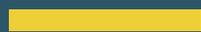




AMERICA'S TOP FIVE DEADLIEST PROSECUTORS:

*How Overzealous Personalities
Drive The Death Penalty*



Last year, a journalist asked Dale Cox, then the District Attorney of Caddo Parish, Louisiana, about the wisdom of the death penalty in light of the recent exoneration of Glenn Ford, a man who spent thirty years on death row for a crime that he did not commit.¹ Cox told the reporter: “I think we need to kill more people.”² “Revenge,” he said, “brings to us a visceral satisfaction.”³ Between 2010 and 2015, Cox alone secured one-third of Louisiana’s death sentences.⁴

Cox’s disproportionate use of the death penalty illustrates a point that Justice Stephen Breyer recently made. “It is now unusual to find capital punishment in the United States,”⁵ Breyer wrote, because “capital prosecutions are being pursued in only a few isolated counties.”⁶ There are more than 3,100 counties,⁷ 2,400 head prosecutors,⁸ and thousands of line prosecutors in America—yet only a tiny handful of prosecutors are responsible for a vastly disproportionate number of death sentences. The question that this disparity prompts is: **Why?**

- 1 Alexandria Burris, *Glenn Ford, Exonerated Death Row Inmate, Dies*, USA Today, Jun. 29, 2015, <http://www.usatoday.com/story/news/nation/2015/06/29/glenn-ford-exonerated-death-row-inmate-dies/29489433/>.
- 2 Vickie Welborn, *ADA On Death Penalty: ‘We Need To Kill More People’*, Shreveport Times, Mar. 27, 2015, <http://www.shreveporttimes.com/story/news/local/2015/03/27/glenn-ford-dale-cox-charles-scott-caddo-parish-death-penalty-execution-marty-stroud/70529188/>.
- 3 Leon Neyfakh, *Bloodthirsty Prosecutor Who Said “We Need To Kill More People” Will Not Run For Reelection*, Slate (Jul. 14, 2015), http://www.slate.com/blogs/the_slatest/2015/07/14/dale_cox_louisiana_prosecutor_with_horrendous_death_penalty_views_will_not.html.
- 4 *1 County, 2 Prosecutors Responsible for 3/4 of Recent Louisiana Death Sentences, Amid Charges of Prosecutorial Misconduct*, Death Penalty Info. Ctr. (2015), <http://www.deathpenaltyinfo.org/node/6097>.
- 5 *Glossip v. Gross*, 135 S.Ct. 2726, 2774 (2015).
- 6 *Id.* See also Robert J. Smith, *America’s Deadliest Prosecutors*, Slate (May 14, 2015), http://www.slate.com/articles/news_and_politics/jurisprudence/2015/05/america_s_deadliest_prosecutors_death_penalty_sentences_in_louisiana_florida.html; Richard C. Dieter, *The 2% Death Penalty: How A Minority Of Counties Produce Most Death Cases At Enormous Costs To All*, Death Penalty Info. Ctr. (2013), available at <http://www.deathpenaltyinfo.org/documents/TwoPercentReport.pdf>.
- 7 *How Many Counties Are There In The United States?*, U.S. Geological Surv., <https://www2.usgs.gov/faq/categories/9799/2971> (explaining that “there are 3,141 counties and county equivalents in the 50 States and the District of Columbia.”).
- 8 Kyle Swenson, *Florida’s Elected State Attorneys: Overwhelmingly White And Male*, Broward-Palm Beach New Times, Jul. 9, 2015, <http://www.browardpalmbeach.com/news/floridas-elected-state-attorneys-overwhelmingly-white-and-male-7101778>.

This report analyzes the records of five of America's deadliest head prosecutors. Three of them personally obtained over 35 death sentences each: Joe Freeman Britt in North Carolina, Bob Macy in Oklahoma, and Donnie Myers in South Carolina. These men shared an obsession with winning death sentences at almost any cost.⁹ For example, Joe Freeman Britt, who committed misconduct in more than 36% of his death penalty prosecutions,¹⁰ said: "Within the breast of each of us burns a flame that constantly whispers in our ear 'preserve life, preserve life, preserve life at any cost.' It is the prosecutor's job to extinguish that flame."¹¹ The remaining two prosecutors, Lynne Abraham (Philadelphia County, Pennsylvania) and Johnny Holmes (Harris County, Texas), did not personally prosecute as many death penalty cases as the three men above, but nonetheless oversaw the imposition of death sentences against a staggering 108¹² and 201 people,¹³ respectively, during their terms.

Of these five prosecutors, only one—Donnie Myers—remains in office, and he plans to retire at the end of the year.¹⁴ One of the most remarkable findings from our research is the fact that once these prosecutors and their protégés left their positions, death sentences dramatically declined in these jurisdictions--a pattern that has only become clear in the years since their departures.

We also highlight five additional prosecutors who came very close to becoming members of this notorious group. These runners-up have egregious records in their own states, and like the prosecutors above, the striking drop in new death sentences that has occurred in their respective jurisdictions since their departures illustrates their outsized impact on the death penalty.

Unfortunately, the problem of personality-driven capital sentencing has continued beyond the tenure of these prosecutors. Over the past fifteen years, prosecutors have pursued far fewer capital cases and juries have returned far fewer death sentences than in years past. Indeed, in 2015, juries returned just 49 death sentences, the fewest in recent history. This number represents an 84.4% drop from

9 See, e.g., John A. Horowitz, *Prosecutorial Discretion And The Death Penalty: Creating A Committee To Decide Whether To See The Death Penalty*, 65 *Fordham L. Rev.* 2571 (1997), available at <http://ir.lawnet.fordham.edu/cgi/viewcontent.cgi?article=3377&context=flr> (examining prosecutorial discretion in the context of the death penalty).

10 See AMERICA'S DEADLIEST PROSECUTORS SPREADSHEET: DONNIE MYERS, JOE FREEMAN BITT, AND BOB MACY, <http://fairpunishment.org/wp-content/uploads/2016/06/Americas-Deadliest-Prosecutors-Donnie-Myers-Joe-Freeman-Britt-and-Bob-Macy.xlsx>.

11 Barry Saunders, *An End To Joe Freeman Britt's Brand Of Justice*, *News & Observer*, Apr. 11, 2016, <http://www.newsobserver.com/news/local/news-columns-blogs/barry-saunders/article71222712.html>.

12 Robert Brett Dunham, Assistant Federal Defender, Federal Public Defender Office for the Middle District of Pennsylvania, *Philadelphia Death Row: 1990-2014* (Feb. 23, 2015).

13 See AMERICA'S DEADLIEST PROSECUTORS SPREADSHEET, *supra* note 10.

14 Andy Shain & Tim Flach, *Veteran Lexington Prosecutor Myers Retiring*, *The State*, Mar. 15, 2016, <http://www.thestate.com/news/local/article66304792.html>.

the 1996 high of 315 death verdicts.¹⁵ However, in the increasingly small number of the counties that still actively sentence people to death, a handful of prosecutors dominate death-sentencing statistics.

In the final section of this report, we offer a snapshot of three active prosecutors who, if they continue on their current trajectories, may soon join the ranks of the deadliest prosecutors in America. Taken together, the profiles featured in this report demonstrate that the death penalty has been, and continues to be, a personality-driven system with very few safeguards against misconduct and frequent abuse of power, a fact that seriously undermines its legitimacy.

¹⁵ Death Sentences By Year: 1976-2014, Death Penalty Info. Ctr., <http://www.deathpenaltyinfo.org/death-sentences-year-1977-2009> (last visited May 26, 2016).

THE WORST OF THE WORST

"Within the breast of each of us burns a flame that constantly whispers in our ear 'preserve life, preserve life, preserve life at any cost,'" Joe Freeman Britt once said. "It is the prosecutor's job to extinguish that flame."¹⁶

#1

NAME	JOE FREEMAN BRITT
COUNTY	ROBESON COUNTY, NC
# OF DEATH SENTENCES	38
YEARS IN OFFICE	1974-1988 (14 YEARS)
MISCONDUCT ALLEGED	81.6% (31/38)
MISCONDUCT FOUND	36.8% (14/38)
EXONERATIONS	2



Joe Freeman Britt was the head prosecutor for Robeson County, North Carolina, from 1974 to 1988.¹⁷ He personally obtained 38 death sentences,¹⁸ more than any other prosecutor in the state's history,¹⁹ and his status as "the deadliest prosecutor in America" is recorded in the Guinness Book of World Records.²⁰

¹⁶ See Saunders, *supra* note 11.

¹⁷ Matt Schudel, *Joe Freeman Britt, Prosecutor Who Sent Dozens To Death Row, Dies At 80*, Wash. Post, Apr. 15, 2016, https://www.washingtonpost.com/national/joe-freeman-britt-prosecutor-who-sent-dozens-to-death-row-dies-at-80/2016/04/15/b246f27e-025b-11e6-b823-707c79ce3504_story.html.

¹⁸ See AMERICA'S DEADLIEST PROSECUTORS SPREADSHEET, *supra* note 10. This number is lower than reported in some sources because of the methodology used in this report. We chose not to include concurrent death sentences, due to their duplicative and essentially symbolic nature.

¹⁹ See Schudel, *supra* note 17. Schudel explains that "after just one year on the job, Mr. Britt had won more death-row convictions than any other prosecutor in the country." Despite the fact that these sentences were later overturned because of North Carolina's unconstitutional pre-Gregg legislative response to *Furman v. Georgia*, Britt's record still exceeded any other prosecutor at the time.

