

# *The Death Penalty in Alabama: Judge Override*

EQUAL JUSTICE INITIATIVE



**[I]t approaches the most literal sense of the word “arbitrary” to put one to death in the face of a contrary jury determination where it is accepted that the jury had indeed responsibly carried out its task.**

*- Johnson v. Alabama, 488 U.S. 876 (1988) (Marshall, J., dissenting).*

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# EXECUTIVE SUMMARY AND MAJOR FINDINGS

No capital sentencing procedure in the United States has come under more criticism as unreliable, unpredictable, and arbitrary than the unique Alabama practice of permitting elected trial judges to override jury verdicts of life and impose death sentences.

- Of the 34 states with the death penalty, Alabama is the only jurisdiction where judges routinely override jury verdicts of life to impose capital punishment.
- Since 1976, Alabama judges have overridden jury verdicts 107 times. Although judges have authority to override life or death verdicts, in 92% of overrides elected judges have overruled jury verdicts of life to impose the death penalty.
- Twenty-one percent of the 199 people currently on Alabama's death row were sentenced to death through judicial override.
- Judge override is the primary reason why Alabama has the highest per capita death sentencing rate and execution rate in the country. Last year, with a state population of 4.5 million people, Alabama imposed more new death sentences than Texas, with a population of 24 million.
- Override is legal in only three states: Alabama, Delaware, and Florida. However, Florida and Delaware have strict standards for override. No one in Delaware is on death row as a result of an override and no death sentences have been imposed by override in Florida since 1999. In Delaware and Florida, override often is used to overrule jury death verdicts and impose life - which rarely happens in Alabama.
- Alabama's trial and appellate court judges are elected. Because judicial candidates frequently campaign on their support and enthusiasm for capital punishment, political pressure injects unfairness and arbitrariness into override decisions.

- Override rates fluctuate wildly from year to year. The proportion of death sentences imposed by override often is elevated in election years. In 2008, 30% of new death sentences were imposed by judge override, compared to 7% in 1997, a non-election year. In some years, half of all death sentences imposed in Alabama have been the result of override.
- There is evidence that elected judges override jury life verdicts in cases involving white victims much more frequently than in cases involving victims who are black. Seventy-five percent of all death sentences imposed by override involve white victims, even though less than 35% of all homicide victims in Alabama are white.
- Some sentencing orders in cases where judges have overridden jury verdicts make reference to the race of the offender and reveal illegal bias and race-consciousness. In one case, the judge explained that he previously had sentenced three black defendants to death so he decided to override the jury's life verdict for a white defendant to balance out his sentencing record.
- Some judges in Montgomery and Mobile Counties persistently reject jury life verdicts to impose death. Two Mobile County judges, Braxton Kittrell and Ferrill McRae, have overruled 11 life verdicts to impose death. Former Montgomery County Judge Randall Thomas overrode five jury life verdicts to impose the death penalty.
- There are considerably fewer obstacles to obtaining a jury verdict of death in Alabama because, unlike in most states with the death penalty, prosecutors in Alabama are not required to obtain a unanimous jury verdict; they can obtain a death verdict with only ten juror votes for death. Capital juries in Alabama already are very heavily skewed in favor of the death penalty because potential jurors who oppose capital punishment are excluded from jury service.

# INTRODUCTION

In 1972, the United States Supreme Court declared capital punishment unconstitutional, citing the arbitrary, unpredictable, and capricious manner in which death sentences were imposed.<sup>1</sup> The Court analogized the death penalty to being struck by lightning<sup>2</sup> and concluded that bias, politics, and unfairness rendered capital punishment a violation of the Eighth Amendment. In 1976, the Court upheld modern death penalty statutes based on a commitment that the death penalty would no longer be arbitrary, political, or discriminatory. The Court ordered that there be heightened scrutiny and substantial oversight to ensure that every death sentence is rationally and fairly imposed.<sup>3</sup>

Thirty-five years later, there are increasing concerns and doubts about the reliability and fairness of capital punishment in the United States. Scores of death row prisoners have been released after being proven innocent.<sup>4</sup> Three states recently abolished capital punishment because of its pervasive error and excessive cost.<sup>5</sup> Concern about discrimination and inequality in the use of the death penalty has resulted in declining support, as reflected in public opinion polls and in sharply reduced sentencing and execution rates nationwide.<sup>6</sup>

## What Is Judge Override?

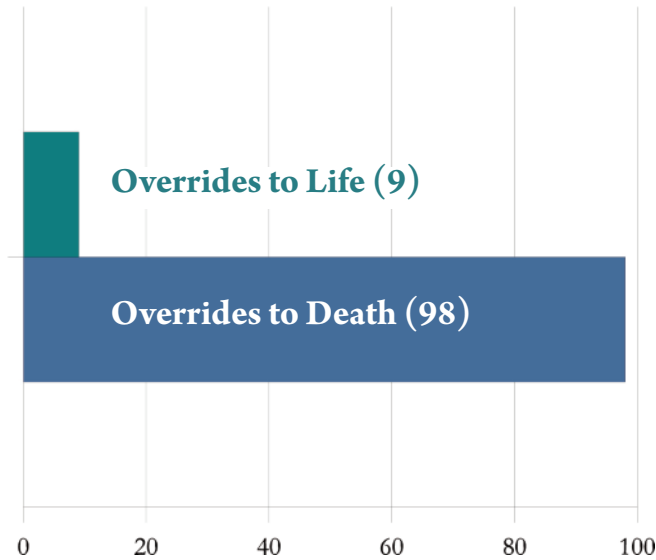
People convicted of capital murder in Alabama are entitled to a sentencing hearing before a jury that decides whether the defendant should be sentenced to life imprisonment without parole or death. That jury verdict can be overruled by the trial judge: if the jury decides the sentence should be life imprisonment without parole, the judge may override the jury's verdict and sentence the defendant to death instead; or, if the jury returns a verdict for the death penalty, the judge may override that verdict and impose life imprisonment without parole.<sup>7</sup> Judge override in Alabama is almost always used to impose death.

One of the glaring structural problems with how the death penalty is imposed in the United States exists in Alabama. No capital sentencing procedure in the United States has come under more criticism as unreliable, unpredictable, and arbitrary than the unique Alabama practice that permits an elected trial judge to override unilaterally a jury verdict of life and sentence a defendant to death. Judge override dramatically exemplifies how contemporary death sentencing is vulnerable to politics, bias, and arbitrariness.

