

OVERRIDING JURY SENTENCING
RECOMMENDATIONS IN FLORIDA CAPITAL
CASES: AN UPDATE AND POSSIBLE HALF-
REQUIEM

*Michael L. Radelet**

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INTRODUCTION

In mid-2011, Florida housed nearly 400 prisoners on its death row,¹ more than any other state except California.² Between 1972 and mid-2011 it

* Michael L. Radelet, Ph.D. (sociology) is Professor of Sociology, University of Colorado-Boulder. I would like to thank Margaret Vandiver (University of Memphis), Steve Walter (Office of the Federal Public Defender, Sacramento), and especially Theresa Farley (formerly with the Office of Capital Collateral Representative, Tallahassee) for their voluntary assistance over the past thirty years keeping track of Florida capital cases. I thank Paula Sites for her assistance in gathering information on overrides in Indiana; Valerie Hans, Kevin O'Connell, and Bernard O'Donnell for their assistance with gathering the Delaware data; and Bryan Stevenson and Aaryn Urell for supplying the data from Alabama. I am grateful to these six experts for teaching me about the death penalty statutes in their respective states, and to David Menschel and Judge O.H. Eaton, Jr. for their helpful comments on an earlier draft of this paper. I also thank Jane Thompson in the Wise Law Library, University of Colorado, for her assistance, and Hugo Adam Bedau for his suggestion some thirty years ago to pursue this line of research. Finally, I thank the Institute of Behavioral Science, University of Colorado (Jane Menken, Director) for providing outstanding research facilities and support. This Article is dedicated to the memory of David C. Baldus, a friend, scholar, and mentor. I first met Professor Baldus some 30 years ago. At the time I was fresh out of graduate school,

conducted sixty-nine executions, ranking fourth behind Texas, Virginia, and Oklahoma.³ The abundance of both death sentences and executions in Florida is because Florida's death penalty scheme allows the ultimate punishment to become a possible sentence in almost every first-degree murder case. Florida is also one of only four states that has allowed judges in the past four decades to sentence defendants to death even after the trial jury has recommended a life sentence.⁴ Overriding the jury's recommendation was also possible in Indiana until 2002,⁵ and still is possible in Delaware⁶ and Alabama,⁷ three states that have statutes that "are modeled after Florida's trifurcated capital sentencing scheme."⁸ But none of these states have sentenced nearly as many inmates to death as Florida after the trial jury in the case (from which, like in all death penalty cases, those standing firmly opposed to the death penalty have been excused)⁹ recommended that the defendant should not be executed.

One of the pioneers in conducting research in this area is the late Michael Mello, who passed away in 2008 after a distinguished career at Vermont Law School.¹⁰ We both began writing about it in 1985,¹¹ and Professor

with no background in criminology in general or in the death penalty in particular. Yet, David took time—lots of it—to listen, help me tweak my ideas, and help fuel my passion for this type of work. He continued to do so when I last saw him at the conference in East Lansing in April 2011 that gave rise to this issue of the *Michigan State Law Review*. And at that meeting, he spent a considerable amount of time with the younger scholars, still listening, still tweaking, and still fueling. He will continue to lead us on for many decades in the future.

1. On September 25, 2011, Florida had 397 inmates under sentence of death. *Death Row Roster*, FLA. DEP'T OF CORR., <http://www.dc.state.fl.us/activeinmates/deathrowroster.asp> (last visited Sept. 25, 2011).

2. DEATH PENALTY INFO. CTR., FACTS ABOUT THE DEATH PENALTY 3 (2011), available at <http://www.deathpenaltyinfo.org/documents/FactSheet.pdf>.

3. *Id.*

4. FLA. STAT. ANN. § 921.141 (2)(3) (West 2011).

5. IND. CODE ANN. § 35-50-2-9(e) (West 2011).

6. DEL. CODE ANN. tit. 11, § 4209(d) (West 2011). Delaware juries do not vote directly on sentences in capital cases, but instead vote on a parallel question: whether the aggravating circumstances outweigh any mitigating circumstances. *Id.* If jurors do find this, it is tantamount to a death recommendation. See *infra* note 57 and accompanying text.

7. ALA. CODE §§ 13A-5-47(e) (2011).

8. LaTour Rey Lafferty, *Florida's Capital Sentencing Jury Override: Whom Should We Trust to Make the Ultimate Ethical Judgment?*, 23 FLA. ST. U. L. REV. 463, 464 (1995).

9. *Cf.* *Witherspoon v. Illinois*, 391 U.S. 510, 519-20 (1968) (holding that a jury could not be "[c]julled of all who harbor doubts about" the death penalty).

10. *Michael Mello*, VT. L. SCH., <http://www.vermontlaw.edu/x8019.xml> (last visited Sept. 25, 2011).

11. Michael Mello & Ruthann Robson, *Judge Over Jury: Florida's Practice of Imposing Death over Life in Capital Cases*, 13 FLA. ST. U. L. REV. 31 (1985); Michael L. Radelet, *Rejecting the Jury: The Imposition of the Death Penalty in Florida*, 18 U.C. DAVIS L. REV. 1409 (1985) [hereinafter *Rejecting the Jury*].

Mello later wrote other articles about the Florida override.¹² He was co-counsel for “Crazy” Joe Spaziano, in whose case the United States Supreme Court ruled that the Florida override procedure passed constitutional muster.¹³ Professor Mello and I co-authored two papers. The first described the first post-*Furman* case in Florida where an inmate was executed for killing a black victim.¹⁴ The second article focused on the jury override in Florida, especially on cases in which the jury recommended death, but the judge imposed life.¹⁵ The names, dates, and places of fifty-one such death-to-life overrides in Florida were presented. The purpose of this Article is to update that 1992 Article.

Since 1972 there have been 166 cases in which a defendant was sentenced to death after the trial jury recommended sentences of life imprisonment.¹⁶ Curiously, the last case in which a judge overrode a jury recommendation of life in Florida was 1999. Although there is always the possibility of an afterlife, it appears reasonable to suggest that it is now time for a requiem for Florida’s life-to-death override. After discussing the life-to-death cases, this Article updates the list of fifty-one death-to-life cases that were documented in 1992 by adding another forty to the inventory of known cases in which defendants were sentenced to life after their Florida trial juries had recommended death sentences. Looking at the whole picture, this Article proposes a “half-requiem” for the Florida override. The life-to-death overrides have disappeared, perhaps forever, and it is time to give them a final requiem and ban their future use. On the other hand, looking at the

12. Michael Mello, *Taking Caldwell v. Mississippi Seriously: The Unconstitutionality of Capital Statutes that Divide Sentencing Responsibility Between Judge and Jury*, 30 B.C. L. REV. 283 (1989) [hereinafter *Taking Caldwell v. Mississippi Seriously*]; Michael Mello, *The Jurisdiction to Do Justice: Florida’s Jury Override and the State Constitution*, 18 FLA. ST. U. L. REV. 923 (1991).