²⁰ Richard A. Oppel Jr., *As Two Men Go Free, a Dogged Ex-Prosecutor Digs In*, N.Y. Times, Sept. 7, 2014, http://www.nytimes.com/2014/09/08/us/as-2-go-free-joe-freeman-britt-a-dogged-ex-prosecutor-digs-in.html?_r=0.

At one point, one out of every 25 death row inmates nationwide had been prosecuted by Joe Freeman Britt.²¹ With the District Attorney's office under Britt's control, a person in Robeson County was almost 100 times more likely to be sentenced to death than a randomly selected person in the United States.²² What's even more striking is that in the 27 years before Britt's arrival, no one in Robeson County had been sentenced to death,²³ and with Britt out of office, Robeson County has imposed only two death sentences in the past decade.²⁴ Therefore, the remarkable increase in death sentences during Britt's tenure is likely due to Britt's overzealous prosecution, and not a reflection of abnormally high support for the death penalty by local residents.

Courts found that Britt committed misconduct in 14 of his death penalty trials,²⁵ and at the height of Britt's self-styled "blitz" on murderers, the North Carolina Supreme Court frequently condemned his tactics.²⁶ For example, defendant John Wesley Oliver received a new sentencing hearing because Britt failed to give to the defense an eyewitness's statement that cast doubt on the state's contention that Oliver was the shooter.²⁷

In prosecuting Henry McCollum and Leon Brown, two intellectually disabled brothers, Britt failed to notify the defense about a cigarette butt found at the crime scene, which DNA testing would later link to a different man.²⁸ Britt complained that "[w]hen we tried those cases, every time they would bring in shrinks to talk about how retarded they were. It went on and on and on, blah-blah-blah."²⁹ In addition, Brown was only 15 years old when he was charged.³⁰ McCollum, who was 19 years old, sustained hours of "intense questioning," without speaking to an

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- 21 See Cynthia F. Adcock, *The Twenty-Fifth Anniversary of Post-Furman Executions in N.C.: A History of One S. St.'s Evolving Standards of Decency*, 1 *Elon L. Rev.* 113, 119 n.27 (2009), available at http://www.elon.edu/docs/e-web/law/law_review/issues/adcock.pdf (citing Dee Reid, 'Killer' DA: In First 28 Months On Job, He Won 23 Death Verdicts, *Nat'l L. J.*, Sept. 17, 1984, at col. 3).
 - 22 Compare Population Overview: 1970-1995, N.C. Off. of St. Budget and Mgmt., <https://ncosbm.s3.amazonaws.com/s3fs-public/demog/pop7095.html> (last visited May 9, 2016) (displaying population statistics for Robeson, NC), with Historical National Population Estimates: July 1, 1990 to July 1, 1999, U.S. Census Bureau, <https://www.census.gov/population/estimates/nation/popclockest.txt> (last visited May 9, 2016) (displaying population statistics for U.S.).
 - 23 See Schudel, *supra* note 17.
 - 24 Smith, *supra* note 6.
 - 25 See AMERICA'S DEADLIEST PROSECUTORS SPREADSHEET, *supra* note 10.
 - 26 Hunter James, 'Deadliest Prosecutor' Has Achieved 41 Death Sentences, *Gainesville Sun*, March 16, 1986, at 1B, available at <https://news.google.com/newspapers?nid=dBzKUGQrMsC&dat=19860316&printsec=frontpage&hl=en>.
 - 27 Robert P. Mosteller, *Exculpatory Evidence, Ethics, and the Road to the Disbarment of Mike Nifong: The Critical Importance of Full Open-File Discovery*, 15 *Geo. Mason L. Rev.* 257, 261 n.11 (2008), available at http://scholarship.law.duke.edu/cgi/viewcontent.cgi?article=2486&context=faculty_scholarship.
 - 28 Joseph Neff, *DNA Evidence Could Free 2 Men In 1983 Case*, *Charlotte Observer*, Sept. 2, 2014, <http://www.charlotteobserver.com/news/local/crime/article9159632.html>.
 - 29 Victor Li, *Retired Prosecutor Who Convicted Two Men Just Exonerated After 30 Years Behind Bars Is Unrepentant*, *ABA J.*, Sept. 8, 2014, http://www.abajournal.com/mobile/article/ex_prosecutor_convicted_two_men_of_rape_and_murder_exonerated_afer_30_years.
 - 30 *State v. McCollum*, 433 S.E.2d 144, 160 (1993); see also Op-Ed., *How To Reduce Coerced Confessions And Wrongful Convictions*, *L.A. Times*, Oct. 14, 2014, <http://www.latimes.com/opinion/editorials/la-ed-recordings-police-interrogations-20141015-story.html>.

attorney or parent, and signed a confession only upon “a promise [he] could go home.”³¹ Britt relied on McCollum’s coerced statement to prosecute and seek death for the brothers, despite the mitigating fact that McCollum was “mentally retarded and easily influenced by others.”³² After DNA testing exonerated the men, Britt simply doubled down, insisting the two were “absolutely” guilty.³³ Both men spent 30 years in prison for a crime they didn’t commit, including time on death row. On June 4, 2014, North Carolina Governor Pat McCrory formally pardoned Brown and McCollum.³⁴



Henry McCollum and Leon Brown
Photo by Corey Lowenstein, The News & Observer

When the current Robeson County District Attorney called Britt “a bully” and chastised him for his unethical behavior in the McCollum case, Britt shot back, calling the new D.A. a “pussy” who had been “hanging around too much with the wine and cheese crowd.”³⁵ Even in his retirement, Britt displayed the same attributes that the North Carolina Supreme Court had rebuked him for two decades earlier. “Ministers of the law ought not to permit zeal in its enforcement to cause them to transgress its precepts,” the court wrote.³⁶ “They should remember that where the law ends, tyranny begins.”³⁷ This “flagrant disregard”³⁸ for well-established rules earned Britt notoriety as “a living symbol of the gross, almost medieval nature of the justice system in small Southern counties.”³⁹ As one journalist quipped, “Good Lord in Heaven, man. He did know he was dealing with people’s lives and not auditioning for ‘Matlock,’ right?”⁴⁰

Prosecutorial misconduct was found in more than one-third of Britt’s death penalty cases.⁴¹

31 Op-Ed., *supra* note 30.

32 *McCollum*, 433 S.E.2d at 161-62.

33 See Schudel, *supra* note 17.

34 Craig Jarvis, *Gov. McCrory Pardons Half-Brothers Imprisoned for Decades*, Charlotte Observer, June 4, 2015, <http://www.charlotteobserver.com/news/politics-government/article23092284.html>.

35 Opper, *supra* note 20.

36 *State v. Thompson*, 290 N.C. 431, 448 (1976).

37 *Id.*

38 *Id.* at 449.

39 Hamilton Nolan, *Prosecutor Who Sent Innocent Man To Death Row Proud He’s No “Pussy”*, Gawker (Sept. 8, 2014), <http://gawker.com/prosecutor-who-sent-innocent-man-to-death-row-proud-hes-1631877118>.

40 See Saunders, *supra* note 11.

41 See AMERICA’S DEADLIEST PROSECUTORS SPREADSHEET, *supra* note 10.

“There is no better example of how a weak state judicial system was overpowered by a powerful and malicious district attorney than that of Cowboy Bob Macy and the Oklahoma Court of Criminal Appeals.”

PROFESSOR RYAN PATRICK ALFORD.⁴²

#2

NAME	ROBERT H. MACY
AKA	“COWBOY” BOB MACY
COUNTY	OKLAHOMA COUNTY, OK
# OF DEATH SENTENCES	54
YEARS IN OFFICE	1980-2001 (21 YEARS)
MISCONDUCT ALLEGED	94.4% (51/54)
MISCONDUCT FOUND	33.3% (18/54)
EXONERATIONS	3



“Cowboy” Bob Macy sent more people to death row than any other individual district attorney in the United States. He was personally responsible for 54 death sentences,⁴³ more than the current death row populations of Colorado, Indiana, New Mexico, Utah, Virginia, Washington, and Wyoming combined.⁴⁴ Under Macy, Oklahoma County had more death sentences than it had seen in the previous 40 years.⁴⁵ The number dropped precipitously after he retired: Oklahoma County has only had three death sentences in the past six years.⁴⁶

42 Ryan Patrick Alford, *Catalyzing More Adequate Fed. Habeas Rev. Of Summation Misconduct: Persuasion Theory And The Sixth Am. Right To An Unbiased Jury*, 59 Okla. L. R. 479, 491 (2006), available at <http://adams.law.ou.edu/olr/articles/vol59/301Alford4articleblu.pdf>.

43 See Nolan Clay & Bryan Dean, *Former Oklahoma County District Attorney Bob Macy Dies*, *Oklahoman*, Nov. 19, 2011, <http://newsok.com/article/3624881>.

44 Deborah Fins, NAACP Legal Def. and Educ. Fund, Inc., *Death Row U.S.A. 36-37* (2016) [hereinafter *Death Row U.S.A.*], available at <http://www.deathpenaltyinfo.org/documents/DRUSAWinter2016.pdf>.