**Of 34 states with the death penalty, Alabama is the only state where judges regularly override jury verdicts of life to impose the death penalty.**

## Overrides In Alabama Since 1976

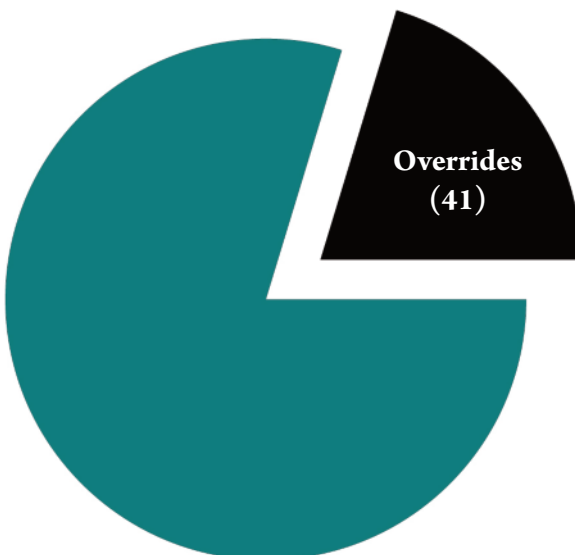
(Total: 107)



Only three states allow judges to override jury life verdicts.<sup>8</sup> Of these, Alabama is the only state that elects trial judges in partisan elections. The other two states, Florida and Delaware, have long maintained tight regulations on a trial judge's ability to overrule the jury's sentencing judgment and judge override is very rare. By contrast, no meaningful standards regulate an Alabama trial judge's ability to ignore a jury's life-without-parole verdict.

## Alabama's Death Row

(Total: 199)



Since 1976, judges in Alabama have overridden jury sentencing verdicts 107 times. While the law authorizes override of both life and death verdicts, Alabama judges have overturned life verdicts 98 times. In only nine cases has a judge overturned a jury's death verdict to impose a life-without-parole sentence.

**Of the 199 people currently condemned to death in Alabama, 41 (21%) were sentenced through judge override.**



**Every person on 19-year-old Shonelle Jackson's jury agreed he should be sentenced to life without parole. The trial judge overrode the jury and condemned Mr. Jackson to death, saying he had considered the jury's unanimous life verdict but found the effort "not helpful."**

More than 20% of the people currently sentenced to death in Alabama were condemned by a judge after the jury voted for life. Fueled by "tough on crime" rhetoric in partisan judicial elections, judicial override in Alabama has accounted for 19% of annual death sentences on average over the past decade. The percentage of death sentences imposed by override fluctuates dramatically from year to year. In 2008, an election year, 30% of death sentences were imposed by

override, in contrast with just 7% in 1997, a non-election year. In some years, including 1990 and 1991, half of death sentences imposed are overrides. The data suggests that override in Alabama is heavily influenced by arbitrary factors such as the timing of judicial elections, the politics of the county where the accused is prosecuted, and the outsized enthusiasm of certain judges for overriding jury life verdicts.

The Alabama Supreme Court recently ruled that when a jury votes for life imprisonment without parole, the trial judge must give serious consideration to that verdict and can set it aside and impose death only if he provides a convincing written explanation of the problems with the jury's verdict.<sup>9</sup> Appellate courts have not rigorously enforced this ruling, however, and trial judges continue to override with little or no explanation, even where juries have returned unanimous life verdicts, such as in the cases of Shonelle Jackson, William Bush, and Oscar Doster. In the absence of meaningful standards and appellate oversight, several judges routinely have used override against the verdicts of capital sentencing juries, such as Mobile County Judge Ferrill McRae, who rejected jury life verdicts in six cases and never overruled a jury's verdict in order to impose a life sentence.

- **Alabama has the highest death sentencing rate in the country.** In 2010, more people were sentenced to death in Alabama than in Georgia, Maryland, Virginia, Arkansas, South Carolina, Oklahoma, Kentucky, and Louisiana combined.
- **The death sentencing rate in Alabama is nearly six times greater than in Texas.** Alabama – with a population of 4.7 million – sentenced more people to death last year than Texas, with 24.8 million people.
- **Alabama executes more people per capita than any other state.**



**These death sentences are cruel and unusual in the same way that being struck by lightning is cruel and unusual.**

**- *Furman v. Georgia*, 408 U.S. 238, 309 (1972) (Stewart, J., concurring).**

The constitutionality of Alabama's override scheme has been called into question by the United States Supreme Court's ruling in *Ring v. Arizona*, 536 U.S. 584 (2002), which held that juries, not judges, must make the factual findings legally required before a death sentence can be imposed. The *Ring* decision struck down statutes that permitted a judge, without a jury, to determine whether a defendant could receive the death penalty, and leaves Alabama as the only state where virtually unrestricted judicial override still plays a major role in capital cases.

Judicial override is particularly problematic in Alabama because trial judges often are selected in hotly contested partisan elections in which judges campaign on their records of imposing death. Together with the absence of a statewide public defender system, prosecutorial misconduct, racial discrimination, and geographic disparities in the death sentencing rate, the practice of judicial override raises concerns about the fairness, reliability, and constitutionality of death sentencing in Alabama.

## History of Judicial Override

In 1972, the United States Supreme Court in *Furman v. Georgia*, 408 U.S. 238 (1972), struck down the death penalty in large part because it was being applied in an arbitrary and discriminatory way. If a state determines that death should be an available penalty for certain crimes, the Court made clear that it must administer the death penalty in a manner that rationally distinguishes between the small number of individuals for whom death is an appropriate sanction and those for whom it is not.<sup>10</sup>

States responded to *Furman* by implementing new capital sentencing statutes that established procedures to regularize imposition of the death penalty and minimize the risk that death sentences will be imposed in error or in an arbitrary and

capricious manner. Four years after *Furman*, the Court upheld in *Gregg v. Georgia*, 428 U.S. 153 (1976), a new capital sentencing statute that requires a separate sentencing proceeding for defendants convicted of capital murder, also known as a bifurcated trial. The Georgia statute allows imposition of the death penalty only where the jury unanimously finds beyond a reasonable doubt one of several statutorily-defined aggravating circumstances and then elects to impose death, and unless the defendant waives his right to a jury sentencing verdict, the jury's recommended sentence is binding on the trial judge. All capital sentencing statutes currently in place require participation in the sentencing decision by juries, which are heavily skewed in favor of death because people with reservations about the death penalty cannot serve on capital juries. In most states, a death sentence cannot be imposed unless the jury returns a *unanimous* verdict for death. In contrast, Alabama juries need only ten votes for death in order to return a death verdict.

In 31 of the 34 states that authorize capital punishment, the jury's decision is final. Only in three states – Alabama, Delaware, and Florida – does the judge have the power to override the jury's decision. "Alabama's capital sentencing statute is unique. In Alabama, unlike any other State in the Union, the trial judge has unbridled discretion to sentence the defendant to death – even though a jury has determined that death is an inappropriate penalty, and even though no basis exists for believing that any other reasonable, properly instructed jury would impose a death sentence."<sup>11</sup>

## **Override in Delaware and Florida**

No one is on death row in Delaware as a result of judge override. Delaware judges - who are not elected - typically use override to impose life sentences.<sup>12</sup> In Florida, six people are on death row as a result of override. No Florida judge has imposed death through override in 12 years.<sup>13</sup> Whereas more than 20% of the people on Alabama's death row were condemned by override, judge override accounts for less than 2% of Florida's current death sentences.<sup>14</sup> Florida judges have used override to impose life sentences in 87 cases,<sup>15</sup> compared to only nine in Alabama.

For 100 years between 1872 and 1972, Florida law required the jury to decide whether to impose the death penalty. In 1972, state law reversed course in reaction to *Furman*, which was misunderstood as barring jury sentencing in capital cases.<sup>16</sup> Florida's new capital sentencing scheme created a bifurcated proceeding in which the jury, after finding the defendant guilty of capital murder, participates in a second phase to decide the appropriate sentence. The jury's sentencing verdict can be overruled by the trial judge.