13. *Spaziano v. Florida*, 468 U.S. 447 (1984). For a case analysis, see Jeffrey Alan Wellek, *Eighth Amendment – Trial Court May Impose Death Sentence Despite Jury’s Recommendation of Life Imprisonment*, 75 J. CRIM. L. & CRIMINOLOGY 813 (1984). Professor Mello also wrote at length about the case and (especially) his role in it. MICHAEL MELLO, *THE WRONG MAN* (2001).

14. That inmate was James Dupree Henry, executed on September 20, 1984. Michael L. Radelet & Michael Mello, *Executing Those Who Kill Blacks: An Unusual Case Study*, 37 MERCER L. REV. 911 (1986) [hereinafter *Executing Those Who Kill Blacks*]. Mello and I were interested in the case because research at the time had shown that in Florida, those who were convicted of killing blacks rarely were sentenced to death. Michael L. Radelet, *Racial Characteristics and the Imposition of the Death Penalty*, 46 AM. SOC. REV. 918 (1981). Henry was executed for the murder of an African-American victim, making it a rare case. In our project we demonstrated that in Henry’s case there was far more press coverage about the wounded white police officer than about the deceased black victim. *Executing Those Who Kill Blacks*, *supra*, at 923-24.

15. Michael L. Radelet & Michael Mello, *Death-to-Life Overrides: Saving the Resources of the Florida Supreme Court*, 20 FLA. ST. U. L. REV. 195 (1992).

16. See cases listed *infra* Appendix B.

other side of overrides, the death-to-life overrides continue to occur at an approximate rate of two or three per year.

The analysis begins with a brief look at the three states that joined Florida in allowing trial judges to reject jury recommendations in capital cases.

I. THE OVERRIDE IN INDIANA, DELAWARE, AND ALABAMA

A. Indiana

When the Indiana legislature enacted a post-*Furman*¹⁷ death penalty statute in 1977, it followed Florida's death penalty scheme. The trial jury was required to make a non-binding sentence recommendation to the trial judge, but the ultimate decision of what sentence to impose was left to the discretion of the court.¹⁸ Originally trial courts were not given directions on when it might be appropriate to override jury recommendations of life. This changed in 1989, however, when the Indiana Supreme Court attempted to specify when it would be appropriate for a judge to reject a jury's sentence recommendation:

In order to sentence a defendant to death after the jury has recommended against death, the facts justifying a death sentence should be so clear and convincing that virtually no reasonable person could disagree that death was appropriate in light of the offender and his crime. A trial court cannot override the jury's recommendation unless the facts meet this standard.¹⁹

Thus, the Indiana Supreme Court sent a clear message to trial courts that it would permit life-to-death overrides only in the most unusual circumstances.

In 2002, the override in Indiana ended when Governor Frank O'Bannon signed legislation that required judges in death penalty cases to follow the jury's sentencing recommendations.²⁰ The legislation also increased the minimum age for death penalty eligibility to eighteen years old

17. *Furman v. Georgia*, 408 U.S. 238 (1972). The *Furman* decision, in effect, invalidated all existing death penalty statutes in the U.S., forcing states that wished to retain the death penalty to rewrite their statutes.

18. IND. CODE § 35-50-2-9(d), (e) (1998). For an overview and critique of this law, see Jason C. Tran, *Death by Judicial Overkill: The Unconstitutionality of Overriding Jury Recommendations Against the Death Penalty*, 30 LOY. L.A. L. REV. 863, 874-76 (1997).

19. *Martinez Chavez v. State*, 534 N.E.2d 731, 735 (Ind. 1989).

20. See 2002 Ind. Acts 1734; Chris Sundheim, *O'Bannon Signs Bill Preventing Juvenile Execution*, EVANSVILLE COURIER & PRESS, Mar. 27, 2002, at B9; Joel M. Schumm, *Recent Developments in Indiana Criminal Law and Procedure*, 36 IND. L. REV. 1003, 1003-13 (2003). The legislation went into effect on July 1, 2002. 2002 Ind. Acts 1731.

at the time of the crime.²¹ Thereafter, judges in capital cases were permitted to make sentencing decisions only in cases where the jury cannot unanimously agree on a sentence: “If a jury is unable to agree on a sentence recommendation after reasonable deliberations, the court shall discharge the jury and proceed as if the hearing had been to the court alone.”²²

Between 1977 and 2002, there were ten death sentences imposed on nine defendants after trial juries recommended prison sentences rather than death. These cases are listed in Table 1.²³ None of these defendants were executed, and none remain on death row today. Appellate courts have vacated all the death sentences imposed after jury recommendations of life.

At the same time, Indiana trial judges had the power under the 1977 statute to reject a jury’s recommendation of death, and instead impose a sentence of life imprisonment. Indeed, Indiana case law suggests that trial judges in the state had much more freedom to reject jury recommendations of death than jury recommendations of life.²⁴ Death-to-life overrides occurred in nine cases between 1977 and 2002. These cases are listed in Table 2.

Under the authority of the 1977 statute, by late September 2011, Indiana had executed twenty inmates,²⁵ and another fourteen remain on the state’s death row.²⁶ Because none of these thirty-four inmates had a jury recommendation of life imprisonment, the override has become nothing more than a footnote documenting a failed attempt to increase the number of executions in Indiana’s death penalty history.

21. 2002 Ind. Acts 1730 §§ 1(b)(1), 2(d); Laura Emerson, *Death Sentences To Be Up To Jurors: New Law Takes Decision From Indiana Judges*, J. GAZETTE (Ft. Wayne, Ind.), Mar. 31, 2002, at 1C.

22. IND. CODE ANN. § 35-50-2-9(f) (West 2011).

23. In her discussion of Indiana overrides, Russell listed several cases that she believed involved an override that apparently did not. Kathryn K. Russell, *The Constitutionality of Jury Override in Alabama Death Penalty Cases*, 46 ALA. L. REV. 5, 19 n.113 (1994) (discussing the cases of Miller, Conner, Evans, Games, and Spranger).

24. See Radelet & Mello, *supra* note 15, at 204 (discussing *Daniels v. State*, 561 N.E. 2d 487 (Ind. 1990)).

25. *Searchable Execution Database*, DEATH PENALTY INFO. CENTER, <http://www.deathpenaltyinfo.org/executions> (select “IN” in the state field, and press “Search by Details”) (last visited Sept. 25, 2011).

26. IND. PUB. DEFENDER COUNCIL, INDIANA DEATH ROW INMATES 1-2 (2011), available at <http://www.in.gov/ipdc/general/indianadeathrow.pdf>.