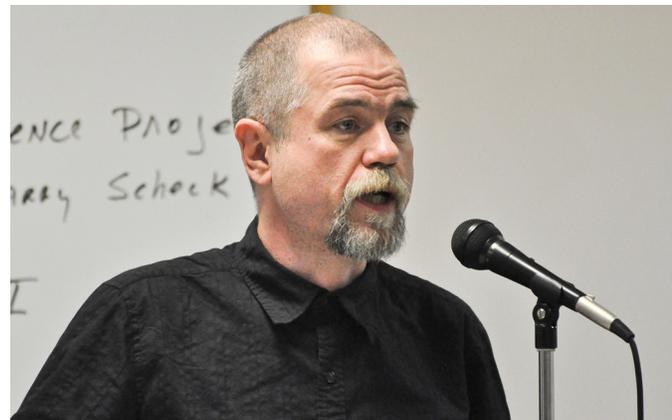
45 Amnesty International, *Old Habits Die Hard: The Death Penalty In Oklahoma* 54 n.101 (2001), available at <https://www.amnesty.org/en/documents/AMR51/055/2001/en/> (noting that only “twelve of the 82 men (14.6 per cent) executed in Oklahoma between 1915 and 1966 were prosecuted in Oklahoma County,” while “fifteen of the 40 prisoners (37.5) put to death since 1990 were prosecuted there”).

46 Brain Hardzinski, *Why Oklahoma County Backed Off Pursuing The Death Penalty*, *KGOU*, Aug. 18, 2015, <http://kgou.org/post/why-oklahoma-county-backed-pursuing-death-penalty#stream/0>.

Like Joe Freeman Britt, Macy had a combative personality that drew attention and controversy. Bob Macy kept an old stack of baseball cards on his desk.⁴⁷ The front of the cards showed images of Macy riding a horse, while the back sides conveyed “accomplishments,” such as being the “nation’s leading death penalty prosecutor” and sending over 40 people to death row.⁴⁸ He hung a movie poster from the film “Tombstone” in his office that read: “Justice is Coming.”⁴⁹ In one capital murder trial, Macy physically pushed a defense attorney in front of the jury.⁵⁰ Another time, Macy “was dragged from the courtroom after reaching for his gun when a jury acquitted six defendants.”⁵¹

Macy once told a jury that sentencing the defendant to death was a “patriotic duty” similar to military service.⁵² He boasted about his prosecution of 16-year-old Sean Sellers, who was executed before the U.S. Supreme Court barred death sentences for juveniles.⁵³ Macy mocked the notions of mental illness and trauma when they were presented as mitigating evidence. In one case, he told the jury that defendant Earl Alexander Frederick, Jr. must have “dreamed up” the claim that he “had been sexually molested as a child by his mother.”⁵⁴

Prosecutorial misconduct was found in approximately one-third of Macy’s death penalty cases.⁵⁵ In fact, Macy’s “extreme prosecutorial misconduct,”⁵⁶ which included findings of inappropriate behavior in 18 of his death penalty cases,⁵⁷ contributed to the conviction and condemnation of innocent people. Courts reversed nearly half of his death sentences, and three of the people Macy helped to convict were later exonerated and freed from death row.⁵⁸



Curtis McCarty, exonerated after prosecutorial misconduct was exposed.
Photo by Teri Robinson

47 Sara Rimer, *A Proud And Unwavering Believer In The Death Penalty*, N.Y. Times, Feb. 10, 2001, <http://www.nytimes.com/2001/02/10/us/public-lives-a-proud-and-unwavering-believer-in-the-death-penalty.html>.

48 *Id.*

49 Clay & Dean, *supra* note 43.

50 Howell v. State, 882 P.2d 1086, 1094 (Okla.Crim.App. 1994).

51 Mark Fuhrman, *Death and Justice: An Expose Of Oklahoma’s Death Row Machine* 25 (2003); *see also* Nolan Clay, *Macy Dragged From Court After Jury Frees 6 Suspects*, *Oklahoman*, Apr. 18, 1990, <http://newsok.com/article/2314197>.

52 Moore v. Reynolds, 153 F.3d 1086, 1113 (10th Cir. 1998)

53 Rimer, *supra* note 47.

54 Frederick v. State, 37 P.3d 919, 948 (Okla.Crim.App. 2001).

55 See AMERICA’S DEADLIEST PROSECUTORS SPREADSHEET, *supra* note 10.

56 See Alford, *supra* note 42, at 494.

57 See AMERICA’S DEADLIEST PROSECUTORS SPREADSHEET, *supra* note 10.

58 Bowen v. Maynard, 799 F.2d 593 (10th Cir. 1986) (exculpating Bowen); Jay F. Marks & Ken Raymond, *Ex-Death Row Inmate A Free Man, Judge Calls Case Tainted By Misconduct*, *Oklahoman*, May 12, 2007, <http://newsok.com/article/3052699> (explaining Curtis McCarty’s innocence); Graham Lee Brewer, *Oklahoma Executes Man For Two Rapes, Murders*, *Oklahoman*, Dec. 11, 2013, <http://newsok.com/article/3913351> (explaining Robert Lee Miller, Jr.’s exoneration).

In his first capital case, in which twelve witnesses confirmed the defendant's alibi that he was "300 miles away at a rodeo," Macy hid a much more credible suspect's identity from the defense.⁵⁹ A federal appellate court reversed the death sentence, holding that "Bowen's alibi would have been viewed in a different light" if the jury heard about the other suspect.⁶⁰ But Macy did not learn his lesson from the Bowen case.

Joyce Gilchrist, a disgraced scientist once known as the "darling of Macy's lethal forensics squad," helped Macy win cases by "misidentifying evidence" and "giving improper courtroom testimony."⁶¹ Bob Macy wrongfully prosecuted Robert Lee Miller, Jr. after Gilchrist characterized hair follicle evidence as conclusive of guilt during trial;⁶² many years later, DNA evidence exonerated Mr. Miller.⁶³ When Macy prosecuted Loyd Lafevers, Gilchrist lied in her trial testimony, denying that she had performed any blood tests because the results would have hurt the prosecution.⁶⁴ Macy then relied on Gilchrist's lies to mislead the jury, suggesting that the blood belonged to Lafevers and the victim, even though both he and Gilchrist knew that it belonged to someone else.⁶⁵

Indeed, Macy retired early due to revelations about misconduct shortly after his use of fabricated evidence was publicly exposed.⁶⁶

59 Ben Fenwick, *Bob Macy: A Look Back*, Oklahoma Gazette, Jan. 12, 2011, <http://okgazette.com/2011/01/12/bob-macy-a-look-back/>.

60 See *Bowen*, 799 F.2d at 612-13.

61 Randall Coyne, *Dead Wrong In Oklahoma*, 42 Tulsa L. R. 209, 236 (2006).

62 *Id.*

63 *Id.*

64 *Lafevers v. Gibson*, 238 F.3d 1263, 1266 (10th Cir. 2001).

65 *Id.*

66 Megan K. Stack, *Prosecutor's Days in Saddle Ending in Controversy*, L.A. Times, May 17, 2001, <http://articles.latimes.com/2001/may/17/news/mn-64599>. Jeffrey Todd Pierce, convicted of rape despite faulty testimony from Gilchrist and "extreme prosecutorial misconduct" by Macy, was exonerated in 2001 due to DNA evidence. See Elisabeth Salemme, *Faces of the Innocence Project: Jeffrey Pierce*, Time (2007), http://content.time.com/time/specials/2007/article/0,28804,1627368_1627366_1627379,00.html (last visited May 9, 2016).

“The only reason he gets up in the morning is to try death penalty cases.”

U.S. ATTORNEY BILL NETTLES

#3

NAME	DONALD V. MYERS
AKA	DONNIE “DR. DEATH” MYERS
COUNTY	11TH JUDICIAL DISTRICT, SC (SALUDA, EDGEFIELD, MCCORMICK, LEXINGTON)
# OF DEATH SENTENCES	39
YEARS IN OFFICE	1977-CURRENT (38 YEARS)
MISCONDUCT ALLEGED	61.5% (24/39)
MISCONDUCT FOUND	46.2% (18/39)



Solicitor Donnie “Dr. Death” Myers⁶⁷ personally secured 39 death sentences,⁶⁸ more than any other prosecutor in South Carolina history.⁶⁹ Known as a “fire-and-brimstone” prosecutor who is “passionate” about the death penalty, Myers “keeps on his desk a small paperweight model of South Carolina’s electric chair[.]”⁷⁰ Bill Nettles, currently a United States Attorney for the District of South Carolina, said of Myers, “The only reason he gets up in the morning is to try death penalty cases. Virtually the only time you see him in the courtroom is when he’s trying to kill people.” Myers himself explained, “This is about all I’ve got. If I had to go home and be by myself, I would shoot my damn self.”⁷¹

67 Eric Frazier, *Lawyer Relishes Death Row Record*, Charlotte Observer, Sept. 12, 2000, http://fairpunishment.org/wp-content/uploads/2016/06/Charlotte-Observer_Nettles-quote.pdf

68 See AMERICA’S DEADLIEST PROSECUTORS SPREADSHEET, *supra* note 10.

69 John Monk, *Avenging Angel? A Look At 5 of Donnie Myers’ More Memorable Death Penalty Cases*, The State, Mar. 19, 2015, <http://www.thestate.com/news/local/article67122927.html>. Myers prosecuted Raymond Patterson in three different capital trials after multiple reversals of Patterson’s death sentences. After Patterson’s third death sentence for the same crime was reversed, Patterson received a life sentence. John H. Blume & Lindsey S. Vann, *Forty Years of Death: The Past, Present, and Future of the Death Penalty in S. C. (or Still Arbitrary After All These Years)*, 11 Duke J. Const. L. & Pub. Pol’y n.198 (forthcoming Summer 2016).