## The Death Penalty - Who Decides?

### Jury's Decision Is Final

Arkansas Arizona California Colorado Connecticut Georgia Idaho Indiana Kansas Kentucky Louisiana Maryland Mississippi Missouri Montana Nebraska	Nevada New Hampshire North Carolina Ohio Oklahoma Oregon Pennsylvania South Carolina South Dakota Tennessee Texas Utah Virginia Washington Wyoming
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### Judge Override Only If Standard Met

Delaware  
Florida

### Judge Override Without Standard

Alabama

Florida law requires the trial judge to give “great weight” to the jury’s recommendation and prohibits override of a jury’s life verdict unless “the facts suggesting a sentence of death [are] so clear and convincing that virtually no reasonable person could differ.” *Tedder v. State*, 322 So. 2d 908, 910 (Fla. 1975). As interpreted by the Florida Supreme Court, the statute requires the prosecutor to satisfy a more stringent standard before the judge in order to obtain a death sentence. The Supreme Court upheld the Florida statute in *Spaziano v. Florida*, 468 U.S. 447 (1984), and has repeatedly cited the *Tedder* standard with approval.

Delaware’s capital punishment statute is based on Florida’s scheme, and has permitted override only since 1991. Delaware judges generally have overruled juries to impose life sentences. In fact, only one Delaware judge has overruled a jury’s recommendation of life to impose a death sentence.<sup>17</sup> That sentence was twice overturned by the Delaware Supreme Court and the judge imposed a life sentence in 2004.<sup>18</sup>

The Delaware Supreme Court held that trial judges must afford “great weight” to a jury’s recommendation, adopting virtually the same standard that has eliminated judge override as a major component of death sentencing in Florida.<sup>19</sup> Although Delaware’s General Assembly has amended the death penalty statute to clarify that the jury’s advisory verdict is not binding on the trial court,<sup>20</sup> Delaware courts to date have maintained strict standards on override of life verdicts and trial judges uniformly have refrained from such overrides.



## Override in Alabama: No Meaningful Standards or Oversight

Like Florida, Alabama has bifurcated capital trial proceedings in which the jury, after finding the defendant guilty of capital murder in the first phase, participates in a second phase to decide the appropriate sentence. An Alabama capital sentencing jury may recommend the death penalty provided at least ten jurors vote for death; the statute requires a simple majority (seven jurors) to recommend life imprisonment without parole.<sup>21</sup>

In contrast with Florida, where jury recommendations are to be given “great weight” by the sentencing judge,<sup>22</sup> Alabama’s statute merely requires the judge to “consider” the jury’s advisory verdict.<sup>23</sup> Alabama courts have refused to adopt the *Tedder* standard. Override in Alabama remains largely unregulated, with no meaningful standards or oversight.

**To permit the State to execute a woman in spite of the community’s considered judgment that she should not die is to sever the death penalty from its only legitimate mooring. The absence of any rudder on a judge’s free-floating power to negate the community’s will, in my judgment, renders Alabama’s capital sentencing scheme fundamentally unfair and results in cruel and unusual punishment.**

**- *Harris*, 513 U.S. at 525  
(Stevens, J., dissenting).**

Alabama’s override provision was challenged in *Harris v. Alabama*, 513 U.S. 504 (1995), in which the petitioner argued that Alabama’s scheme is unconstitutional because it does not specify the weight the judge must give to the jury’s advisory verdict and thus permits arbitrary imposition of the death penalty. An evaluation of the sentencing orders in override cases revealed that judges across the state varied widely in the weight and consideration they gave to jury verdicts, with some according “great weight” to the jury’s recommendation while others identified merely a “reasonable basis” to override.<sup>24</sup> The Court ultimately upheld Alabama’s statute, reasoning that because the Constitution “permits the trial judge, acting alone, to impose a capital sentence,” a state may require the sentencing judge to consider a jury’s recommendation and trust the judge to give it proper weight.<sup>25</sup>

In 2002, however, the Supreme Court held in *Ring v. Arizona*, 536 U.S. 584 (2002), that “[c]apital defendants . . . are entitled to a jury determination of any fact on which the legislature conditions an increase in their maximum punishment,”<sup>26</sup> and accordingly, the Sixth Amendment does not permit “a sentencing judge, sitting without a jury, to find an aggravating circumstance necessary for imposition of the death penalty.”<sup>27</sup> The Court has not yet addressed whether or how Alabama’s override system might survive *Ring*.

Since *Harris*, the Alabama Supreme Court has held that when a jury recommends life, the trial judge must give “serious consideration” to that recommendation and can set it aside and impose death only if she provides a convincing written explanation of the problems with the jury’s verdict.<sup>28</sup> A jury’s life recommendation “is to be treated as a mitigating circumstance,”<sup>29</sup> and if the vote is unanimous, it is supposed to be afforded “great weight.”<sup>30</sup>

Appellate courts, however, have not exercised any meaningful or consistent oversight to enforce these rulings: in 57 of 98 override cases, trial judges failed to consider the jury’s life verdict as a mitigating circumstance; unanimous jury verdicts are not reliably afforded more weight than verdicts with fewer votes for life (in fact, more unanimous verdicts have been overturned than 9-3 verdicts for life); and Alabama trial judges continue to override unanimous life verdicts, including one as recently as January 2011. Indeed, four of the last 12 people executed in Alabama received life verdicts from their juries; and in three of the four, the trial judge did not consider the jury’s life verdict as a mitigating circumstance.

**Alabama thus remains the only state in the country where judges can override jury life verdicts without meeting a strict standard.** Because Alabama judges continue to have virtually unfettered discretion in overriding jury sentencing verdicts, there is haphazard and inconsistent application of the ultimate sanction.



**Robert Tarver’s jury sentenced him to life without parole but the trial judge overrode and sentenced him to death. On April 14, 2000, he was executed in Alabama’s electric chair.**

## Alabama's Elected Judiciary: "Politicians in Robes"

Of the three states that allow judge override, Alabama is the only state that elects trial judges in partisan elections. Alabama judges face partisan elections every six years.<sup>31</sup> Political considerations often dictate sentencing determinations in Alabama capital cases. Fearing that one's constituency may perceive him as lenient and not "tough on crime," a trial judge who desires to remain in office faces tremendous pressure to override life recommendations, especially during election season.

**[P]resent-day capital judges may be "too responsive" [to] a political climate in which judges who covet higher office – or who merely wish to remain judges – must constantly profess their fealty to the death penalty.**

*- Harris, 513 U.S. at 519 (Stevens, J., dissenting).*

Alabama's elected trial judges have the authority to override a jury's verdict and impose a death sentence or a sentence of life imprisonment without parole, but they overwhelmingly use override to impose death. Of 107 total overrides in Alabama, 92% have been life-to-death overrides.

Override decisions are extremely vulnerable to political factors that have nothing to do with the merits of a particular case. The prominence of "tough on crime" rhetoric in Alabama judicial races is one measure of how politics influences rulings in capital cases at all levels of Alabama's judicial system.