B. Delaware

Between 1977 and 1991, Delaware law required that decisions to sentence defendants to death be made only by unanimous juries.²⁷ However, in December 1990, two guards were murdered in an armored car robbery in Wilmington, igniting calls for the execution of the four perpetrators. Despite the outcry, in October 1991, following jury recommendations, all were sentenced to consecutive terms of life imprisonment.²⁸ In response, the Delaware legislature amended the state's death penalty statute to make the jury's sentencing vote a recommendation to the trial judge, rather than binding.²⁹ This legislation, clearly designed to increase the number of people sentenced to death, was signed into law on November 4, 1991.³⁰

Since this statutory change, Delaware judges have overridden a jury recommendation of life in only two cases, and both involved the same defendant: Sadiki J. Garden. Mr. Garden was convicted of a series of robberies and attempted robberies that occurred in December 1999, and one resulted in the death of Denise Rhudy.³¹ For Rhudy's death he was convicted of both intentional murder and felony murder, and his trial jury recommended life sentences by ten-to-two and nine-to-three votes respectively.³² Nonetheless, Superior Court trial judge John E. Babiarz disagreed, rejected the jury's recommendation, and sentenced Garden to death.³³

On appeal the Delaware Supreme Court affirmed the convictions, but the death sentences were vacated.³⁴ The case was returned to trial court for reconsideration of the sentences, with no new jury. Judge Babiarz then issued an opinion highly critical of the state supreme court's decision and, in the end, reimposed the death sentences.³⁵ On appeal, the new death sentence was vacated by the Delaware Supreme Court, and the case was returned to the trial court with orders to impose a life sentence.³⁶

27. Loren C. Myers & Gayle P. Lafferty, *Capital Punishment, in DELAWARE SUPREME COURT: GOLDEN ANNIVERSARY 1951-2001*, at 177-93 (Randy J. Holland & Helen L. Winslow eds., 2001).

28. *Robertson v. State*, 630 A.2d 1084, 1086 (Del. 1993).

29. *Id.*; see also Sheri Lynn Johnson, John H. Blume, Theodore Eisenberg, Valerie P. Hans & Martin T. Wells, *The Death Penalty in Delaware: An Empirical Study*, in CORNELL LAW FACULTY PUBLICATIONS PAPER 110, at 4-6 (2008), available at http://scholarship.law.cornell.edu/lrsp_papers/110.

30. See *State v. Cohen*, 604 A.2d 846, 849 (Del. 1992).

31. *Garden v. State*, 815 A.2d 327, 331 (Del. 2003).

32. *Id.* at 332-33.

33. *Id.* at 331.

34. *Id.* at 347.

35. *State v. Garden*, 831 A.2d 352, 365 (Del. Super. Ct. 2003).

36. *Garden v. State*, 844 A.2d 311, 318 (Del. 2004).

On the other hand, from 1991 through 2011 there have been seventeen cases in Delaware that resulted in life sentences after trial judges overrode jury recommendations of death:

<u>Defendant's Name</u>	<u>Votes for Death</u>	<u>Year of Sentence</u>
1. Michael Jones ³⁷	11	2005
2. Michael Keyser ³⁸	10	2005
3. Donald Simmons ³⁹	10	1992
4. Meri-Ya Baker ⁴⁰	9	1992
5. Byron Dickerson ⁴¹	9	1992
6. Ronald Hankins ⁴²	9	2008
7. Jose Rodriguez ⁴³	9	1993
8. Jermaine Barnett ⁴⁴	8	2002
9. Hector Barrow ⁴⁵	8	2002
10. Arthur Govan ⁴⁶	8	1993
11. Darrel Page ⁴⁷	8	2003
12. John Watson ⁴⁸	8	1993

37. *State v. Jones*, No. 9911016309, 2008 WL 4173816, at *2 (Del. Super. Ct. Sept. 3, 2008). Jones was seventeen years old at the time of the offense. Subsequent to the eleven-to-one jury recommendation but prior to the imposition of sentence, the U.S. Supreme Court issued its decision in *Roper v. Simmons*, 543 U.S. 551, 575 (2005), precluding a death sentence for an offender under the age of eighteen at the time of the homicide offense. *Jones*, 2008 WL 4173816, at *2.

38. *See State v. Keyser*, No. 0310021647, 2005 WL 1331778, at *4, *14 (Del. Super. Ct. June 3, 2005).

39. Steven Church, *Capano's Fate Is Now in Judge Lee's Hands*, NEWS J. (Wilmington), Jan. 29, 1999, at 8A.

40. *Baker v. State*, 637 A.2d 825, 1993 WL 557951, at *1 (Del. Dec. 30, 1993); *see Lawrie v. State*, 643 A.2d 1336, 1346 (Del. 1994).

41. *Lawrie*, 643 A.2d at 1346; *Dickerson v. State*, No. 353, 1992, 1993 WL 541913, at *4 (Del. Dec. 21, 1993).

42. *State v. Hankins*, No. 0603026103, 2008 WL 4899238, at *2, *9 (Del. Super. Ct. Oct. 30, 2008), *aff'd*, 976 A.2d 839 (Del. 2009).

43. *State v. Rodriguez*, 656 A.2d 262, 268, 281 (Del. Super. Ct. 1993).

44. *Barrow v. State*, 749 A.2d 1230, 1237 (Del. 2000). Barnett and Barrow, co-defendants, were originally sentenced to death after a jury recommendation of death, but the sentence was vacated and the case was returned to trial court for resentencing. *Id.* at 1234. After the parties agreed to waive a jury recommendation at the new penalty hearing, the trial court re-sentenced Barrow and Barnett to life imprisonment. *State v. Barrow*, 2002 WL 88934, at *3 (Del. Super. Ct. Jan. 4, 2002).

45. *Barrow*, 749 A.2d at 1237. Barrow was originally sentenced to death, but this sentence was vacated and the case was returned to trial court for resentencing. *Id.* 1234. At resentencing, without a new jury recommendation, Barrow was sentenced to life. *Barrow*, 2002 WL 88934, at *3.

46. *Weeks v. State*, 761 A.2d 804, 805 & n.1 (Del. 2000); All information on Delaware overrides was obtained from Kevin O'Donnell and Bernard O'Donnell, Office of the Public Defender, State of Delaware (as acknowledged in note *).

47. *Page v. State*, 934 A.2d 891, 895 (Del. 2007).

13. Luis Cabrera ⁴⁹	7	1999
14. Donald Cole ⁵⁰	7	2004
15. Freddy Flonnory ⁵¹	7	2004
16. David Jones ⁵²	7	2000
17. Clifford Wright ⁵³	7	2010

In July 2002, the Delaware legislature tightened the rules that allow overrides in capital cases in order to comply with the U.S. Supreme Court's decision in *Ring v. Arizona*.⁵⁴ In 2003, the Delaware Supreme Court held "that the trial judge must give 'great weight' to a jury's recommendation of life imprisonment," and vacated the death override of the jury's life recommendation in *Garden*.⁵⁵ In reaction to that decision, the Delaware legislature shortly thereafter revised Delaware's statute to provide that the jury's recommendation shall only be "given such consideration as deemed appropriate. . . ."⁵⁶

Unlike in capital trials in Alabama and Florida, the 2002 Delaware statute does not ask the jurors to vote directly on the question of whether the defendant should be sentenced to death or life imprisonment. Instead, they are asked:

1. Whether the evidence shows beyond a reasonable doubt the existence of at least 1 aggravating circumstance
2. Whether, by a preponderance of the evidence, . . . the aggravating circumstances . . . outweigh the mitigating circumstances⁵⁷

48. *State v. Watson*, 1993 WL 603341, at *7 (Del. Super. Ct. Jan. 22, 1993).