70 O’Shea, *supra* note 67.

71 Margaret N. O’Shea, *Life’s Work Faces Threat In Ethics Case*, Augusta Chron., Apr. 1, 2001, http://old.chronicle.augusta.com/stories/2001/04/01/met_310270.shtml.

Myers used his charging discretion to seek the death penalty for some of the most vulnerable people he prosecuted. For example, he pursued death for Kevin Mercer, despite evidence of “cognitive deficiencies, including neurological dysfunction and learning disabilities,” post-traumatic stress disorder (PTSD), and a “damaging disability in terms of making judgments and inferences.”⁷² He put William Kelly⁷³ and Ted Powers⁷⁴ on death row, even though both were under 18 at the time of their crimes. Powers was only 16 years old.⁷⁵

Courts have found that Myers committed misconduct in 18 capital cases, which is approximately 46% of his cases.⁷⁶ Six of his death sentences were overturned due to his explicit misconduct.⁷⁷ Myers wiretapped confidential communications between defendants and their lawyers,⁷⁸ and once allowed his team to have ex parte communications with a potential juror to determine that he was not a “criminal.”⁷⁹ He was often accused of excluding jurors based on race,⁸⁰ and used misleading arguments to scare and anger juries. He was known to work himself to tears at trial.⁸¹

In one case, Myers used a doll to demonstrate how an infant died and wheeled a crib draped in a black shroud in front of the jury to stage a fake funeral.⁸² Myers cried several times during his closing argument and told the jury that not returning a death sentence would be like declaring “open season on babies in Lexington County.”⁸³ He also told the jury it “will kick the baby some more,” unless it returned a death sentence.⁸⁴ Myers later admitted that his own son’s death, resulting from complications from mucopolysaccharidoses (a genetic condition that causes cell damage), motivated him to get revenge.⁸⁵

72 State v. Mercer, 672 S.E.2d 556, 561 (S.C. 2009).

73 State v. Kelly, 343 S.C. 350 (2001).

74 State v. Powers, 331 S.C. 37 (1998).

75 Rick Brundrett, *Life-Or-Death Ruling Looms For Teen Killers*, The State, Jan. 2, 2005, <http://www.freerepublic.com/focus/f-news/1312511/posts>.

76 See AMERICA’S DEADLIEST PROSECUTORS SPREADSHEET, *supra* note 10.

77 *Id.*

78 State v. Quattlebaum, 338 S.C. 441, 447 (2000).

79 In re Myers, 355 S.C. 1, 12 (2003).

80 See, e.g., Patterson v. South Carolina, 110 S.Ct. 709 (1990); State v. Southerland, 316 S.C. 377 (1994); State v. Powers, 331 S.C. 37 (1998).

81 State v. Northcutt, 372 S.C. 207, 229 (2007)

82 *Id.* at 223.

83 *Id.*

84 Bryce Mursch, *Sup. Ct. Overturns Death Sentence For Baby Killer*, WIS-TV (Feb. 20, 2007), <http://www.wistv.com/Global/story.asp?s=6113797>.

85 Beam, *supra* note 71.

In another death penalty case, Myers referred to the African-American defendant, Johnny Bennett, as “King Kong,” a “monster,” a “caveman,” and a “beast of burden,” and elicited testimony referencing “black Indians.”⁸⁶ U.S. District Judge Richard Gergel held that this characterization “played upon a racist stereotype of the bestial black savage that seems calculated to animate and excite the all-white Lexington County jury.”⁸⁷ Myers’ tactic worked—one juror later testified that he sentenced Bennett to death because he was “just a dumb nigger.”⁸⁸ In yet another case, the U.S. Supreme Court found that Myers engaged in racial discrimination during jury selection. At the retrial, Myers *again* engaged in improper jury selection, and again the U.S. Supreme Court reversed the conviction.⁸⁹

86 Bennett v. Stirling, CV 2:13-3191-RMG, 2016 WL 1070812, at *2 (D.S.C. Mar. 16, 2016).

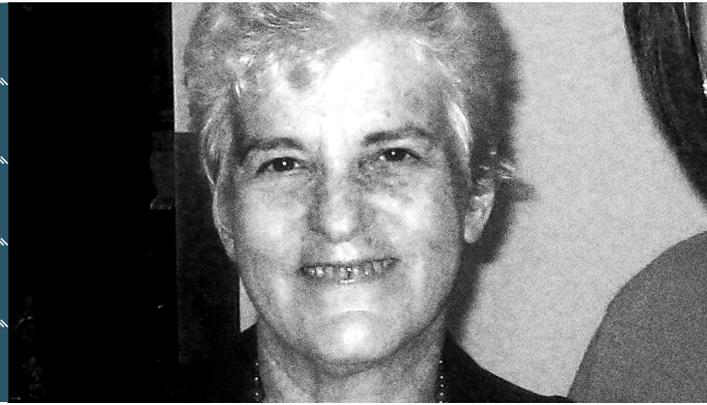
87 *Id.* at *9.

88 *Id.* at *12.

89 See Patterson v. South Carolina, 493 U.S. 1013 (1990); Patterson v. South Carolina, 500 U.S. 950 (1991).

#4

NAME	LYNNE ABRAHAM
COUNTY	PHILADELPHIA COUNTY, PA
# OF DEATH SENTENCES	108
YEARS IN OFFICE	1991-2010 (19 YEARS)
EXONERATIONS	2



Under the leadership of Lynne Abraham, who has been dubbed the “Queen of Death”⁹⁰ and “The Deadliest D.A.”,⁹¹ the Philadelphia County District Attorney’s office obtained 108 death sentences.⁹² Abraham exhibited the same personality quirks that Britt, Macy, and Myers shared. She described herself as “passionate” about the death penalty.⁹³ “I truly believe it is manifestly correct,” she said.⁹⁴ After overseeing her first execution, she described the killing as “a nonevent for me” and emphasized, “I don’t feel anything.”⁹⁵ Since Abraham’s departure from the office in 2010, her successor, Seth Williams, has overseen the imposition of just three death sentences in the last six years.

Abraham was equally unfazed by death row exonerations, going so far as to interpret a Philadelphia man’s release from death row as proof that “the system worked.”⁹⁶ Indeed, before leaving office, Lynne Abraham was asked whether she ever secured a death sentence against a person who did not deserve to die. She answered, “No, I have not seen that.”⁹⁷ However, at least two Philadelphia death row prisoners who had their convictions overturned were retried during Abraham’s tenure and acquitted.⁹⁸

Abraham drew criticism for her apparent insensitivity to the complexities of race

90 Jenn Carbin, *A Matter of Life and Death*, Phila. City Paper, Nov. 1-8, 2001, <http://mycitypaper.com/articles/110101/cs.cover1.shtml>.

91 Tina Rosenberg, *The Deadliest D. A.*, N.Y. Times, Jul. 16, 1995, <http://www.nytimes.com/1995/07/16/magazine/the-deadliest-da.html?pagewanted=all>.

92 Robert Brett Dunham, Assistant Federal Defender, Federal Public Defender Office for the Middle District of Pennsylvania, *Philadelphia Death Row: 1990-2014* (Feb. 23, 2015), <http://fairpunishment.org/wp-content/uploads/2016/06/PHILApost-1990.pdf>.

93 Rosenberg, *supra* note 91.

94 *Id.*

95 *Id.*

96 *Id.*

97 *Id.*

98 See Jacqueline Soteropoulos, *South Phila. Man Cleared in Slaying*, Philly.com (Nov. 19, 2005), http://articles.philly.com/2005-11-19/news/25430837_1_dna-testing-new-trial-death-row; Dave Racher, *Pa. High Court Overturns Man’s Death Sentence*, Philly.com (Feb. 19, 2000), http://articles.philly.com/2000-02-19/news/25573535_1_death-sentence-murder-conviction-and-death-drug-convictions.

in the justice system.⁹⁹ A reporter once noted that 85% of the inmates in the city’s prison were Black, and asked Abraham whether she believed 85% of the city’s crime was committed by African-Americans.¹⁰⁰ “Yes, I do. I really do,” Abraham responded.¹⁰¹

Unlike Britt, Macy, and Myers, Lynne Abraham did not try many death cases herself. She entrusted that role to her assistant district attorneys, particularly Roger King. King tried more capital cases than any other prosecutor in Pennsylvania history.¹⁰² He ultimately put at least 20 people on death row and personally claimed a number of sentences in the “high 30s” by 1995.¹⁰³ A wall of Roger King’s Philadelphia office was papered with pictures of people he prosecuted who had been sentenced to death.¹⁰⁴ Each person’s face was circled in the picture with a line through it, and the word “death” was written on each image.¹⁰⁵

King was known to engage in specious trial tactics. Once, in urging the jury to return a death sentence against a 16 year-old, King told jurors that mitigating evidence about the defendant and his background was a mere “relic” of the “great society [that has] failed” and should thus be ignored.¹⁰⁶ In another case, King asked jurors to vote for a death sentence in order to send a message to a judge who had previously sentenced the defendant in a prior matter.¹⁰⁷ The Pennsylvania Supreme Court held that it was “extremely prejudicial for a prosecutor to exhort a jury” in this fashion.¹⁰⁸ And across his death penalty trials, King was two times more likely to strike potential Black jurors compared to other potential jurors who were not Black.¹⁰⁹

99 Dianna Marder, *Street Enters Race Fray With D.A.*, Philly.com (Oct. 3, 1996), http://articles.philly.com/1996-10-03/news/25664094_1_criminal-justice-system-blacks-abraham.