Judicial candidates in Alabama routinely tout their commitment to punishing criminals. Although United States Supreme Court Justice John Paul Stevens has opined that "[a] campaign promise to 'be tough on crime,' or to 'enforce the death penalty,' is evidence of bias that should disqualify a candidate from sitting in criminal cases,"<sup>32</sup> such rhetoric is ubiquitous in Alabama judicial campaigns.

In one campaign ad, Alabama Supreme Court candidate Claud Neilson boasted that he "looked into the eyes of murderers and sentenced them to death." Another candidate for the state's highest court, incumbent Kenneth Ingram, ran a TV ad that opened with grainy videotape footage from inside a convenience store where, 20 years earlier, a teenager had murdered the owner. Here, said the ad's narrator, "a 68-year-old woman, working alone, was robbed, raped, stabbed 17 times,

## Such life-or-death power shouldn't be vested in a single judge, particularly an elected judge subject to political pressures.

- *The Birmingham News*, July 31, 2002

and murdered. Without blinking an eye, Judge Kenneth Ingram sentenced the killer to die.” The victim’s daughter appears on screen to give her personal endorsement: “It was my mother who was killed, and Judge Ingram gave us justice. Thank heaven Judge Ingram is on the supreme court.”<sup>33</sup>

Former Alabama Supreme Court Justice Harold See ran an ad in 2000 showing a newspaper headline that read, “Court upholds death sentences in two slayings” while the narrator stated that See was “fighting against minor technicalities that would let criminals off” and that “Justice See knows that drug dealers are dangerous criminals who threaten our children . . . [He] has the tough on crime record to be Chief Justice.”<sup>34</sup>

To gain election, judges in Alabama frequently express enthusiasm for the death penalty, deference to prosecutors and police, hostility towards the accused, and occasionally contempt for the defense function.<sup>35</sup> A former Chief Judge of the Court of Criminal Appeals was once quoted as saying he could not do criminal defense work because he has “strong moral values and principles. I would make a better prosecutor than a defender.”<sup>36</sup>

**Given the key role of the jury in American justice, it is difficult to justify giving officials who will be held to account for their stance on the death penalty every four years the power to substitute their own individual opinions for those of the 12-member jury.**

- *The Anniston Star*, July 6, 2008

Tough on crime and pro-death penalty rhetoric also extends to circuit court races. In a 1998 Montgomery race, a candidate was endorsed by the county district attorney in one ad,<sup>37</sup> and in another, she touted her experience working on a drug task force, using actual video footage of her participating in a police raid of a “crack house.”<sup>38</sup> Also in 1998 in Montgomery, a circuit court judge ran ads featuring endorsements from a former juror and a crime victim’s son.<sup>39</sup>



Mobile County trial judge Ferrill McRae ran TV ads to highlight his support for capital punishment, including one in which he is shown on the bench while an announcer notes that the judge has “presided over more than 9,000 cases, including some of the most heinous murder trials in our history.” Meanwhile, the names of notorious convicted murderers whom McRae sentenced to death flash on the screen: “Singleton, Murdered Catholic Nun” and “State Trooper Martin, Murdered and Burned Wife.” (George Martin’s jury determined he should be sentenced to life without parole, but Judge McRae overrode and condemned him to death.)<sup>40</sup>

Appointed in 1965 by Governor George Wallace – then promoting “Segregation forever!” – four years after he graduated from the University of Alabama’s law school, Mobile Circuit Judge Ferrill McRae has acknowledged that “some judges are more prone to give the death penalty than others. There’s no question about that. But if it’s based on what’s fair in the case, I have no problem with that.” **McRae has overridden more cases than any other judge in Alabama.** Five of the six men he sentenced to die by override are African American, and he has never substituted a life sentence for a jury verdict of death – even when an all-white jury recommended death for a mentally retarded black man who could not read the confession that he signed.<sup>41</sup>

These political pressures produce the appearance and reality of a judiciary that is insufficiently independent to provide a fair and impartial hearing on controversial issues or enforce the rights of politically unpopular minorities. Because trial judges have almost unlimited discretion in capital sentencing, and because reviewing judges also are subject to reelection pressure, the override decision is perhaps the most vulnerable to political pressure. Scholars observe that, in a state where the majority of people favors the death penalty, “a judge who declines to hand down a sentence of death, or who insists on upholding the Bill of Rights, may thereby sign his own political death warrant.”<sup>42</sup>

Indeed, recent studies show that elections exert significant direct influence on decision-making in death penalty cases.<sup>43</sup> In 2008, an election year, 30% of the death sentences imposed in Alabama were the result of judge override. Former United States Supreme Court Justice Sandra Day O’Connor, who wrote the majority opinion in *Harris v. Alabama* upholding Alabama’s override statute, has since her retirement from the Court championed the cause of ending judicial elections because they facilitate corruption and give rise to a perception of judges as “politicians in robes.”<sup>44</sup>

# Lightning Strikes: The Arbitrary Effect of Race and Geography

Override in Alabama is characterized by arbitrariness and error - it is shaped by geography, race, and the lottery of which judge is drawn. Geography has a major impact on the imposition of death sentences in Alabama. Some counties have highly disproportionate death sentencing rates shaped by the “tough on crime” politics of their elected judges and prosecutors. For example, Houston County has imposed 27 death sentences since 1977, accounting for 6% of the state’s death sentences but only 2% of its population. Houston County’s per capita death sentencing rate is more than twice that of Jefferson County, the state’s most populous county. In contrast, nine Alabama counties have sent no one to death row.

Death sentences imposed by judge override likewise demonstrate arbitrariness based on location. **Just three of Alabama’s 67 counties account for nearly half of the life-to-death overrides statewide.** Jefferson County leads the state with 17 overrides (17.4%), followed by Mobile with 16, and Montgomery with 12. Mobile and Montgomery’s override rates are higher even than their overall death sentencing rates. Mobile County accounts for 10% of death sentences imposed statewide since 1977, but Mobile judges imposed 16% of Alabama’s total life-to-death overrides. Montgomery County has imposed 6.7% of Alabama death sentences, but 12% of overrides.

The disproportionate use of override in Mobile and Montgomery can be traced to the outsized willingness of certain judges to overturn jury life verdicts. Montgomery Circuit Judge Randall Thomas and Mobile Circuit Judge Braxton Kittrell each have overridden five jury life verdicts. Mobile Circuit Judge Ferrill McRae has overridden six jury life verdicts – the most overrides in Alabama by a single judge. Montgomery Circuit Judge William Gordon and Judge P.B. McLaughlin, Jr., of Dale County have overridden three times each. No other judge in the state has overruled more than two jury verdicts for life.