49. *State v. Cabrera*, No. 9703012700, 1999 WL 41630, at *6 (Del. Super. Ct. Jan. 21, 1999). Cabrera remains on death row for two other murders. *State v. Cabrera*, 2002 WL 484641, *20 (Del. Super. Ct. Mar. 14, 2002).

50. Esteban Parra, *Two Get Life Terms for Killing Couple*, NEWS J. (Wilmington Del.), Sept. 3, 2004, at B3.

51. *State v. Flonnory*, 2004 WL 1658496, *1, *4 (Del. Super. Ct. July 22, 2004); Esteban Parra, *Killer of Two in '97 Gets Life in Prison*, NEWS J. (Wilmington, Del.), July 23, 2004, at B1.

52. *Jones v. State*, 798 A.2d 1013, 1015-16 (Del. 2002); from Delaware Public Defender.

53. *State v. Wright*, No. 0801010328, 2010 WL 746240, at *9-10 (Del. Super. Ct. Mar. 5, 2010); from Delaware Public Defender.

54. 536 U.S. 584 (2002); 73 Del. Laws 1113-15 (2002); DEL. CODE ANN. tit. 11, § 4209(d)(1) (West 2011) ("A sentence of death shall not be imposed unless the jury, if a jury is impaneled, first finds unanimously and beyond a reasonable doubt the existence of at least 1 statutory aggravating circumstance as enumerated in subsection (e) of this section.").

55. *Johnson et al.*, *supra* note 29, at 6 (footnotes omitted); *see also* *Garden v. State*, 815 A.2d 327, 342-43 (Del. 2003).

56. 74 Del. Laws 425 (2003).

57. DEL. CODE ANN. tit. 11, § 4209(c)(3) (West 2011); *see also* *Tran*, *supra* note 18, at 870-72.

The jury must be unanimous on the first question; if the jury does not unanimously find at least one aggravator, the defendant is sentenced to life imprisonment. However, they need not be unanimous in the weighing of aggravating and mitigating circumstances. Thus, under current law, it is possible that the majority of the jurors could find that the aggravation (including the one aggravating circumstance that they all agree is present) *does not* outweigh the mitigation, but the judge, after he or she independently reweighs aggravation and mitigation, finds that the aggravation is stronger and therefore imposes death. This is precisely what happened in the *Garden* case. The jury acts in an advisory capacity solely in its determination of the relative weights of aggravation and mitigation, and their response to the question of whether the aggravating circumstances outweigh the mitigating circumstances is the Delaware equivalent of asking the jury whether it recommends a life or a death sentence.

As of February 5, 2012, Delaware had sixteen people on its death row,⁵⁸ and fifteen others had been executed under its current death penalty statute.⁵⁹ None of these thirty-one defendants received jury recommendations of life from their trial juries.⁶⁰ Like in Indiana, to the degree that provisions allowing judges to reject jury recommendations of life are meant to increase the number of executions, the override in Delaware has not succeeded.

C. Alabama

The current Alabama death penalty statute was adopted in 1981.⁶¹ Juries can recommend life sentences with a majority of votes (seven), but need at least ten votes to recommend death.⁶² Unlike the three other states that in the past four decades have allowed a judge to override a jury recommendation of life, Alabama judges have no standards to use to determine when such overrides are appropriate.⁶³ In *Harris v. Alabama*,⁶⁴ the U.S. Supreme

58. Dep't of Corr., *Inmates Sentenced to Death*, ST. DEL., <http://www.doc.delaware.gov/information/deathrow.shtml> (last visited Feb. 5, 2012). As of 2008, there had been fifty-two post-*Furman* death sentences imposed in Delaware. See Johnson et al., *supra* note 29, at 6.

59. *Searchable Execution Database*, *supra* note 25 (select "DE" in the state field, and press "Search by Details").

60. This statement results from the data presented in this paper where I identify the overrides. See *supra* notes 37-53 and accompanying text.

61. ALA. CODE §§ 13A-5-39 to -59 (2012); Russell, *supra* note 23, at 24.

62. ALA. CODE § 13A-5-46(f) (2012); Tran, *supra* note 18, at 868.

63. Russell, *supra* note 23, at 27.

64. 513 U.S. 504, 512 (1995).

Court approved this standardless override procedure. The statute has attracted regular analysis and criticism.⁶⁵

The procedure I use to count override cases requires some explanation. I count one trial, regardless of the number of victims or the number of separate jury votes on sentence, as one case. If an original death sentence is vacated and it returns to the trial court for a new sentence, I count that as a new case, and include it on the override list if appropriate. If a defendant has two separate trials for two or more murders, I count the separate trials as multiple cases.⁶⁶

Since 1981, ninety-three defendants have been sentenced to death in Alabama after the jurors at their trials recommended life imprisonment.⁶⁷ Their name, county of offense, and date of sentencing are listed in Appendix A. Of the ninety-three, forty-three remain among the 200 inmates on Alabama's death row.⁶⁸ In other words, 21.5% of those currently on death row in Alabama had jury recommendations of life imprisonment. On average about three inmates per year are sentenced to death in Alabama after their trial juries recommended life sentences. This rate has been relatively consistent; there is no indication that the number of overrides is increasing or decreasing.

As of September 24, 2011, Alabama had hosted fifty-five post-*Furman* executions.⁶⁹ Eight of the fifty-five executed (14.5%) (or eight of

65. See, e.g., Scott E. Ehrlich, *The Jury Override: A Blend of Politics and Death*, 45 AM. U. L. REV. 1403 (1996); Nathan A. Forrester, *Judge Versus Jury: The Continuing Validity of Alabama's Capital Sentencing Regime After Ring v. Arizona*, 54 ALA. L. REV. 1157 (2003); *Criminal Procedure – Sixth Amendment – Alabama Supreme Court Upholds a Death Sentence Imposed by Judicial Override of a Jury Recommendation for Life Imprisonment Without Parole – Ex parte Hodges*, 856 So. 2d 936 (Ala. 2003), 117 HARV. L. REV. 1283 (2004). Clayton Tartt, *Administration of Justice of the Preservation of Political Office: The Unconstitutionality of Judicial Override in Alabama Death Penalty Cases*, 1 FAULKNER L. REV. 151 (2009).

