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. Cox told the reporter: “I think we need to kill more people.” Revenge, he said, “brings to us a visceral satisfaction.” Between 2010 and 2015, Cox alone secured one-third of Louisiana’s death sentences.

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,” Breyer wrote, because “capital prosecutions are being pursued in only a few isolated counties.” There are more than 3,100 counties, 2,400 head prosecutors, 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?


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


\[13\] See America’s Deadliest Prosecutors Spreadsheet, supra note 10.

the 1996 high of 315 death verdicts. 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.

“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.”

Joe Freeman Britt was the head prosecutor for Robeson County, North Carolina, from 1974 to 1988. He personally obtained 38 death sentences, more than any other prosecutor in the state’s history, and his status as “the deadliest prosecutor in America” is recorded in the Guinness Book of World Records.

<table>
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<th>NAME</th>
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<td>COUNTY</td>
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16 See Saunders, supra note 11.
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.
At one point, one out of every 25 death row inmates nationwide had been prosecuted by Joe Freeman Britt. 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. 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, and with Britt out of office, Robeson County has imposed only two death sentences in the past decade. 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, and at the height of Britt’s self-styled “blitz” on murderers, the North Carolina Supreme Court frequently condemned his tactics. 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.

In prosecuting Henry McCallum 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. 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.” In addition, Brown was only 15 years old when he was charged. McCollum, who was 19 years old, sustained hours of “intense questioning,” without speaking to an

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23 See Schudel, supra note 17.

24 Smith, supra note 6.

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


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.\(^{34}\)

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.
\(^{35}\) Oppel, supra note 20.
\(^{36}\) State v. Thompson, 290 N.C. 431, 448 (1976).
\(^{37}\) Id.
\(^{38}\) Id. at 449.
\(^{40}\) 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

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<th>NAME</th>
<th>ROBERT H. MACY</th>
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<td></td>
<td>AKA</td>
<td>“COWBOY” BOB MACY</td>
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<td>33.3% (18/54)</td>
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<td></td>
<td>EXONERATIONS</td>
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“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, more than the current death row populations of Colorado, Indiana, New Mexico, Utah, Virginia, Washington, and Wyoming combined. Under Macy, Oklahoma County had more death sentences than it had seen in the previous 40 years. The number dropped precipitously after he retired: Oklahoma County has only had three death sentences in the past six years.

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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”).
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. 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. He hung a movie poster from the film “Tombstone” in his office that read: “Justice is Coming.” In one capital murder trial, Macy physically pushed a defense attorney in front of the jury. Another time, Macy “was dragged from the courtroom after reaching for his gun when a jury acquitted six defendants.”

Macy once told a jury that sentencing the defendant to death was a “patriotic duty” similar to military service. 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. 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.”

Prosecutorial misconduct was found in approximately one-third of Macy’s death penalty cases. In fact, Macy’s “extreme prosecutorial misconduct,” which included findings of inappropriate behavior in 18 of his death penalty cases, 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.

48 Id.
49 Clay & Dean, supra note 43.
52 Moore v. Reynolds, 153 F.3d 1086, 1113 (10th Cir. 1998)
53 Rimer, supra note 47.
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.
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. 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. 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.” Bob Macy wrongfully prosecuted Robert Lee Miller, Jr. after Gilchrist characterized hair follicle evidence as conclusive of guilt during trial; many years later, DNA evidence exonerated Mr. Miller. 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. 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.

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

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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.
Solicitor Donnie “Dr. Death” Myers\textsuperscript{67} personally secured 39 death sentences,\textsuperscript{68} more than any other prosecutor in South Carolina history.\textsuperscript{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.[\textsuperscript{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.”\textsuperscript{71}


\textsuperscript{68} See America’s Deadliest Prosecutors Spreadsheet, supra note 10.


\textsuperscript{70} O’Shea, supra note 67.

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.” He put William Kelly and Ted Powers on death row, even though both were under 18 at the time of their crimes. Powers was only 16 years old.

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

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. 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.” He also told the jury it “will kick the baby some more,” unless it returned a death sentence. 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.

76 See AMERICA’S DEADLIEST PROSECUTORS SPREADSHEET, supra note 10.
77 Id.
79 In re Myers, 355 S.C. 1, 12 (2003).
82 Id. at 223.
83 Id.
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

87 Id. at *9.
88 Id. at *12.
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

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\(^93\) Rosenberg, *supra* note 91.

\(^94\) *Id.*

\(^95\) *Id.*

\(^96\) *Id.*

\(^97\) *Id.*

in the justice system. 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. “Yes, I do. I really do,” Abraham responded.

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. He ultimately put at least 20 people on death row and personally claimed a number of sentences in the “high 30s” by 1995. A wall of Roger King’s Philadelphia office was papered with pictures of people he prosecuted who had been sentenced to death. Each person’s face was circled in the picture with a line through it, and the word “death” was written on each image.