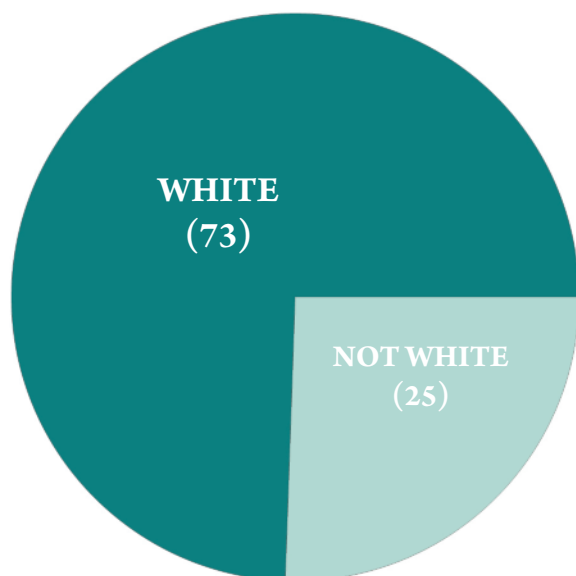
**[Alabama should be] more closely following the Western ideal that life-and-death judicial decisions should be based on communal consensus, as represented by a unanimous jury. For a judge to overrule the jury is to interfere with the defendant’s constitutional guarantee of judgment by his or her peers. Indeed, judicial override is unfair to the defendant, the jury and the judge.**

**- The Mobile Register, June 25, 2002**

In Crenshaw, DeKalb, and Hale counties, all of the death sentences since 1977 have been imposed after juries returned life verdicts. Sixty percent or more of the death sentences imposed in Conecuh and Dallas counties have been overrides.

Conecuh County has the highest per capita override rate in the state. Montgomery and Morgan are in the top ten Alabama counties with the highest override rate.

### Life-to-Death Overrides by Race of Victim



Each year in Alabama, less than 35% of all murders involve white victims, yet 75% (73) of the cases where judges overrode jury life verdicts to impose death involved white victims. While just 6% of all murders in Alabama involve black defendants and white victims,<sup>46</sup> in 31% of Alabama override cases, the trial judge condemned a person of color to death for killing someone white.

Persons convicted of capital offenses are more than four times more likely to get the death penalty if the victim is white than if the victim is not white. Strong race-of-victim effects also appear in Alabama override cases.

**African Americans in Alabama constitute 26% of the total population,<sup>45</sup> but more than half of the overrides in Alabama have imposed the death penalty on African-American defendants.** None of the nineteen appellate court judges and only one of the 42 elected District Attorneys in Alabama is black.

**Courtney Lockhart, a 24-year-old African American man and Iraq War veteran, was sentenced to death in 2011 by Lee County Circuit Judge Jacob Walker for the killing of a white female Auburn University student despite the jury's unanimous verdict for life.**

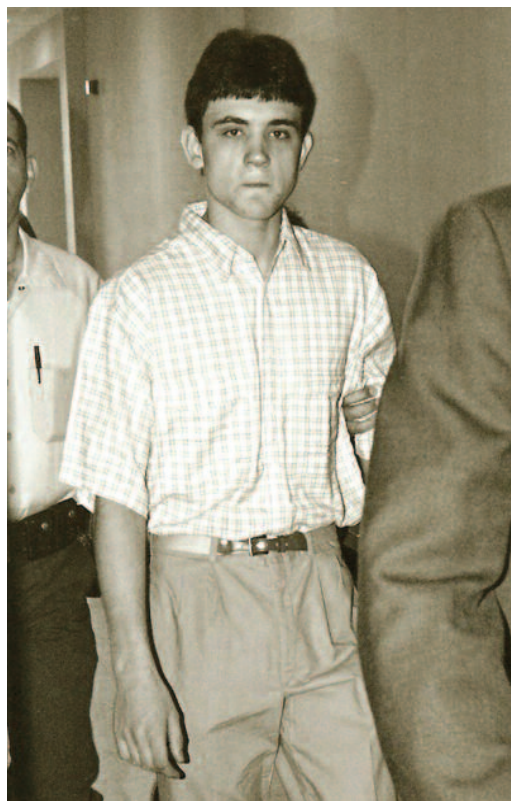
## In Their Own Words: Override Judges' Sentencing Orders

A review of sentencing orders overriding jury life verdicts and imposing death reveals a troubling randomness in the way jury verdicts are considered; demonstrates the influence of arbitrary factors like race in overrides; and shows that override in Alabama has not been reliably or consistently reserved for the worst of the worst cases.

In the majority (57) of life-to-death overrides, judges did not consider the jury's life verdict as a mitigating factor weighing against imposition of the death penalty. Alabama judges also overrode in more cases with unanimous jury verdicts for life (14) than in cases with 11-1 votes (7) or even 9-3 verdicts (12). In a rational system, as the Alabama Supreme Court has recognized,<sup>47</sup> trial judges not only would consider the jury's life verdict as a mitigating factor, but would give unanimous life verdicts more weight, resulting in fewer overrides of unanimous verdicts than of verdicts reflecting fewer juror votes for life.

Alabama judges have used override to condemn seven children to death, including one as young as 15. The United States Supreme Court has since held that it is unconstitutionally cruel to sentence children (under age 18) to death because they categorically lack sufficient culpability to justify the harshest penalty.<sup>48</sup> In overriding the jury's life verdict and sentencing to death the youngest defendant in Alabama condemned by override, 15-year-old Clayton Flowers (*below*), Baldwin County Judge Jim Reid acknowledged Clayton's young age but wrote that "he appeared mature and able to appreciate the nature and consequences of his conduct."<sup>49</sup>

Even among adult defendants, override judges vary widely in their consideration of the defendant's age as a mitigating factor. Nine judges have refused to find that the defendant's age of 20 to 22 was mitigating at all; four judges found that same age range to be mitigating; and one found it mitigating that the defendant was as old as 26. Mobile Judge Ferrill McRae rejected as mitigating the fact that Herbert Williams was just 19 years old, writing that the "reptilian coldness" of this black teenager "vitiates any contention that innocence of youth was a factor."<sup>50</sup>





**Thomas Ferguson was convicted of capital murder at age 24. The jury heard evidence that he was a person with borderline mental retardation and a highly dysfunctional family background who had been co-opted into a criminal scheme by his father-in-law. The jury returned a life verdict, but the trial judge overrode and imposed the death penalty.**

The United States Supreme Court has also excluded people with mental retardation from the death penalty because they lack sufficient blameworthiness.<sup>51</sup> In his order condemning John Neal to death despite the jury's life verdict, Baldwin County Judge Charles Partin determined that Mr. Neal's 65 IQ score classified him as having mild mental retardation, but the judge asserted that "[t]he sociological literature suggests Gypsies intentionally test low on standard IQ tests."<sup>52</sup> After Mr. Neal's case was reversed on appeal because the prosecutor illegally excluded people of color from the jury, the State agreed that Mr. Neal is exempt from the death penalty because he is mentally retarded.

Macon County Judge Dale Segrest relied on his own reading about personality disorders to conclude that Edward Evans was attempting to "stage insanity" and did not in fact suffer from a mental disease or defect (despite evidence that his father abused him, including lighting his hands on fire) because it would be "dangerous policy for the law to suggest that the very factors that propel a defendant into a life of crime in some way mitigate a defendant's personal responsibility for the criminal activity."<sup>53</sup> Mr. Evans hanged himself shortly after Judge Segrest overrode and sentenced him to death.