66. Cf. *infra* note 107.

67. In ninety-three cases, seven or more jurors voted for life. See *infra* Appendix A. The four remaining cases received fewer than the unanimous vote for death that was required under the 1975 Alabama death penalty statute to constitute a death recommendation. ALA. CODE § 13-11-1 to 13-11-9 (1975). Arthur Jones (Appendix A, Case No. 1) and Arthur Giles (Appendix A, Case No. 35) were sentenced to death after one juror voted for life. At his 1986 trial, Richard Frazier's jury recommended a sentence of life without parole, *Ex parte Frazier*, 562 So. 2d 560, 561 (Ala. 1989), although the records from the Equal Justice Initiative indicate that only two trial jurors voted for life. Despite the non-unanimous recommendation, he was sentenced to death and resentenced to death in 1990 (Appendix A, Case No. 17).

68. *Alabama Inmates Currently on Death Row*, ALA. DEP'T CORRECTIONS, <http://www.doc.state.al.us/deathrow.asp> (last updated Mar. 8, 2012) (number of inmates remaining on Alabama's death row as of Sept. 24, 2011).

69. *Inmates Executed in Alabama*, ALA. DEP'T CORRECTIONS, <http://www.doc.state.al.us/execution.asp> (last visited Aug. 12, 2011).

the ninety-three overrides, or 8.6%) had jury recommendations of life imprisonment. They are:

<u>Defendant's Name</u>	<u>Direct Appeal</u>	<u>Vote</u>	<u>Exec. Date</u>
1. Lindsey, Michael	456 So. 2d 383 (1983)	11-1	05.26.89
2. Hays, Henry	518 So. 2d 749 (1985)	7-5	06.06.97
3. Thompson, Steven Allen	542 So. 2d 1286 (1988)	10-2	05.08.98
4. Johnson, Anthony Keith	521 So. 2d 1006 (1986)	9-3	12.12.02
5. McNair, Willie	706 So. 2d 828 (1997)	8-4	05.14.09
6. Parker, John Forrest	587 So. 2d 1072 (1991)	10-2	06.10.10
7. White, Leroy	587 So.2d 1218 (1990)	9-3	01.11.11
8. Boyd, William Glenn	746 So.2d 364 (1990)	7-5	03.31.11 ⁷⁰

On the other hand, there have been nine defendants in Alabama who were sentenced to life imprisonment without parole after their juries recommended death:

<u>Defendant's Name</u>	<u>County</u>	<u>Date of Sentence</u>
1. Neal, Eddie Barnard	Jefferson	1978
2. Johnson, Kenneth Earl	Talladega	1984
3. Kinder, Richard David	Jefferson	09.21.84
4. Turner, Cleveland (Jr.)	Talladega	01.06.86
5. Bogan, Claude E.	Montgomery	02.14.86
6. Green, Lionel	Shelby	12.19.88
7. Williams, Willie (Jr.)	Houston	03.22.96
8. Birdsong, Gabriel Dona	Limestone	09.07.01
9. Grace, Ray	Houston	11.07.06 ⁷¹

The ability of Alabama judges to reject the trial jury's sentencing recommendations in capital cases was the subject of a July 2011 report by the Equal Justice Initiative.⁷² They point out, as did Tartt in an earlier analysis,⁷³ that Alabama is the only one of the three states that permit the judicial override to elect its judges in partisan elections.⁷⁴ Judges face the electorate in Alabama every six years. This creates an incentive for judges who are mindful of public opinion polls and who want to appear "tough on crime" to

70. Data provided by Aaryn Urell, Equal Justice Initiative, Montgomery, Alabama.

71. EQUAL JUST. INITIATIVE, *THE DEATH PENALTY IN ALABAMA: JUDGE OVERRIDE* 26 (2011), available at http://eji.org/eji/files/Override_Report.pdf; E-mail from Aaryn Urell, Senior Attorney, Equal Justice Initiative, to Michael L. Radelet, Professor of Sociology, University of Colorado-Boulder (Apr. 2, 2011, 14:02 EST) (on file with author).

72. EQUAL JUST. INITIATIVE, *supra* note 71.

73. Tartt, *supra* note 65, at 156-61.

74. ALA. CODE § 17-2-7 (LexisNexis 2005).

override life recommendations and increase the number of defendants who are sentenced to death. In fact, it appears that overrides of life recommendations in Alabama are more frequent in election years.⁷⁵

II. THE OVERRIDE IN FLORIDA

The idea that judges could treat the sentencing votes of juries in capital cases as a non-binding recommendation originated in Florida.⁷⁶ However, unlike in Alabama, the ability of Florida judges to reject jury recommendations of life is tightly bridled. Some thirty-six years ago, the Florida Supreme Court outlined what has come to be known as “The *Tedder* Standard,” which holds that “[i]n order to sustain a sentence of death following a jury recommendation of life, the facts suggesting a sentence of death should be so clear and convincing that virtually no reasonable person could differ.”⁷⁷ Similar standards were later adopted in Indiana⁷⁸ and Delaware,⁷⁹ but not in Alabama. Over the years, the Florida Supreme Court has made it clear that it will strictly adhere to the *Tedder* standard, resulting in life sentences for the vast majority of defendants sentenced to death after a judicial override.

Alabama legislators have steadfastly resisted putting any constraints on the ability of trial judges to reject jury recommendations of life, and Alabama capital defense attorneys have been equally insistent that such standards should be required. Thus far this battle has been won by those who advocate no constraints on the ability of judges to reject life recommendations. In the 1995 case of *Harris v. Alabama*, the Supreme Court ruled that standards such as *Tedder* that are intended to limit the discretion of trial judges in overriding life recommendations are unnecessary.⁸⁰

75. Tartt, *supra* note 65, at 160-61; EQUAL JUST. INITIATIVE, *supra* note 71, at 14-16.

76. For a discussion of how this legislation was born, see Radelet & Mello, *supra* note 15, at 197-200. In 2011, the Florida Supreme Court wrote that “[i]t takes more than a difference of opinion as to the validity and weight of the evidence presented in aggravation and mitigation to justify a jury override. . . . The trial court must . . . consider whether the mitigation evidence could serve as a reasonable basis for a life recommendation.” *Coleman v. State*, 64 So. 3d 1210, 1225 (Fla. 2011) (citations omitted).

77. *Tedder v. State*, 322 So. 2d 908, 910 (Fla. 1975). For a discussion of *Tedder*, see Radelet & Mello, *supra* note 15, at 200-04.

78. *Martinez Chavez v. State*, 534 N.E.2d 731, 735 (1989); *see supra* note 19 and accompanying text.

79. *Garden v. State*, 815 A.2d 327 (2003); *see supra* notes 32-36 and accompanying text.