100 *Id.*

101 *Id.* This is despite the fact that studies of self-reported crime for serious adolescent offenders in Philadelphia demonstrated that Black and white youth commit crimes at similar rates. See Alex R. Piquero and Robert W. Brame, *Assessing The Race—Crime and Ethnicity—Crime Relationship In A Sample Of Serious Adolescent Delinquents*, 54 *Crime Delinq.* 390 (2008), available at <http://www.ncbi.nlm.nih.gov/pmc/articles/PMC2782848/>.

102 Dwight Ott, *Retired, But Memories Stay, For 35 Years, Roger King Relentlessly Prosecuted Murder Cases*, Philly.com (June 7, 2008), http://articles.philly.com/2008-06-07/news/25249127_1_prosecutor-murder-charge-murder-cases.

103 See Joseph R. Daughen, *He’s ‘Simply The Best’*, Philly.com (Mar. 6, 1995), http://articles.philly.com/1995-03-06/news/25701152_1_death-sentences-death-row-robbery-murder.

104 Carbin, *supra* note 90.

105 *Id.*

106 *Com. v. Hughes*, 865 A.2d 761, 804 (Pa. 2004)

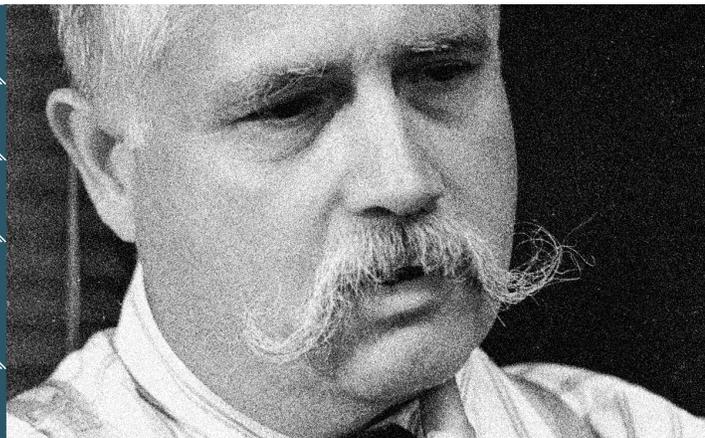
107 *Com. v. Crawley*, 526 A.2d 334, 344 (Pa. 1987).

108 *Id.*

109 *Com v. Reid*, 99 A.3d 470 (2014).

#5

NAME	JOHNNY HOLMES
COUNTY	HARRIS COUNTY, TX
# OF DEATH SENTENCES	201
YEARS IN OFFICE	1979-2000 (21 YEARS)
EXONERATIONS	1



“If you murder someone here, the state of Texas is going to kill you,”¹¹⁰ then-Harris County District Attorney Johnny Holmes said. He meant what he said. Under Holmes’s leadership, the Harris County District Attorney’s office sent 201 people to death row, and Harris County subsequently became known as the “buckle” of the “death belt” and the “Death Penalty Capital of the World.”¹¹¹ Indeed, Holmes’ office “secured an average 12 capital sentences a year in the decade before his retirement in 2000.”¹¹² Since 2008, by contrast, Harris County juries sent an average of one person to death row each year.¹¹³

Like Lynne Abraham, Johnny Holmes did not prosecute many death cases himself. Instead, he relied primarily on two of his deputy district attorneys: Lyn McClellan, who estimates he sent approximately 30 people to death row,¹¹⁴ and Kelly Siegler, nicknamed the “Giant Killer” for putting 19 people on death row.¹¹⁵

Over Lyn McClellan’s 27-year tenure at the Harris County DA’s office, he obtained a remarkable number of capital sentences.¹¹⁶ From the time McClellan was in law school, he bought into Holmes’ death-oriented version of justice. He decided to become a prosecutor because he wanted to see Max Soffar executed for the murder he was convinced that Soffar had committed.¹¹⁷ McClellan finally had his chance

110 Audrey Duff, *The Deadly DA*, Tex. Monthly, Feb. 1, 1994, available at <https://business.highbeam.com/410545/article-1G1-14790976/deadly-da>.

111 Simone Seiver, *Why Three Counties That Loved the Death Penalty Have Almost Stopped Pursuing It*, The Marshall Project (Aug. 11, 2015), <https://www.themarshallproject.org/2015/08/11/why-three-counties-that-loved-the-death-penalty-have-almost-stopped-pursuing-it#.xNroshNVN>.

112 *Id.*

113 *Id.*

114 Tommy Witherspoon, *McLennan County Prosecutor Likely Holds Active Death Row Record*, Waco Trib., May 24, 2014, http://www.wacotrib.com/news/courts_and_trials/mclennan-county-prosecutor-likely-holds-active-death-row-record/article_548a4b86-4742-5f0a-aa35-bce4a41ad89a.html.

115 Biography for Kelly Siegler, “Cold Justice”, TNTdrama.com, <http://mobile19.tntdrama.com/series/cold-justice/> (last visited May 31, 2016).

116 McClellan claimed to have secured around 30 death sentences. See *supra* note 114 and accompanying text.

117 See Brian Rogers, *Longtime Prosecutor McClellan Praised For His Service*, Houston Chron., Nov. 27, 2008, <http://www.chron.com/news/>

to prosecute Soffar after Soffar's original murder conviction was overturned in 2004.¹¹⁸ McClellan did not care that the original conviction was reversed because it was based on a "thin case consisting only of an uncorroborated confession,"¹¹⁹ that a serial killer named Paul Reid was likely the true culprit,¹²⁰ or that Soffar suffered from intellectual disability and brain damage.¹²¹ He charged forward despite the weakness of his case and sought the death penalty anew.¹²² Just as the Fifth Circuit was poised to review the case again, Soffar died of cancer while in prison.¹²³ Soffar insisted on his innocence until his death.

While Lyn McClellan mostly managed to stay out of the limelight while racking up death sentences, his colleague Kelly Siegler became famous for her big personality and notorious willingness to break the rules. Last year, a state court judge reversed a murder conviction after finding that Kelly Siegler committed 36 instances of misconduct, including "failure to disclose or timely disclose favorable evidence."¹²⁴ According to the court, "[h]ad that evidence been disclosed or disclosed timely, the results of the trial would have been different."¹²⁵ In another murder case, Siegler failed to reveal to defense lawyers the fact "that crime scene investigators found fingerprints that were not [the defendant's] on the victim's car door and front fender."¹²⁶ In a third murder trial, Siegler "had the bloodstained bed from the [defendant's] bedroom brought into the courtroom," then dramatically "straddled her colleague, raised one of the actual knives that the defendant was alleged to have used to kill her husband, and reenacted the stabbings."¹²⁷ In a fourth case, one involving a juvenile defendant, Siegler told the jury to sentence the teenager to death because "he ain't a boy and he ain't a child...he's been a grown man for a lot longer than some of you were."¹²⁸ In a fifth case, Siegler excluded a Black juror while

houston-texas/article/Longtime-prosecutor-McClellan-praised-for-his-1776508.php.

118 See *id.*

119 *Soffar v. Dretke*, 368 F.3d 441, 479 (5th Cir. 2004).

120 See *id.*; Maurice Chammah, '80 Murder Confession Prompts Call to Require Police to Record Interrogations, N.Y. Times, Dec. 27, 2012, <http://www.nytimes.com/2012/12/28/us/murder-confession-prompts-calls-in-texas-for-recording-interrogations.html>.

121 *State of Texas v. Max Soffar*, ACLU (Feb. 23, 2015), <https://www.aclu.org/cases/state-texas-v-max-soffar>.

122 See Rogers, *Longtime Prosecutor*, *supra* note 117.

123 See Allan Turner, *Twice-Convicted Houston Killer Max Soffar, Suffering Cancer, Dies In Prison*, Houston Chron., Apr. 25, 2016, <http://www.chron.com/news/houston-texas/houston/article/Twice-convicted-Houston-killer-Max-Soffar-7307734.php>.

124 Brian Rogers, *Judge Cites Prosecutorial Misconduct In Temple Case*, Houston Chron., Jul. 8, 2015, <http://www.expressnews.com/news/local/article/Judge-cites-prosecutorial-misconduct-in-Temple-6374157.php>.

125 *Ex parte Temple*, No. 1008763-A, (178th Crim. D. Ct. of Harris Cnty., Tex., July 6, 2015), <https://assets.documentcloud.org/documents/2159552/judge-cites-prosecutorial-misconduct-in-temple.pdf>.

126 Jonathan Turley, *Cold Injustice? TNT Star Kelly Siegler Accused Of A Pattern Of Prosecutorial Misconduct*, JonathanTurley.org (Jul. 22, 2015), <https://jonathanturley.org/2015/07/22/cold-injustice-tnt-star-kelly-siegler-accused-of-a-pattern-of-prosecutorial-misconduct/>.