Judge Segrest later relied on the same reasoning in refusing to consider undisputed mitigating evidence in the Randolph County case of Bobby Waldrop. After hearing evidence about 19-year-old Bobby's addiction to crack cocaine, his deep remorse over the killing of his grandparents, and the love between him and his grandparents, the jury decided that life in prison without parole was the appropriate punishment. Judge Segrest was facing re-election at the time of sentencing, and he overrode the jury's verdict. In open court, he explained that he sentenced Mr. Waldrop (who is white) to death to show he was not racially biased in his past cases: "If I had not imposed the death sentence [on Bobby Waldrop], I would have sentenced three black people to death and no white people."<sup>54</sup>

Alabama law requires the trial judge to explain his decision to sentence a defendant to death in a written sentencing order. A review of the sentencing orders in override cases reveals that racial bias and other improper considerations play a role in some Alabama overrides. For example, Judge Charles Partin overrode the jury and sentenced John Neal to death based in part on his finding that:

**“The sociological literature suggests Gypsies intentionally test low on standard IQ tests.”**

Judge Dale Segrest explained in open court that he sentenced Bobby Waldrop to death over the jury’s life verdict at least in part to balance out his record on race:

**“If I had not imposed the death sentence, I would have sentenced three black people to death and no white people.”**



Override cases have proven highly susceptible to error, perhaps because factors that exacerbate the political pressure on judges to override – such as media attention and social status of the victim – also pressure law enforcement and prosecutors to overreach and make mistakes in pursuit of capital murder convictions.

An innocent man, Walter McMillian (*right*), was convicted of capital murder in the killing of a young white woman in Monroeville, Alabama. His trial lasted just a day and a half; only three witnesses testified against Mr. McMillian and multiple alibi witnesses, who were black, testified he was at a church fish fry at the time of the crime. Trial judge Robert E. Lee Key overrode the jury's life verdict and sentenced Mr. McMillian to death. After postconviction counsel proved that the State's witnesses had lied on the stand and the prosecution had illegally suppressed exculpatory evidence, Mr. McMillian's conviction was overturned. He was released in 1993 after spending six years on death row for a crime he did not commit.



**William Bush was convicted of capital murder and sentenced to death three times. His first two convictions were overturned by appellate courts because of prosecutorial misconduct. After his third trial and conviction, the jury unanimously determined he should be sentenced to life without parole. But the trial judge, who had twice previously sentenced Mr. Bush to die, overrode the jury's verdict and unilaterally imposed the death penalty. Mr. Bush has spent more than 28 years on Alabama's death row.**

Of the 93 people sentenced to death through judicial override in Alabama, 37% left death row after their convictions or sentences were reversed.

That more than a third of override cases have been reversed because of error demonstrates the frequently arbitrary and unreliable nature of these proceedings.

**Anthony Johnson was convicted of a 1984 murder. The State of Alabama conceded that Mr. Johnson did not kill the victim, who was shot by a co-defendant. The jury determined that the appropriate punishment was life in prison without parole, but the trial judge overrode the jury's verdict and condemned Mr. Johnson to death. In dissent from the United States Supreme Court's decision upholding Mr. Johnson's death sentence in 1988, Justice Thurgood Marshall wrote: "[I]t approaches the most literal sense of the word 'arbitrary' to put one to death in the face of a contrary jury determination where it is accepted that the jury had indeed responsibly carried out its task."<sup>55</sup> Anthony Johnson was executed by lethal injection on December 12, 2002.**

## **Conclusion**

Supreme Court Justice John Paul Stevens reasoned in *Harris v. Alabama* that "[d]eath sentences imposed by judges over contrary jury verdicts do more than countermand the community's judgment: They express contempt for that judgment . . . Indeed, government-sanctioned executions unsupported by judgments of a fair cross section of the citizenry may undermine respect for the value of human life itself."<sup>56</sup> Of the 53 people executed by the State of Alabama since 1976, ten – 19% – were sentenced to death by judges even though their juries determined that death was not an appropriate punishment.

Override in Alabama is a unique, arbitrary, and unreliable mechanism for imposing the death penalty that stands starkly at odds with the heightened reliability on which the United States Supreme Court has conditioned continued use of the death penalty. Alabama overrides are largely unregulated, with no meaningful standards or oversight; they are extremely vulnerable to political factors; they are shaped by geography, race, and the lottery of which judge is assigned; and they are defined by error. No other state permits elected trial judges to exercise virtually unfettered discretion to reject the jury's life verdict and impose death. Override is the primary reason why Alabama's death sentencing rate is the highest in the nation and, while death sentencing and executions across the country decline, Alabama's death sentencing rate and execution rate continue to outpace even much larger states, including Texas. Judge override raises critical questions about the fairness, reliability, and integrity of the death sentencing process in Alabama.



## Alabama Overrides from Life to Death

	<u>Name</u>	<u>County</u>	<u>Judge</u>	<u>Yr.</u>	<u>Race</u> <u>Def./Vic.</u>
1.	Acres, Gregory	Montgomery	R. Thomas	1983	B/W
2.	Apicella, Andrew	Jefferson	J. Garrett	1997	W/W
3.	Barnes, Michael	Mobile	B. Kittrell	1995	W/W
4.	Beard, David	Marshall	W. Gullahorn	1991	W/W
5.	Billups, Kenneth	Jefferson	W. Cole	2006	B/B
6.	Boyd, William	Calhoun	H. Quattlebaum	1987	W/W
7.	Burgess, Alonzo	Jefferson	I. Johnson	1994	B/B
8.	Burgess, Roy	Morgan	B. McRae	1994	B/W
9.	Bush, William	Montgomery	J. Phelps	1991	B/W
10.	Carr, Patrick	Jefferson	D. Reynolds	1992	B/W
11.	Carroll, Taurus	Jefferson	A. Bahakel	1998	B/B
12.	Clark, Andrew	Henry	S.E. Jackson	1995	W/W
13.	Coral, Robert	Montgomery	R. Thomas	1989	B/W
14.	Crowe, Coy	Jefferson	B. Burney	1984	W/W
15.	Dorsey, Ethan	Conecuh	S. Welch	1998	B/W
16.	Doster, Oscar	Covington	A. McKathan	2006	W/W
17.	Duncan, Joe	Dallas	J.C. Norton	1988	W/W
18.	Eatmon, Dionne	Jefferson	T. Petelos	2005	B/W
19.	Evans, Edward	Macon	D. Segrest	1996	W/W
20.	Ferguson, Thomas	Mobile	N.P. Thompkins	1998	W/W
21.	Flowers, Clayton	Baldwin	J. Reid	1990	W/W
22.	Frazier, Richard	Mobile	B. Kittrell	1986	W/W
23.	Frazier, Richard	Mobile	B. Kittrell	1990	W/W
24.	Freeman, Darryl	Madison	D. Banks	1984	B/B
25.	Gentry, Ward	Jefferson	J. Garrett	1992	W/W
26.	Giles, Arthur	Morgan	B. Aderholt	1991	B/W
27.	Gregory, William	Baldwin	P. Baschab	1995	W/W
28.	Hadley, J.C.	Baldwin	C. Partin	1989	W/W
29.	Harrell, Ed	Jefferson	D. Reynolds	1983	B/B
30.	Harris, Louise	Montgomery	R. Thomas	1990	B/B
31.	Harris, Westley	Crenshaw	E. McFerrin	2005	B/B
32.	Hays, Henry	Mobile	B. Kittrell	1984	W/B
33.	Hodges, Melvin	Lee	R. Harper	1999	B/W
34.	Hooks, Joseph	Montgomery	R. Thomas	1986	W/W
35.	Hyde, James Matthew	Marshall	B. Jetton	1996	W/W
36.	Jackson, Demetrius	Jefferson	T. Petelos	2008	B/B
37.	Jackson, Shonelle	Montgomery	W. Gordon	1998	B/B
38.	Jackson, Willie	Coffee	G. McAliley	1989	B/W
39.	Johnson, Anthony	Morgan	D. Hundley	1985	W/W
40.	Jones, Arthur	Baldwin	H. Wilters	1982	B/W
41.	Killingsworth, Jimmy	Bibb	T. Jones	2006	W/W