80. In *Harris v. Alabama*, the Supreme Court heard a challenge to the Alabama death sentencing scheme because it failed to tell trial judges how much they should weigh jury recommendations of life imprisonment when making the final life-or-death decision. 513 U.S. 504 (1995). The lone dissent came from Justice Stevens, who wrote, “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

In the wake of *Harris*, the Florida legislature attempted to get rid of the *Tedder* parameters and make life-to-death overrides more resilient to the scrutiny of the state supreme court. In 1995, they passed a bill that would have eliminated the *Tedder* standard, making it easier for judges to override life recommendations from juries. However, on June 14, 1995, this legislation was vetoed by Governor Lawton Chiles.⁸¹ *Tedder* remains the standard to this day.

In academic circles, the most thoughtful and persistent critic of statutes that permit trial judges to override jury recommendations of life was Michael Mello. He became interested in the issue when it was presented in the case of Joe Spaziano, who first in 1976 and again in 1981 was sentenced to death in Florida following jury recommendations of life imprisonment. Spaziano's challenge to the ability of judges to reject jury recommendations of life went to the U.S. Supreme Court in 1984, but in a decision written by Justice Harry Blackmun, the Court held that the override provision in Florida did not violate any constitutional standards.⁸²

The following year, Mello and Ruthann Robson outlined several reasons why they believed that the Florida legislature should eliminate the power of judges to reject jury recommendations of life.⁸³ They took the view that retribution or community outrage was the sole possible justification of the death penalty.⁸⁴ They pointed out that judges are typically older, whiter, and richer than most citizens in the community, and that juries "represent 'a fair cross section of the community' and therefore reflect community values."⁸⁵ This makes jurors more able than judges to reflect community sentiments in the decision to seek death.

Mello and Robson also argued that eliminating the override would increase the efficiency and decrease the costs of the Florida Supreme Court and federal appellate courts because death penalty cases consume many more court resources than cases that end with life sentences.⁸⁶ Perhaps more importantly, they suggested that life recommendations by jurors in capital cases may reflect lingering doubts about the defendant's guilt.⁸⁷ Here they pointed to the case of Anibal Jaramillo, who was sentenced to death despite

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." *Id.* at 515 (Stevens, J., dissenting). For discussion and critique, see Tran, *supra* note 18, at 876-87.

81. Lafferty, *supra* note 8, at 466, 482-87; John M. Richardson, *Reforming the Jury Override: Protecting Capital Defendants' Rights by Returning to the System's Original Purpose*, 94 J. CRIM. L. & CRIMINOLOGY 455, 465 (2004).

82. *Spaziano v. Florida*, 468 U.S. 447, 449 (1984).

83. Mello & Robson, *supra* note 11.

84. *Id.* at 45-46.

85. *Id.* at 49 (footnote omitted).

86. *Id.* at 52-55.

87. *Id.* at 55-60.

two unanimous jury recommendations of life.⁸⁸ On appeal, the Florida Supreme Court vacated the convictions and ordered Jaramillo's immediate release because of questions about his guilt.⁸⁹

In a second article,⁹⁰ Mello argued that allowing judges to reject jury recommendations of life violated the Supreme Court's 1985 decision in *Caldwell v. Mississippi*.⁹¹ Bobby Caldwell was sentenced to death after the prosecutor told jurors that the ultimate responsibility for Caldwell's sentence lay not in their hands, but in the hands of the appellate courts.⁹² The Supreme Court reversed because this argument not only misstated Mississippi law, but it also misled jurors into underestimating their responsibility in the sentencing decision.⁹³ Mello argued that these same defects can be found with the override—it allows jurors to know that the ultimate life-or-

88. *Id.* at 59.

89. *Jaramillo v. State*, 417 So. 2d 257 (Fla. 1982); *see infra* Appendix B (Case No. 65). They also discussed the case of Ernest Dobbert, who was executed in 1984 despite a jury vote for life and much evidence that he did not have the requisite intent and premeditation to be found guilty of first-degree murder. *See infra* Appendix B (Case Nos. 12 & 40). Since Mello and Robson initially raised the issue of lingering doubt, other cases where a jury's vote for life was undoubtedly based on questions about guilt have emerged. In 1986, Anthony Brown (Case No. 89) was acquitted after the Florida Supreme Court threw out his original conviction and ordered a new trial. *Brown v. State*, 471 So. 2d 6 (Fla. 1985). At retrial, he was acquitted. MICHAEL L. RADELET, HUGO ADAM BEDAU & CONSTANCE E. PUTNAM, IN SPITE OF INNOCENCE 289 (1992). In two other cases, the defendants who were sentenced to death after jury recommendations of life were permitted to leave prison after winning new sentencing hearings and pleading guilty to second degree murder (or entering an Alford plea) in exchange for time served. One involved Sonia Jacobs. *See infra* Appendix B (Case No. 28, Sonia Jacobs); Michael L. Radelet, William S. Lofquist & Hugo Adam Bedau, *Prisoners Released from Death Rows Since 1970 Because of Doubts About Their Guilt*, 13 T.M. COOLEY L. REV. 907, 941-43 (1996). The second involved Ernest Miller. *See also infra* Appendix B (Case No. 54, Ernest Miller); Radelet, Lofquist & Bedau, *supra*, at 943-44. Mello's client, Joe Spaziano, also deserves a place on this list, at least arguably. *See, e.g.*, Tena Jamison Lee, *Anatomy of a Death Penalty Case: Did Florida Almost Execute an Innocent Man?*, 23 HUM. RTS. 18 (1996). In 1995, Spaziano won a stay of execution from the Florida Supreme Court, *Spaziano v. State*, 660 So. 2d 1363 (1995), and in early 1996, District Court Judge O.H. Eaton, Jr. set aside the conviction. MICHAEL MELLO, *THE WRONG MAN: A TRUE STORY OF INNOCENCE ON DEATH ROW* 433-39 (2001). In November 1998, Spaziano entered a "no contest" plea to second degree murder and was sentenced to time served plus two years. *Id.* at 497-99. At the time of this writing in 2011, he remains in prison in Florida, serving a life sentence for a 1975 sexual battery conviction. *Inmate Population Information Search*, FLA. DEPARTMENT CORRECTIONS, <http://www.dc.state.fl.us/ActiveInmates/> (search for Joseph Spaziano) (last visited Sept. 25, 2011).

90. *Taking Caldwell v. Mississippi Seriously*, *supra* note 12.

91. 472 U.S. 320 (1985).

92. *Id.* at 325-26.