127 Skip Hollandsworth, 193, Tex. Monthly, Feb. 2010, <http://www.texasmonthly.com/articles/193/>.

128 Elizabeth F. Emens, *Aggravating Youth: Roper v. Simmons and Age Discrimination*, 2005 Sup. Ct. Rev. 51, 84 (2005), available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1128362 (citing closing argument trans. at 28, *Lopez v. State*, No. 72,536 (Tex. Crim. App. 2002) (quoting the prosecutor, Kelly Siegler, of Harris County)).

claiming that members of the juror's church are "screwballs" and "nuts," even though the prospective juror belonged to the nondenominational Christian church with the largest congregation in the United States.¹²⁹ And these examples only reflect a small sample of Siegler's behavior during death penalty prosecutions. It appears that Holmes never disciplined Siegler for misconduct.

Together, Britt, Macy, and Myers personally obtained 131 death sentences,¹³⁰ a number greater than the total death row populations of fifteen states combined.¹³¹ When death sentences obtained under the leadership of Lynne Abraham and Johnny Holmes are included, that total comes to 440.¹³² If you compare that total to the current number of prisoners on death row in the entire country, which was determined to be 2,943 as of January 1, 2016,¹³³ it is clear that these five prosecutors have had an outsized impact on the death penalty. Their total number of death verdicts is equal to roughly 15% of the current death row population nationwide, or approximately one out of every seven individuals on death row.¹³⁴ Over the past fifteen years, even as death sentences have declined nationally, a small group of individuals continue to drive up the total number of death sentences nationwide, which has contributed to a misperception that the death penalty is a common practice, when in reality, most of America's prosecutors have abandoned it.

129 See Lisa Falkenberg, *DA Hopeful Should Lead By Example*, Houston Chron., Jan. 29, 2008, <http://www.chron.com/news/falkenberg/article/DA-hopeful-should-lead-by-example-1627042.php>.

130 See AMERICA'S DEADLIEST PROSECUTORS SPREADSHEET, *supra* note 10.

131 These states are New Hampshire; Wyoming; New Mexico; Montana; South Dakota; Colorado; Virginia; Washington; Utah; Idaho; Kansas; Nebraska; Indiana; Delaware; and Missouri. See *Death Row Inmates by State*, Death Penalty Info. Ctr., <http://www.deathpenaltyinfo.org/death-row-inmates-state-and-size-death-row-year?scid=9&did=188#state> (last updated Jan. 1, 2016).

132 See AMERICA'S DEADLIEST PROSECUTORS SPREADSHEET, *supra* note 10.

133 *Death Row U.S.A.*, *supra* note 44, at 1.

134 See AMERICA'S DEADLIEST PROSECUTORS SPREADSHEET, *supra* note 10.

THE RUNNERS-UP

Our efforts to identify the top five deadliest prosecutors in America turned up a small handful of prosecutors who failed to meet the threshold for the worst of the worst, but who broke records in their own states or counties, and racked up notoriously long records of misconduct. We have dubbed them “The Runners-Up” for their overzealous and sometimes infamous pursuit of the death penalty.

#6 ABE LAESER, MIAMI-DADE COUNTY, FLORIDA

Abe Laeser, who retired in 2009 as a prosecutor in Miami-Dade County, Florida, narrowly missed the top five list. Laeser obtained at least 30 death sentences, more than any other Florida prosecutor.¹³⁵ He illegally withheld evidence from defense lawyers in two capital trials;¹³⁶ put a man on death row who suffered from paranoid delusions and organic brain damage;¹³⁷ and secured a death sentence for a mentally disabled, non-triggerman who suffered from “child abuse, incest and neglect.”¹³⁸ He also once seriously considered prosecuting a five-year-old child for murder.¹³⁹ In a widely reported incident, he unzipped his fly in front of a defense attorney and female jury consultant.¹⁴⁰ Abe Laeser, like Britt, Macy and Myers, embodied the win-at-all-costs, personality-driven death penalty.

135 See Susannah A. Nesmith, *Longtime Prosecutor Abe Laeser Retires From Miami-Dade State Attorney's Office*, Miami Herald, Apr. 30, 2009, <http://www.susannahnesmith.com/clips/Laeser.pdf>.

136 See *Smith v. State*, 7 So.3d 473, 504 (Fl. 2009); *Rodriguez v. State*, 39 So. 3d 275, 287 (Fl. 2010).

137 See *Connor v. State*, 979 So.2d 852, 865 (Fl. 2007).

138 See Madeline Diaz, *Attorney Asks Jury To Spare Caraballo*, Sun Sentinel, Apr. 17, 2007, http://articles.sun-sentinel.com/2007-04-17/news/0704160281_1_victor-caraballo-death-penalty-ana-maria-angel; David Ovale, *Death Sentence For Defendant In Ana Maria Angel Murder Is Overturned*, Sun Sentinel Jun. 27, 2010, http://articles.sun-sentinel.com/2010-06-24/news/fl-angel-death-sentence-tossed-20100624_1_penalty-phase-death-penalty-death-sentence.

139 *State Undecided On Whether To Charge 5-Year-Old*, Lakeland Ledger, Mar. 15, 1986, 8B.

140 Luisa Yanez, *Trial's Prosecutor Demoted Assistant State Attorney For Gesture*, Sun Sentinel, Apr. 27, 1990, http://articles.sun-sentinel.com/1990-04-27/news/9001050125_1_trial-consultant-laeser-defense-team.

#7

KENNETH PEASLEY, PIMA COUNTY, ARIZONA

Kenneth Peasley, dubbed a “death-penalty machine”¹⁴¹ and “the most feared prosecutor in Arizona’s Pima County,”¹⁴² was personally responsible for at least 10 death sentences.¹⁴³ He often “bragged about having sent more men to death row in Arizona than any other prosecutor.”¹⁴⁴ He prosecuted multiple men for murder who were later exonerated.¹⁴⁵ Until his death, Peasley was the only American prosecutor to be “disbarred for intentionally presenting false evidence in death-penalty cases.”¹⁴⁶ He also sent at least one child to death row,¹⁴⁷ and secured a death sentence against an individual who was so mentally ill that he could not have been declared competent to be executed without being aggressively treated—a job that Arizona doctors refused to take on.¹⁴⁸

#8

NELS MOSS, CITY OF ST. LOUIS AND CHARLES COUNTY,
MISSOURI

#9

AND
DEAN WALDEMER, ST. LOUIS COUNTY, MISSOURI

Missouri has only had four new death sentences since 2010.¹⁴⁹ Yet Missouri is responsible for over 25% of the nation’s executions in the last two years.¹⁵⁰ Both of those facts owe, in part, to the retirement of two prosecutors.

141 Michael Kiefer, *Prosecutorial Misconduct Alleged In Half Of Capital Cases*, Ariz. Repub., Oct. 28, 2013, <http://www.azcentral.com/news/arizona/articles/20131027milke-krone-prosecutors-conduct-day1.html>.

142 Jeffrey Toobin, *Killer Instinct*, New Yorker (2005), <http://www.newyorker.com/magazine/2005/01/17/killer-instincts>.

143 *Id.* (explaining that “Peasley...is personally responsible for a tenth of the prisoners on Arizona’s death row”). In 2007, there were 112 death row inmates in Arizona, three years after Peasley was disbarred. It is highly likely Peasley sent at least ten people to death row, if not more. See Ryn Gargulinski, *Waiting Hardest Part For Inmates, Families Of Victims*, Tucson Citizen, May 19, 2007, <http://tucsoncitizen.com/morgue/2007/05/19/52098-waiting-hardest-part-for-inmates-families-of-victims/>.

144 A. J. Flick, *Ken Peasley, Disbarred Prosecutor, Dead At 64*, Tucson Sentinel (Sep. 8, 2011), http://www.tucsonsentinel.com/local/report/090811_peasley_obit/ken-peasley-disbarred-prosecutor-dead-64/.

145 See, e.g., Toobin, *supra* note 142 (discussing convictions and exonerations of Chris McCrimmon and Andre Minnit); Maurice Possley, *Victims Of The Prosecution*, Salon (Apr. 27, 2012), http://www.salon.com/2012/04/27/victims_of_the_prosecution/ (explaining exoneration of Khalil Rushdan).

146 See Toobin, *supra* note 142.

147 Martin Soto-Fong was seventeen years old at the time of the murders for which he was prosecuted. *Fong v. Ryan*, CV 04-68-TUC-DCB, 2011 WL 3439237, at *1 (D. Ariz. Aug. 5, 2011).

148 See Giovanna Dell’Orto, *Should Convicted Killer Be Made Fit To Die?*, Tucson Citizen, May 10, 2001, <http://tucsoncitizen.com/morgue2/2001/05/10/110782-should-convicted-killer-be-made-fit-to-die/>. No doctor in Arizona would prepare Claude Marutana for execution, so prison officials outsourced a psychiatrist from Georgia. See Alfred M. Freedman, MD, *Commentary: The Doctor’s Dilemma: A Conflict of Loyalties*, Psychiatric Times, Jan. 1, 2001, <http://www.psychiatrytimes.com/articles/commentary-doctors-dilemma-conflict-loyalties>.

149 Death Sentences in the United States From 1977 By State And By Year, Death Penalty Info. Ctr, <http://www.deathpenaltyinfo.org/death-sentences-united-states-1977-2008> (last visited Jun. 2, 2016).