	<u>Name</u>	<u>County</u>	<u>Judge</u>	<u>Yr.</u>	<u>Race</u> <u>Def./Vic.</u>
42.	Knotts, William	Montgomery	C. Price	1993	W/B
43.	Lane, Thomas	Mobile	J. Johnston	2006	W/A
44.	Lee, Jeffrey	Dallas	J. Meigs	2000	B/W
45.	Lindsey, Michael	Mobile	B. Kittrell	1982	B/W
46.	Lockhart, Courtney	Lee	J. Walker	2011	B/W
47.	Madison, Vernon	Mobile	F. McRae	1994	B/W
48.	Martin, George	Mobile	F. McRae	2000	B/B
49.	McGahee, Earl	Dallas	J. Meigs	1992	B/B
50.	McGowan, James	Conecuh	S. Welch	1996	W/W
51.	McMillan, Calvin	Elmore	J. Bush	2009	B/W
52.	McMillian, Walter	Monroe	R. Key	1988	B/W
53.	McNair, Willie	Montgomery	E. Jackson	1993	B/W
54.	Mitchell, Brandon	Jefferson	J.W. Cole	2007	B/W,B
55.	Moore, Daniel	Morgan	G. Thompson	2003	W/W
56.	Morrow, John	Baldwin	R. Wilters	2002	W/W
57.	Murry, Paul	Montgomery	W. Gordon	1982	B/B
58.	Murry, Paul	Montgomery	W. Gordon	1988	B/B
59.	Musgrove, Phillip	Madison	L. Smith	1985	W/W
60.	Myers, Robin	Morgan	B. McRae	1994	B/B
61.	Neal, John	Baldwin	C. Partin	1990	W/W
62.	Neelley, Judy	De Kalb	R. Cole	1983	W/W
63.	Norris, Michael	Jefferson	A. Bahakel	1995	W/W
64.	Owens, Charles	Russell	W. Johnson	1985	B/W
65.	Padgett, Larry	Marshall	W. Jetton	1992	W/W
66.	Parker, John	Colbert	I. Johnson	1989	W/W
67.	Ponder, Terry	Cullman	F. Brunner	1995	W/W
68.	Reiber, Jeffrey	Madison	J. Blankenship	1992	W/W
69.	Riggs, Jeffery	Jefferson	C. Jones	2010	B/B
70.	Roberts, David	Marion	B. Aderholt	1994	W/W
71.	Russaw, Henry	Pike	R. Green	1989	B/W
72.	Scott, Christie	Franklin	T. Dempsey	2009	W/W
73.	Scott, William	Geneva	P.B. McLauchlin	1994	W/W
74.	Smith, Kenneth	Jefferson	N.P. Thompkins	1996	W/W
75.	Smith, Ronald	Madison	L. Smith	1995	W/W
76.	Sneed, Ulysses	Morgan	S. Palar	2006	B/W
77.	Sockwell, Michael	Montgomery	R. Thomas	1990	B/B
78.	Spencer, Kerry	Jefferson	T. Nail	2005	B/W
79.	Spradley, Montez	Jefferson	G. Bahakel	2008	B/B
80.	Stanley, Anthony	Colbert	H. Hughston	2007	W/W
81.	Stephens, Victor	Hale	C. Thigpen	1989	B/W,B
82.	Tarver, Bobby	Mobile	F. McRae	1987	B/B
83.	Tarver, Robert	Russell	W. Johnson	1985	B/W
84.	Taylor, Jarrod	Mobile	D. Johnstone	1998	B/W

	<u>Name</u>	<u>County</u>	<u>Judge</u>	<u>Yr.</u>	<u>Race</u> <u>Def./Vic.</u>
85.	Thompson, Steven	Madison	W. Page	1985	W/W
86.	Tomlin, Phillip	Mobile	F. McRae	1990	W/W
87.	Tomlin, Phillip	Mobile	E. McDermott	1994	W/W
88.	Tomlin, Phillip	Mobile	H. Thomas	1999	W/W
89.	Turner, Calvin	Etowah	J. Swann	1984	B/W
90.	Waldrop, Bobby	Randolph	D. Segrest	1999	W/W
91.	Wesley, Ronald	Mobile	F. McRae	1988	B/B
92.	White, Justin	Jefferson	C. Jones	2010	B/B
93.	White, Leroy	Madison	D. Banks	1989	B/B
94.	Williams, Herbert	Mobile	F. McRae	1990	B/W
95.	Wimberly, Shaber	Dale	P.B. McLauchlin	1998	B/W
96.	Wimberly, Shaber	Dale	P.B. McLauchlin	2001	B/W
97.	Woodward, Mario	Montgomery	T. Hobbs	2008	B/W
98.	Yancey, Vernon	Russell	G. Green	2005	W/W

## **Alabama Overrides from Death to Life**

1.	Birdsong, Gabriel	Limestone	G. Craig	2001
2.	Bogan, Claude	Montgomery	R. Thomas	1986
3.	Grace, Ray	Houston	L. Anderson	2006
4.	Green, Lionel	Shelby	J. Rochester	1988
5.	Johnson, Kenneth	Talladega	W. Sullivan	1984
6.	Kinder, Richard	Jefferson	J. Hard	1984
7.	Neal, Eddie	Jefferson	C. Nice	1978
8.	Turner, Cleveland	Talladega	W. Sullivan	1986
9.	Williams, Willie	Houston	D. Holloway	1996