93. *Id.* at 340-41.

death decision belongs to the judge, not them, and thereby diminishes their responsibility.⁹⁴

The Florida life-to-death override was also examined in a 1985 article by the present author.⁹⁵ The criticisms of the override contained in the article focused on its psychological and fiscal costs,⁹⁶ the question of the representativeness and competence of the trial jury,⁹⁷ and the possibility that in some cases, jury votes for life could reflect “whimsical” or lingering doubts about the defendant’s guilt.⁹⁸ The 1985 article presented data that showed that the probability that the conviction would be affirmed on direct appeal by the Florida Supreme Court was two times higher in cases with a death recommendation than in cases with a life recommendation.⁹⁹ In addition, the article examined 326 cases in which the death penalty was imposed in Florida from 1972 through September 20, 1984, of which eighty-four had jury recommendations of life (25.77%).¹⁰⁰ Interestingly, the data showed that the ratio of aggravating to mitigating circumstances was lower in the cases where the jury recommended death than in cases where the jury recommended life.¹⁰¹ In the latter, judges tended to find more aggravating and fewer mitigating circumstances than in cases with a death recommendation, indicating that the trial judge’s formal findings of aggravating and mitigating circumstances were more “an effort to justify, rather than to direct, the sentencing decision.”¹⁰²

The arguments against the practice of allowing judges to reject jury recommendations of life imprisonment have convinced at least two distinguished commissions to recommend the elimination of life-to-death overrides. The first recommendation came in 1991 from the Florida Supreme Court’s Racial and Ethnic Bias Study Commission. The Commission recommended:

The Florida Legislature should amend [§] 921.141(3), Florida Statutes, to prohibit judges from imposing the death penalty in cases where the jury has recommended a sentence of life imprisonment. Judges should stand between a defendant and the

94. Later, Mello argued that the override procedure offends the Florida constitution. This critique, which grew out of work that he began in 1986 in the Spaziano case, was intended as a roadmap for the Florida Supreme Court to prohibit the override on state constitutional grounds. *Taking Caldwell v. Mississippi Seriously*, *supra* note 12.

95. *Rejecting the Jury*, *supra* note 11.

96. *Id.* at 1422-24.

97. *Id.* at 1424-26.

98. *Id.* at 1427-30.

99. *Id.* at 1423. Even by 1985, it was becoming clear that most death penalty cases with a jury recommendation of life would later be reduced to life imprisonment. “If present trends continue, very few defendants who have been sentenced to death following a jury recommendation of life will ever be executed.” *Id.* at 1422.

100. *Id.* at 1413.

101. *Id.* at 1414.

102. *Id.*

hatred and hysteria of an inflamed jury. They should not be subject to public pressure, stemming from those same emotions, to impose the death penalty where the jury has recommended life. If it is to be retained at all, the judicial override provision should be revised to make it operational only to temper an inflamed jury's recommendation of death.¹⁰³

Later, the American Bar Association's Death Penalty Moratorium Project, in its report on the death penalty in Florida, recommended that "[t]he State of Florida should give the jury final decision-making authority in capital sentencing proceedings, and thus should eliminate judicial override in cases where the jury recommends life imprisonment without the possibility of parole."¹⁰⁴ However, in the chambers of the Florida legislature, these recommendations have done nothing but gather dust.

III. LIFE-TO-DEATH OVERRIDES IN FLORIDA

How many life-to-death override cases have occurred in Florida? Soon after Florida's post-*Furman* death penalty statute took effect in 1972,¹⁰⁵ Jacksonville attorney William Sheppard and his legal assistant, Kay Isaly, began to assemble a data set on all Florida death sentences. In 1979 this data set was turned over to the present Author, who, with the assistance of Florida paralegal Theresa Farley, continues to update and maintain it today. When a new death sentence is handed down, a letter and brief questionnaire is sent to both the inmate and the attorney. The defense attorney is asked to send a copy of the judge's "sentencing order," which lists the judge's findings of aggravating and mitigating circumstances.¹⁰⁶ The death penalty case is then followed until the prisoner leaves death row, either from judicial

103. FLA. SUPREME COURT RACIAL & ETHNIC BIAS STUDY COMM'N, "WHERE THE INJURED FLY FOR JUSTICE": REFORMING PRACTICES WHICH IMPEDE THE DISPENSATION OF JUSTICE TO MINORITIES IN FLORIDA 48 (1991), available at <http://www.flcourts.org/diversity/> (emphasis omitted).

104. See AM. BAR ASS'N., EVALUATING FAIRNESS AND ACCURACY IN STATE DEATH PENALTY SYSTEMS: THE FLORIDA DEATH PENALTY ASSESSMENT REPORT, at x (2006), available at <http://www.americanbar.org/content/dam/aba/migrated/moratorium/assessmentproject/florida/executivesummary.authcheckdam.pdf>.

105. Florida's post-*Furman* death penalty law went into effect in December 1972. Charles W. Ehrhardt & L. Harold Levinson, *Florida's Legislative Response to Furman: An Exercise in Futility?*, 64 J. CRIM. L. & CRIMINOLOGY 10, 10 (1973).

106. This data set is not available to the public. In Florida, jurors do not make formal findings of aggravating and mitigating circumstances, but instead only vote for the death penalty or for life imprisonment without parole. Only the trial judge makes written findings of aggravation and mitigation. The absence of formal findings by the jury of aggravation and mitigation led U.S. District Judge Jose E. Martinez to rule in June 2011 that the Florida death penalty statute was unconstitutional and to vacate the death sentence of Paul H. Evans. David Ovalle, *Miami Federal Judge Rules Florida's Death Penalty Unconstitutional*, MIAMI HERALD, Jun. 22, 2011; *Evans v. McNeil*, No. 08-14402 (S.D. Fla. June 20, 2011), available at <http://apublicdefender.com/wp-content/uploads/2011/06/evans-mcneil.pdf>.

decisions, executive clemency, natural death, suicide, homicide, or execution.

Between 1972 and early June 2011, a total of 166 death sentences were imposed in Florida following a jury recommendation of life imprisonment.¹⁰⁷ But as of this writing in August 2011, the last person sentenced to death in Florida after a jury recommendation of life was Jeffery Weaver, who was sentenced in August 1999.¹⁰⁸ It has been nearly a dozen years since the last life-to-death override in Florida.

The names of the defendants who were sentenced to death after jury recommendations of life, dates of their sentences, citations to the direct appeal decisions by the Florida Supreme Court, and the outcomes of those direct appeal decisions are listed in Appendix B. The data in Appendix B show that only about twenty-six percent ($43 \div 166$) of the override cases were affirmed on direct appeal.¹⁰⁹ Of those forty-three, thirty-four won relief (so far) after subsequent litigation.¹¹⁰ Five remain on death row,¹¹¹ and four were executed.¹¹²

The number of overrides by year of sentence is listed in Table 3. It can be seen that between 1973 and 1989, an average of between seven and nine people were sentenced to death each year after life recommendations. That average dropped by fifty percent in 1990-94, and by an additional seventy percent from 1995-1999. Thereafter, life-to-death overrides stopped.

