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### Alabama too often skirts rules in death penalty cases

Posted by [Robin DeMonia](#) -- [Birmingham News](#) May 24, 2009 2:11 AM

Some things aren't really a matter of debate anymore: The state of Alabama can't execute people who are mentally retarded. Prosecutors can't keep blacks off juries just because they're black.

It's the law.

But Alabama officials who are so big on law-and-order principles can be awfully small about abiding by rules that apply to their own conduct.

I'm not talking about police officers flailing an unconscious suspect, although there are parallels to the taped beating that is making Birmingham famous, again.

I'm talking about cases in which lives are on the line, and the people who are supposed to uphold the law just seem to be hunting for a loophole.

Listen to Bryan Stevenson, a highly regarded death penalty lawyer who runs the Equal Justice Initiative in Montgomery. "When the death penalty is involved, and the politics of the death penalty are behind it," he said, "we're not willing to follow the law."

In too many cases, courts have to force us to do the right thing.

Stevenson points to some of his recent cases:

-- A federal judge on May 14 ordered [\[See the judge's order\]](#) the state to lift the death sentence of Glenn William Holladay, a mentally retarded man who killed his ex-wife, her boyfriend and a neighbor in Gadsden in 1986.

State prosecutors fought to keep Holladay on Death Row, despite the U.S. Supreme Court's 2002 ban on executing the mentally retarded. Although Holladay scored low enough on IQ tests dating back to childhood to qualify as mentally retarded, state prosecutors claimed his poor showing had more to do with illiteracy than retardation.

Stevenson said prosecutors just didn't want to give up on the idea of executing Holladay. Why not? It's not as if the alternative sentence, life in prison without parole, is something to look forward to.

-- In March, the 11th U.S. Circuit Court of Appeals ordered [\[See ruling here\]](#) new trial for Earl Jerome McGahee, who was sentenced to death for killing his ex-wife and another nursing student in Selma in 1985.

The reason? Prosecutors removed every potential black juror from the case without any plausible justification.

At the time McGahee was convicted by an all-white jury, Dallas County was 55 percent black. The 11th Circuit called the pattern of jury strikes "astonishing" and cited "strong evidence" the motives were racial.

Among prosecutors' after-the-fact explanations: Some blacks in the jury pool were of "low intelligence." Which the 11th Circuit considered peculiar, since jurors weren't asked about their education or intellectual abilities.

Yet Alabama courts looked at how the jury was selected and upheld McGahee's conviction, and state prosecutors continued to defend it.

"McGahee is a pretty dramatic example of the state of Alabama tolerating something that never should have been tolerated," Stevenson said.

The state Legislature surely isn't providing any leadership. One of the reasons the courts have had to take action in cases like Holladay's is that Alabama lawmakers have failed to change state law to reflect the Supreme Court ruling on mental retardation and to define who is exempt from execution.

It has also failed to change a state law that gives Alabama judges the rare and



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scary power to impose a death sentence even when a jury doesn't believe it's appropriate. The Legislature did, however, pass a bill during its recent session that expands the number of people who can watch executions.

That passed toward the end of the session, as Stevenson was fighting unsuccessfully to stop the execution of Willie McNair, who was sentenced to death even though his jury voted 8-4 against it.

As the state prepared to execute a man a jury didn't believe should be executed, Stevenson said, state legislators were "focused on who gets to watch."

The talk in Birmingham this week has been on police officers who went too far, and who were caught doing so on videotape. The officers beat a suspect who had led them on a high-speed chase before flipping his minivan, being thrown from the vehicle and landing beside the road unconscious. What may be most remarkable are those who see the video and see nothing to question in the officers' conduct.

But for Stevenson, the indifference is nothing new. He sees it too often when those who are supposed to uphold the law treat it casually, in cases where the stakes couldn't be higher.

"People kind of yawn about it and move on," he said. "There are no consequences. There is no soul-searching in those communities, and that has to change. ... Alabama really needs to reform and just recognize there are constitutional limits, and you can't just execute everyone because you are mad."

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