150 See Death Row U.S.A., *supra* note 44, at 8 (calculated using table of all U.S. executions, where a total of 63 people were executed in 2014 and 2015 combined, and 16 of those were in Missouri).

Nels Moss was a prosecutor for the City of St. Louis from 1968 to 1999 and for St. Charles County from 1999 to 2001. According to news sources, Moss “put about 10 people on death row.”¹⁵¹ He deliberately failed to disclose exculpatory evidence in a death penalty case where the federal judge described his behavior as “abusive and boorish.”¹⁵² He also committed misconduct in at least 25 additional cases, eight of which resulted in reversed convictions or mistrials.¹⁵³ A researcher who examined allegations of prosecutorial misconduct in over 11,000 state and local cases nationally called the number of misconduct findings against Moss “extremely uncommon” and labeled him “almost in a class by himself.”¹⁵⁴

Dean Waldemer served as St. Louis County Chief Trial Attorney from 1991 until 2011.¹⁵⁵ Between 2005 and 2010, Waldemer secured at least 10 death sentences, a fact that he proudly proclaimed in his 2011 application to be a circuit judge.¹⁵⁶ He is also the reputed architect of the “Postman Gambit,” which enables prosecutors to hide racially biased jury selection practices by intentionally excluding postal workers from juries.¹⁵⁷ On its face, this may seem like a race-neutral reason, except for the fact that a majority of post office employees in St. Louis County are Black.¹⁵⁸ In the trial of Herbert Smulls, sentenced to death by an all-white jury and executed in 2014, Waldemer struck a Black prospective juror saying that he treats postal workers “with great suspicion,” because they are “very disgruntled, unhappy people with the system and make every effort to strike back.”¹⁵⁹

#10 DALE COX, CADDO PARISH, LOUISIANA

Dale Cox famously said, “I think we need to kill more people” when asked about the exoneration of Glenn Ford, who was sentenced to death for a crime he didn’t commit.¹⁶⁰ Cox successfully secured death sentences against people with

151 John Sonderegger, *Talk of Charleytown*, St. Charles County Post, January 11, 1999, <http://fairpunishment.org/wp-content/uploads/2016/06/11-Jan-1999-Page-163-St-Louis-Post-Dispatch-at-Newspapers.pdf>

152 Bianca Jagger, *The Time Has Come To Say No To Death*, Huffington Post (Apr. 28, 2010), http://www.huffingtonpost.com/bianca-jagger/the-time-has-come-to-say_b_478388.html.

153 Radley Balko, *U.S. Counties Killing The Most People Are Good At Getting Death Penalty, Not So Good At Justice*, Huffington Post (Nov. 19, 2013), http://www.huffingtonpost.com/2013/11/19/death-penalty_n_4275323.html.

154 Jessamyn Blau, *Ex-Prosecutor In City Erred In 25 Cases, Study Says*, St. Louis Post-Dispatch, Jun. 26, 2003, at A7.

155 Application for Twenty-First Circuit Judge by Dean P. Waldemer, Chief Trial Attorney, St. Louis Cnty., Mo., to Mo. Jud. Comm’n. (Sept. 2011), available at <https://www.courts.mo.gov/file/21st%20circuit%20Hartenbach%20vacancy%20-%20Waldemer%20application.pdf>.

156 *See id.*

157 See William Powell, *How We Kill: The State Of The Death Penalty*, St. Louis Mag., Apr. 25, 2014, <https://www.stlmag.com/How-We-Kill/>.

158 *See id.*

159 *Smulls v. Roper* 535 F.3d 853, 868-69 (2008).

160 *See Welborn, supra* note 2.

intellectual disabilities and severe impairments. He sought death for two 18-year-olds, Lamondre Tucker and Laderrick Campbell, both of whom had low intellectual functioning.¹⁶¹ An expert concluded that Tucker “thinks like a child” despite his chronological age.¹⁶² Campbell, who has an IQ of 67, appeared to be “delusional”¹⁶³ when he represented himself during trial.¹⁶⁴ Cox also obtained a death sentence against Rodricus Crawford, a father convicted of killing his infant son.¹⁶⁵ Cox aggressively pursued the prosecution and death sentence despite the medical examiner’s uncertainty that the death was even a homicide.¹⁶⁶ Cox upset a group of religious leaders when he cited scripture to the jury and suggested that Jesus would demand death for Crawford.¹⁶⁷ Cox retired in 2015.¹⁶⁸ Between 2011 and 2015, Cox alone secured one-third of Louisiana’s death sentences.¹⁶⁹

161 Maurice Chammah, *Could These Cases, Including One From Louisiana, End America’s Death Penalty*, Times-Picayune, Jan. 13, 2016, http://www.nola.com/crime/index.ssf/2016/01/could_these_cases_including_so.html (discussing Tucker); Charles Ogletree, *The Death Penalty’s Last Stand*, Slate (Jan. 6, 2016), http://www.slate.com/articles/news_and_politics/jurisprudence/2016/01/data_and_charts_show_few_states_impose_the_death_penalty.html (discussing Campbell).

162 *State v. Tucker*, No.2013-KA-1631, at *26 (La. 2015), available at <http://www.scotusblog.com/wp-content/uploads/2016/05/15-946-opinion-below.pdf>.

163 See Ogletree, *supra* note 161.

164 *State v. Campbell*, 2006-KA-0286, at *17 n.7 (La. 2008), available at <http://www.lasc.org/opinions/2008/06KA0286.opn.pdf>.

165 See Shaun King, *Rodricus Crawford Is On Death Row. Read This And 0% Of You Will Think He Should Be*, Daily Kos (Jul. 13, 2015), <http://www.dailykos.com/story/2015/7/13/1401800/-Rodricus-Crawford-is-on-death-row-Read-this-and-0-of-you-will-think-he-should-be>.

166 See *id.*

167 See Jarvis DeBerry, *Clergy Object To Prosecutor’s Pro-Death Penalty Jesus*, Times-Picayune, Oct. 23, 2015, http://www.nola.com/politics/index.ssf/2015/10/caddo_da_death_penalty.html.

168 *Acting Caddo DA Dale Cox Leaves Race Following National Criticism*, KTBS (Jul. 14, 2015), <http://www.ktbs.com/story/29549496/acting-caddo-da-dale-cox-leaves-race-following-national-criticism>.

169 See Campbell Robertson, *The Prosecutor Who Says La. Should ‘Kill More People’*, N.Y. Times, Jul. 7, 2015, http://www.nytimes.com/2015/07/08/us/louisiana-prosecutor-becomes-blunt-spokesman-for-death-penalty.html?_r=1.

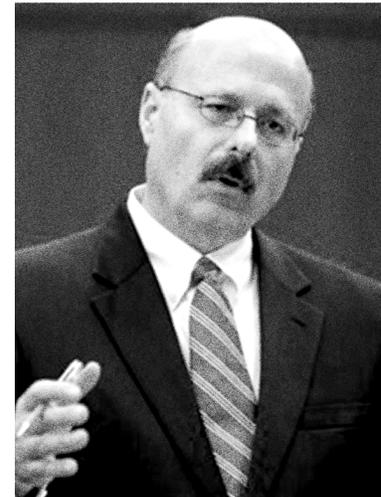
THREE TO WATCH

Could These Three Be America's Next Generation of Deadly Prosecutors?

There are three current prosecutors who could become part of America's next generation of deadly prosecutors if they continue to pursue death sentences at their current rate throughout the rest of their careers.

#1 BERNIE DE LA RIONDA, DUVAL COUNTY, FLORIDA

Since 2010, death sentence rates in Florida have plummeted, yet Bernie de la Rionda of Duval County, Florida, has “put more people on death row than just about any other prosecutor in Florida.”¹⁷⁰ It has been reported that he obtained death sentences in 22 cases.¹⁷¹ Frustrated by delays in executions, de la Rionda stated that we should “bring firing squads back, as bullets are pretty cheap, and they’re very quick.”¹⁷² The Florida Supreme Court has reversed de la Rionda in two cases after deeming death a disproportionately severe punishment for those particular defendants.¹⁷³ De la Rionda has the dubious distinction of obtaining death sentences against a number of defendants with significant impairments, including: a drug-addicted man who was severely abused and neglected as a child and suffers from significant neurological impairments;¹⁷⁴ a man with a 76 IQ and “mild to moderate impairment of his frontal lobe function”;¹⁷⁵ and a severely depressed man with suicidal ideations whom the judge found to be “under the influence of extreme mental or emotional duress.”¹⁷⁶



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- 170 Larry Hannan, *Fla.'s Death Penalty Proce. Declared Unconst. By U.S. Sup. Ct.*, Fla. Times-Union, Jan. 12, 2016, <http://jacksonville.com/news/crime/2016-01-12/story/floridas-death-penalty-procedures-declared-unconstitutional-us-supreme>.
- 171 2010 Director's Community Leadership Awards, Bernie de la Rionda, FBI (2010), https://www.fbi.gov/about-us/partnerships_and_outreach/community_outreach/dcla/2010/jacksonville.
- 172 Andrew Pantazi, *Prosecutor, Activist Argue Over Death Penalty At Tiger Bay Club Forum*, Fla. Times-Union, Sept. 18, 2015, <http://jacksonville.com/news/crime/2015-09-18/story/prosecutor-activist-argue-over-death-penalty-tiger-bay-club-forum>.
- 173 See *Yacob v. State*, 136 So. 3d 539, 550 (Fla. 2014) (determining that the aggravating factor, a robbery, was only incidental to the murder and thus not sufficient to justify the death penalty); *Scott v. State*, 66 So. 3d 923, 936-37 (2011) (finding that battery concurrent with the murder did not warrant the imposition of the death penalty).
- 174 See *Asay v. Sec'y, Fla. Dep't of Corr.*, 3:05-CV-147-J-32PDB, 2014 WL 1463990, at *23-22 (M.D. Fla. Apr. 14, 2014).
- 175 *McMillian v. State*, 94 So. 3d 572, 578 (Fla. 2012).
- 176 *Bright v. State*, 90 So.3d 249, 257 (Fla. 2012).