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. 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. The Pennsylvania Supreme Court held that it was “extremely prejudicial for a prosecutor to exhort a jury” in this fashion. 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.

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/.
104 Carbin, supra note 90.
105 Id.
108 Id.
“If you murder someone here, the state of Texas is going to kill you,” 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.” Indeed, Holmes’ office “secured an average 12 capital sentences a year in the decade before his retirement in 2000.” Since 2008, by contrast, Harris County juries sent an average of one person to death row each year.

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, and Kelly Siegler, nicknamed the “Giant Killer” for putting 19 people on death row.

Over Lyn McClellan’s 27-year tenure at the Harris County DA’s office, he obtained a remarkable number of capital sentences. 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. McClellan finally had his chance.
to prosecute Soffar after Soffar’s original murder conviction was overturned in 2004. McClellan did not care that the original conviction was reversed because it was based on a “thin case consisting only of an uncorroborated confession,” that a serial killer named Paul Reid was likely the true culprit, or that Soffar suffered from intellectual disability and brain damage. He charged forward despite the weakness of his case and sought the death penalty anew. Just as the Fifth Circuit was poised to review the case again, Soffar died of cancer while in prison. 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.” According to the court, “[h]ad that evidence been disclosed or disclosed timely, the results of the trial would have been different.” 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.” 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.” 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.” In a fifth case, Siegler excluded a Black juror while...
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. 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, a number greater than the total death row populations of fifteen states combined. When death sentences obtained under the leadership of Lynne Abraham and Johnny Holmes are included, that total comes to 440. 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, 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. 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.

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. He illegally withheld evidence from defense lawyers in two capital trials; put a man on death row who suffered from paranoid delusions and organic brain damage; and secured a death sentence for a mentally disabled, non-triggerman who suffered from "child abuse, incest and neglect." He also once seriously considered prosecuting a five-year-old child for murder. In a widely reported incident, he unzipped his fly in front of a defense attorney and female jury consultant. Abe Laeser, like Britt, Macy and Myers, embodied the win-at-all-costs, personality-driven death penalty.

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).
139 State Undecided On Whether To Whether To Charge 5-Year-Old, Lakeland Ledger, Mar. 15, 1986, 8B.
Kenneth Peasley, dubbed a “death-penalty machine” and “the most feared prosecutor in Arizona’s Pima County,” was personally responsible for at least 10 death sentences. He often “bragged about having sent more men to death row in Arizona than any other prosecutor.” He prosecuted multiple men for murder who were later exonerated. Until his death, Peasley was the only American prosecutor to be “disbarred for intentionally presenting false evidence in death-penalty cases.” He also sent at least one child to death row, 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.

Missouri has only had four new death sentences since 2010. Yet Missouri is responsible for over 25% of the nation’s executions in the last two years. Both of those facts owe, in part, to the retirement of two prosecutors.
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, CADDJO 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


156 See id.


158 See id.


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. An expert concluded that Tucker “thinks like a child” despite his chronological age. Campbell, who has an IQ of 67, appeared to be “delusional” when he represented himself during trial. Cox also obtained a death sentence against Rodricus Crawford, a father convicted of killing his infant son. Cox aggressively pursued the prosecution and death sentence despite the medical examiner’s uncertainty that the death was even a homicide. Cox upset a group of religious leaders when he cited scripture to the jury and suggested that Jesus would demand death for Crawford. Cox retired in 2015. Between 2011 and 2015, Cox alone secured one-third of Louisiana’s death sentences.


163 See Ogletree, supra note 161.


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.


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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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).
175 McMillian v. State, 94 So. 3d 572, 578 (Fla. 2012).
176 Bright v. State, 90 So.3d 249, 257 (Fla. 2012).
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. She has secured death sentences against people with severe impairments, including a military veteran diagnosed with paranoid schizophrenia. 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. The Arizona Supreme Court rebuked Gallagher for prosecutorial misconduct in at least three death penalty cases, calling her behavior “improper,” “very troubling,” and “entirely unprofessional.”

Virginia, like Missouri, is no longer an active death sentencing state. However, Virginia has had more executions in modern history than every state except Texas and Oklahoma. The recently re-elected the District Attorney of Prince William County, Paul Ebert, has personally obtained at least 14 death sentences, more than any prosecutor in Virginia. As of 2012, nine of those men had been executed. 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. This policy has likely contributed to the sentencing, and possibly the

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177 See America’s Deadliest Prosecutors Spreadsheet, supra note 10.
179 State v. Womble, 235 P.3d 244, 257 (Ariz. 2010).
180 State v. Velazquez, 166 P.3d 91, 102 (Ariz. 2007).
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

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