# NOTES

1. *Furman v. Georgia*, 408 U.S. 238 (1972).
2. *Id.* at 309 (Stewart, J., concurring) (“These death sentences are cruel and unusual in the same way that being struck by lightning is cruel and unusual.”).
3. *Gregg v. Georgia*, 428 U.S. 153 (1976) (upholding Georgia’s guided-discretion death penalty statute, allowing imposition of death where certain aggravating circumstances established); *Proffitt v. Florida*, 428 U.S. 242 (1976) (upholding Florida’s guided-discretion death penalty statute, allowing imposition of death based on weighing of aggravating and mitigating circumstances); *Woodson v. North Carolina*, 428 U.S. 280 (1976) (striking down statute imposing mandatory death sentence for certain crimes and holding Eighth Amendment requires heightened reliability and individual consideration of offender and offense to determine if death sentence is appropriate); *Jurek v. Texas*, 428 U.S. 262 (1976) (upholding Texas statute allowing imposition of death penalty upon determination of various factors including future dangerousness); *Roberts v. Louisiana*, 428 U.S. 325 (1976) (statute making death penalty mandatory for first-degree murder is unconstitutional).
4. Death Penalty Information Center, <http://www.deathpenaltyinfo.org/innocence-and-death-penalty> (last visited June 3, 2011).
5. *See Illinois Abolishes the Death Penalty*, <http://www.eji.org/eji/node/512> (Mar. 9, 2011); *New Mexico Abolishes the Death Penalty*, <http://www.eji.org/eji/node/287> (Mar. 19, 2009); *New Jersey Abolishes the Death Penalty*, <http://www.eji.org/eji/node/106> (Dec. 17, 2007).
6. *See* Death Penalty Information Center Poll Results, <http://www.deathpenaltyinfo.org/poll-results> (Nov. 2010).
7. Ala. Code §§ 13A-5-46, -47 (1975).
8. Indiana permitted override after *Furman* but made the jury’s sentencing recommendation binding for defendants sentenced after June 30, 2002. Ind. Code Ann. § 35-50-2-9 (West 2007).
9. *Ex parte Carroll*, 852 So. 2d 821 (Ala. 2001).
10. *Zant v. Stephens*, 462 U.S. 862, 873-80 (1983); *Furman*, 408 U.S. at 294 (Brennan, J., concurring).
11. *Harris v. Alabama*, 513 U.S. 504, 515 (1995) (Stevens, J., dissenting).
12. *See* Sean O’Sullivan, *Delaware Jury’s Votes in Capital Cases Don’t Always Sway Judges*, *The News Journal* (Feb. 25, 2011).
13. Michael L. Radelet, *Overriding Jury Sentencing Recommendations in Florida Capital Cases* (forthcoming).
14. *See supra* note 13; *see also* <http://www.deathpenaltyinfo.org/death-row-inmates-state-and-size-death-row-year> (Apr. 1, 2010) (Florida has 398 people on death row).
15. Michael L. Radelet, *Death-to-Life Overrides in Florida 1992-Present* (Jan. 27, 2011), available at <http://sobek.colorado.edu/SOC/People/Faculty/radelet.html>.
16. *Spaziano v. Florida*, 468 U.S. 447, 474 (1984) (Stevens, J., dissenting).
17. *Supra* note 12.
18. *Garden v. State*, 815 A.2d 327 (Del. 2003).
19. *Id.* (adopting the *Tedder* standard).
20. 11 Del. C. § 4209(d)(1).

21. Ala. Code § 13A-5-46(f) (1975).
22. See *Tedder v. State*, 322 So. 2d 908, 910 (Fla. 1975).
23. Ala. Code § 13A-5-47(e) (1975).
24. *Harris*, 513 U.S. at 514.
25. *Id.* at 515.
26. *Ring*, 536 U.S. at 589.
27. *Id.* at 609.
28. *Ex parte Carroll*, 852 So. 2d 833 (Ala. 2002); see also *Ex parte Tomlin*, 909 So. 2d 283 (Ala. 2003).
29. *Carroll*, 852 So. 2d at 836.
30. *Tomlin*, 909 So. 2d at 286-87.
31. Ala. Code § 17-2-7 (1987).
32. Stephen B. Bright, *Political Attacks on the Judiciary: Can Justice Be Done Amid Efforts to Intimidate and Remove Judges from Office for Unpopular Decisions?*, 72 N.Y.U. L. Rev. 308, 330 (1997) (citing Justice John Paul Stevens, Opening Assembly Address, American Bar Association Annual Meeting 12 (Aug. 3, 1996)).
33. Ken Silverstein, *The Judge as Lynch Mob*, The American Prospect (May 6, 2001), available at [http://prospect.org/cs/articles?article=the\\_judge\\_as\\_lynch\\_mob](http://prospect.org/cs/articles?article=the_judge_as_lynch_mob).
34. Campaign Commercial (television broadcast, 2000) (DVD on file with Equal Justice Initiative).
35. See, e.g., Criminal Appeals Court Candidates State Views, Qualifications, Montgomery Advertiser, May 24, 2000 (candidates Riley, Saxon and Martin cite their prosecutorial experience, candidate Mansell cites fifteen years as police officer).
36. Cathy Donohoe, *FOCUS: Francis Allen Long, Sr.*, The Docket (1997).
37. Charles Crook Campaign Commercial (television broadcast, 1998) (DVD on file with Equal Justice Initiative).
38. Tracy McCooey Campaign Commercial (television broadcast, 1998) (DVD on file with Equal Justice Initiative) (“She served as an undercover agent, searched crack houses and arrested drug dealers . . . She knows how to fight crime.”).
39. Bill Shashy Campaign Commercial (television broadcast, 1998) (DVD on file with Equal Justice Initiative) (showing victim’s son describing how Shashy “helped her” get justice when no one else would).
40. See *supra* note 33.
41. *Id.*
42. Stephen B. Bright & Patrick J. Keenan, *Judges and the Politics of Death: Deciding Between the Bill of Rights and the Next Election in Capital Cases*, 75 B.U. L. Rev. 759, 765 (1995).
43. Paul Brace & Brent D. Boyea, *State Public Opinion, the Death Penalty, and the Practice of Electing Judges*, 52 Am. J. Pol. Sci. 360 (2008).
44. John Schwartz, *Effort Begun to End Voting for Judges*, N.Y. Times (Dec. 23, 2009).
45. U.S. Census Bureau, *Alabama By County, Race and Hispanic or Latino: 2000*, <http://factfinder.census.gov>.
46. Nationwide, while African Americans accounted for 13% of the U.S. population in 2005, they were victims in nearly half of all homicides during the period from 2001 to 2005. Erika Harrell, *Black Victims of Violent Crime*, Bureau of Justice Statistics Special Report (2007). In Alabama, 71.5% of homicide victims in 2005 were African Americans. Characteristics

of Homicides in Alabama, Bureau of Justice Statistics Crime and Justice Data Online (Mar. 14, 2011).

47. *Ex parte Carroll*, 852 So. 2d 833 (Ala. 2002); *see also Ex parte Tomlin*, 909 So. 2d 283 (Ala. 2003).
48. *Roper v. Simmons*, 543 U.S. 551 (2005).
49. Sentencing Order, *State v. Flowers*, No. 89-65 (Baldwin Co. Cir. Ct. Feb. 23, 1990).
50. Sentencing Order, *State v. Williams*, No. 88-2742 (Mobile Co. Cir. Ct. Apr. 26, 1990).
51. *Atkins v. Virginia*, 536 U.S. 304 (2002).
52. Sentencing Order, *State v. Neal*, No. 87-520 (Baldwin Co. Cir. Ct. May 17, 1990).
53. Sentencing Order, *State v. Evans*, No. 95-59 (Macon Co. Cir. Ct. Apr. 12, 1996).
54. Sentencing Hearing Transcript, *State v. Waldrop*, No. 98-162 (Randolph Co. Cir. Ct. July 25, 2000).
55. *Johnson v. Alabama*, 488 U.S. 876 (1988) (Marshall, J., dissenting).
56. *Harris*, 513 U.S. at 522 (Stevens, J., dissenting).

*Data relevant to judge override in Alabama changes frequently. Please visit our website at [www.eji.org](http://www.eji.org) for updates, as well as for additional information about judge override, the death penalty, and other criminal justice issues, or e-mail us at: [contact\\_us@ej.org](mailto:contact_us@ej.org).*

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