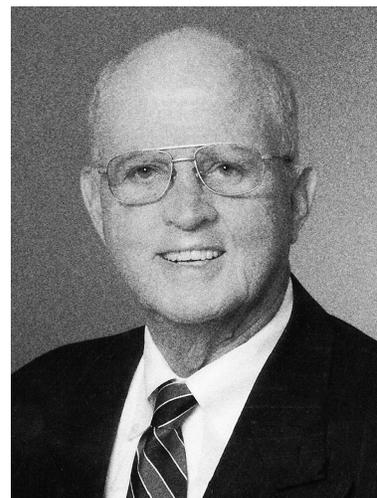
#2 JEANNETTE GALLAGHER, MARICOPA COUNTY, ARIZONA

The same linkage between the aberrant personalities of yesterday and today exists in Arizona. If anyone overtakes Kenneth Peasley's death sentence record, it is likely to be Jeanette Gallagher. Gallagher, the current head of Maricopa County's capital case unit, has obtained at least 9 death sentences, which appears to be more than any other active prosecutor in Arizona in the last decade.¹⁷⁷ She has secured death sentences against people with severe impairments, including a military veteran diagnosed with paranoid schizophrenia.¹⁷⁸ Gallagher also obtained a death sentence for a 19-year-old who had tried to commit suicide the day before he committed murder and who had attempted to seek treatment for his severe depression only to be turned away.¹⁷⁹ The Arizona Supreme Court rebuked Gallagher for prosecutorial misconduct in at least three death penalty cases, calling her behavior "improper,"¹⁸⁰ "very troubling,"¹⁸¹ and "entirely unprofessional."¹⁸²



#3 PAUL EBERT, PRINCE WILLIAM COUNTY, VIRGINIA

Virginia, like Missouri, is no longer an active death sentencing state.¹⁸³ However, Virginia has had more executions in modern history than every state except Texas and Oklahoma.¹⁸⁴ The recently re-elected the District Attorney of Prince William County,¹⁸⁵ Paul Ebert, has personally obtained at least 14 death sentences, more than any prosecutor in Virginia.¹⁸⁶ As of 2012, nine of those men had been executed.¹⁸⁷ Ebert has admitted that his office withholds evidence of innocence as an office policy, in order to prevent defense attorneys from using it to benefit their clients.¹⁸⁸ This policy has likely contributed to the sentencing, and possibly the



177 See AMERICA'S DEADLIEST PROSECUTORS SPREADSHEET, *supra* note 10.

178 State v. Fitzgerald, 303 P.3d 519, 527 (Ariz. 2013).

179 State v. Womble, 235 P.3d 244, 257 (Ariz. 2010).

180 State v. Velazquez, 166 P.3d 91, 102 (Ariz. 2007).

181 State v. Martinez, 282 P.3d 409, 416 (Ariz. 2012).

182 State v. Speer, 212 P.3d 787, 796 (Ariz. 2009).

183 The Death Penalty in 2015: Year End Report, Death Penalty Info. Ctr. 4 (2015), available at <http://deathpenaltyinfo.org/documents/2015YrEnd.pdf>.

184 Number of Executions by State and Region Since 1976, Death Penalty Info. Ctr., <http://www.deathpenaltyinfo.org/number-executions-state-and-region-1976> (last visited June 2, 2016).

185 See Fenit Nirappil, *Prince William Board Chairman and Longtime Cnty. Prosecutor Reelected*, Wash. Post, Nov. 4, 2015, https://www.washingtonpost.com/local/virginia-politics/veteran-prosecutor-ebert-neck-and-neck-with-challenger-in-prince-william/2015/11/03/06f7870e-7e5c-11e5-b575-d8dcfedb4ea1_story.html.

186 See Josh White, *Man Who Killed Prince William Couple in 2001 is Executed*, Wash. Post, Nov. 18, 2009, <http://www.washingtonpost.com/wp-dyn/content/article/2009/11/17/AR2009111702515.html>; *Ebert Gives it Another Go in Race for Commonwealth's Attorney*, Culpepper Times, [DATE], <http://www.northernvatimes.com/culpeper/article/ebert-gives-it-another-go-in-race-for-commonwealths-attorney>.

187 See Dieter, *supra* note 6, app. at 27.

188 See Wolfe v. Clarke, 819 F. Supp.2d 538, 566 n.24 (E.D. Va. 2011) (quoting Ebert's explanation at the defendant's habeas evidentiary hearing: "when you have information that is given to certain counsel and certain defendants, they are able to fabricate a defense around what has been provided"); see also Dahlia Lithwick, *Why is Justin Wolfe Still In Prison?*, Slate (Nov. 13, 2014), <http://www.slate.com/>

execution, of multiple innocent people. The parents of a murder victim insisted that the man Ebert prosecuted, Larry Elliott, was innocent, and claimed that Ebert lied at trial about evidence that they provided to him which pointed to another suspect.¹⁸⁹ Elliott was executed in 2009, despite lingering doubts about his innocence and allegations that Ebert hid exculpatory evidence.¹⁹⁰ Before the courts overturned the conviction of another defendant, Justin Wolfe, Ebert hid evidence that detectives threatened the admitted triggerman with the death penalty unless he testified against Wolfe.¹⁹¹ A judge described the behavior of Ebert and his team as “abhorrent to the judicial process.”¹⁹²

CONCLUSION

There have always been a tiny handful of prosecutors who pursue death sentences with fervor, and without regard for fairness and accuracy. America’s five deadliest prosecutors—Joe Freeman Britt, Bob Macy, Donnie Myers, Lynne Abraham and Johnny Holmes—epitomize this over-aggressive and reckless style of prosecution. But this personality-driven feature of the death penalty is visible in other states too, including among prosecutors who continue to seek the death penalty today. These prosecutors are evidence that the application of the death penalty is—and always has been—less about the circumstances of the offense or the characteristics of the person who committed the crime, and more a function of the personality and predilections of the local prosecutors entrusted with the power to seek the ultimate punishment. Their overzealous pursuit of the death penalty does not accurately reflect America’s growing skepticism of the death penalty, nor is it representative of local constituencies that are more attached to the death penalty. It better reflects the lack of meaningful controls on prosecutorial discretion and a lack of consequences for their illegal or unethical behavior. In fact, death sentencing trends in these counties before and after these individuals served as prosecutors demonstrate that these individuals drove these counties to become extreme outliers in their use of the death penalty, and that these counties saw dramatic reductions in capital verdicts as soon as these individual actors were out of the picture. This overzealous, personality-driven, win-at-all-costs pursuit of capital

articles/news_and_politics/jurisprudence/2014/11/justin_wolfe_case_his_murder_conviction_was_vacated_three_years_ago_so_why.html.

189 See *Clemency Petition on behalf of Larry Bill Elliot*, pt. 2, apps. 4-5 (2009), available at https://library.albany.edu/speccoll/findaids/apap214/elliott_bill_appendices1_50.pdf.

190 See Josh White, *Man Who Killed Prince William Couple In 2001 Is Executed*, Wash. Post, Nov. 18, 2009, <http://www.washingtonpost.com/wp-dyn/content/article/2009/11/17/AR2009111702515.html>.

191 See *Wolfe*, 819 F. Supp.2d at 548 n.9, 554; Lithwick, *supra* note 188.

192 *Wolfe*, 819 F. Supp.2d at 566 n.24.

punishment seriously undermines the legitimacy of the death penalty today.

RESEARCH PROCESS

Our research process consisted of consulting the legal database Westlaw for court opinions, legal briefs, and motions; newspaper archives; and federal and local public defender offices, which allowed us to come up with an initial list of district attorneys who had secured a large number of death sentences in the modern death penalty era. We cross-checked this information with a list of all defendants sentenced to death in the relevant jurisdictions. Where we found incomplete information or discrepancies, we consulted with a second, and sometimes a third, source to verify the information. All of the numbers and figures are accurate to the best of our knowledge, and the resources relied upon are available via the citations in the report, and in the database we created for this purpose, which is on file with the Fair Punishment Project and available upon request.

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ABOUT THE FAIR PUNISHMENT PROJECT

The Fair Punishment Project uses legal research and educational initiatives to ensure that the U.S. justice system is fair and accountable. As a joint initiative of Harvard Law School's Charles Hamilton Houston Institute for Race & Justice and its Criminal Justice Institute, we work to highlight the gross injustices resulting from prosecutorial misconduct, ineffective defense lawyers, and racial bias, and to illuminate the laws that result in excessive punishment. For more information visit: www.fairpunishment.org.