHAT'S NEXT

Tuesday: Alabama's hodgepodge, bare-bones system of defending poor people is indefensible.

Wednesday: Will the state kill Anthony Ray Hinton, who makes a compelling case for his release from Death Row?

Thursday: The reasons death penalty support-

ers use to make the case for the ultimate punishment, such as deterring other crimes, don't hold up.

Friday: Embracing a culture of life begins with acknowledging the state's system of capital punishment doesn't work.

Liberal overrides

Only a handful of states grant judges this kind of power, and even then, it is restricted and rarely used. In Alabama, it is used liberally, accounting for about 20 percent of the people on Death Row. Worse, the override power adds another arbitrary element to capital cases in Alabama because some judges are more willing than others to use it.

Some have never side-stepped a jury's wishes to sentence someone to death; others have done so on more than one occasion. Since 1982, 53 judges have handed down 83 death sentences against a jury's wishes; more than 1 in 5 overrides were the work of just three judges.

One of the three, retired Montgomery Circuit Judge Randall Thomas, sent five people to Death Row using the override power. He says he struggled with the decisions, but ultimately ruled based on the people and cases before him. Thomas won't tell you he never made a mistake.

But, he said, "I can look you in the eye and tell you I never made the wrong decision for the wrong reason."

He believes judges need to have this kind of discretion. But Thomas acknowledges the flip side to discretion is sometimes disparity.

"Everybody is equal in the eyes of the law," he said, "but there are no two people who are the same."

But the difference between life and death should at least be grounded in real distinctions between crimes and criminals. Those distinctions are not always apparent in Alabama, as the Landrum and Washington cases demonstrate.

"We live in a state where the outcome of a death-penalty trial may hinge on 'who you are, how much money you have, which district you're in, which judge, which jury, maybe what day it is,'" said Richard Jaffe, a defense lawyer who has handled a number of capital cases.

In other words, the luck of the draw.

That may be an acceptable way to determine who wins a poker game. It's no way to determine who lives and who dies.

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