107. This includes cases where there were 6, 7, 8, 9, 10, 11, or 12 votes for life. Although Florida's capital statute discusses a recommendation by a "majority" of the jury, FLA. STAT. ANN. § 921.141(3) (West 2011), a split vote of six-to-six is treated as a recommendation of life imprisonment; *see also* Patten v. State, 467 So. 2d 975, 980 (Fla. 1985); Rose v. State, 425 So. 2d 521, 525 (Fla. 1982), *cert. denied*, 461 U.S. 909 (1983). Counting override cases requires some explanation. In 1985, Radelet stated that there had been eighty-seven life-to-death overrides in Florida. *Rejecting the Jury*, *supra* note 11, at 1412. In 1992 Radelet and Mello put the number at 134. Radelet & Mello, *supra* note 15, at 196. The total of 166 cases reported herein is slightly higher because the numbers in this Article are for cases, not individuals. We include eleven cases in which a defendant was sentenced to death after a jury recommendation of life and then *resentenced* to death after the original death sentence was vacated; eight cases with multiple victims, with the jury recommending both life and death, but the defendant was sentenced to death on all counts; and one such case with mixed sentence recommendations where the defendant was resentenced to death after a remand.

108. *See infra* Appendix B, Case No. 166.

109. Here I include three cases in the denominator wherein the defendant died before the direct appeal was decided, and one case where the death sentence was vacated by the trial court soon after it was imposed.

110. *See infra* Appendix B.

111. *See infra* Appendix B (Case No. 82, Tommy Groover; Case No. 135, William Zeigler; Case No. 136, Timothy Robinson; Case No. 152, Anthony Washington; and Case No. 163, Edward Zakrzewski).

112. *See infra* Appendix B (Case No. 38, Beauford White; Case No. 40, Ernest Dobbert; Case No. 58, Bernard Bolander; and Case No. 84, Bobby Francis). It has now been twenty years since the last Florida inmate with a jury recommendation of life (Bobby Francis) was put to death.

Why have life-to-death overrides in Florida ceased? Neither the Florida Supreme Court nor any federal court has halted the practice. Nor has the Florida legislature. It is mysterious that at least one judge, perhaps facing retirement or not worried about retention, has not effectively said, "I do not care what the Florida Supreme Court says; I think this defendant should die."

Undoubtedly there are a number of interrelated factors operating together that have had some effect in reducing overrides, and it is impossible to pinpoint the precise role of each. We can hypothesize that seven factors, listed below in no particular order, may be operating:¹¹³

1. Taking Tedder Seriously. Trial judges slowly began to realize that the Florida Supreme Court only rarely upholds a death sentence imposed after an override. Even if a trial judge really thought that a given defendant deserved to be sentenced to death, judges generally do not like to get reversed on appeal.

2. Better Judges. Judges today are better trained and educated, and more careful.¹¹⁴ Three of the four judges who imposed the most death sentences after jury recommendations of life are no longer on the bench.¹¹⁵ All Florida judges are required to take the five day Handling Capital Cases course offered yearly by the Florida College of Advanced Judicial Studies before being assigned to preside over a capital case.¹¹⁶

3. Little Political Incentive. Because of the publicity about exonerations and lack of fairness, judges do not perceive that they will gain much political mileage by overriding a jury recommendation of life.

113. I am grateful to several of the very best death penalty attorneys in Florida for brainstorming with me about this issue over the years, especially Bill McLain, Bob Norgaard, Mark Olive, Chris Quarles, Todd Scher, and Adam Tebrugge.

114. For example, the author of the most important document given to judges who are attending a training session for conducting death penalty cases, after observing that ninety percent of the override cases are reversed, recommends, "The safe course of action for the trial judge to take after receiving a jury recommendation of life in prison is to determine the credit for time served and impose the sentence recommended by the jury." O.H. EATON, JR., FLA. COLL. OF ADVANCED JUDICIAL STUDIES, CONDUCTING THE PENALTY PHASE OF A CAPITAL CASE 156 (2011), available at http://www.flcourts18.org/PDF/Eaton/2011_AJS_Pen_Phase_Mat_ed_Final.pdf.

115. Two judges overrode six life recommendations: Harry Lee Coe, who committed suicide in 2000, and Nickolas Geeker, who is still on the bench. Two other judges overrode seven life recommendations. The first, Thomas Coker, retired in 1991 and passed away in 1999. The second, Hudson Oliff, is retired.

116. FLA. R. JUD. ADMIN. 2.215(b)(10)(A), available at [http://www.floridabar.org/TFB/TFBResources.nsf/Attachments/F854D695BA7136B085257316005E7DE7/\\$FILE/Judicial.pdf](http://www.floridabar.org/TFB/TFBResources.nsf/Attachments/F854D695BA7136B085257316005E7DE7/$FILE/Judicial.pdf).

4. Ring.¹¹⁷ By the early 2000's, overrides had already ceased, but the final nail in the coffin may have been *Ring v. Arizona*, in which the Supreme Court elevated the importance of trial juries in determining who would be sentenced to death.

5. Better defense attorneys. The defense attorneys are doing a better job presenting mitigation, so judges might see that a jury recommendation of life is well-grounded in solid mitigation.

6. Less Support for the Death Penalty. Like the general public, it may be that prosecutors and judges are less supportive of the death penalty today than they were twenty years ago.¹¹⁸ If so, prosecutors would not be urging judges to override life recommendations as vigorously as they once had been. With 400 inmates already in the queue for execution in Florida, judges may realize that there is little chance that those sentenced to death today will ever be executed, and they may want to spare the taxpayers the huge expense of going through a death penalty appeal that, in all likelihood, will not result in an execution.

7. The Alternative of Life Without Parole. Before 1994, the sentence for those convicted of first-degree murder in Florida who were not sentenced to death was life imprisonment, but offenders would be considered for parole after twenty-five years.¹¹⁹ Today, that possibility for parole has been eliminated. There are only two possible sentences for those convicted of first-degree murder in Florida: death or life imprisonment without the possibility of parole.¹²⁰

117. *Ring v. Arizona*, 536 U.S. 584 (2002).

118. Support for the death penalty has dropped precipitously since the mid-1990s, especially support for the death penalty given the option of life imprisonment without parole. When the Gallup organization last measured this in 2010, they found that forty-nine percent of the American public favored the death penalty, compared to forty-six percent who favored life imprisonment without parole. This is very different than 1997, when supporters of the death penalty outnumbered those favoring prison terms by a sixty-one to twenty-nine margin. *Death Penalty*, GALLUP, <http://www.gallup.com/poll/1606/death-penalty.aspx> (last visited Sept. 25, 2011).

119. As the Florida Supreme Court explained:

In 1994, the Legislature enacted chapter 94-228, Laws of Florida, section 1 of which amended the statute on penalties for crimes to make life without the possibility of parole the alternative punishment to a death sentence for the crime of first-degree murder. See § 775.082(1), Fla. Stat. (Supp. 1994). Section three of the session law states that “[t]his act shall take effect upon becoming a law.” The act was approved by the Governor and became effective May 25, 1994. Thus, the amended sentencing statute applies to all crimes committed after May 25, 1994.

Bates v. State, 750 So. 2d 6, 10 (1999).

120. FLA. STAT. ANN. § 775.082 (West 2011).

IV. DEATH-TO-LIFE OVERRIDES IN FLORIDA

In 1992, Radelet and Mello provided information on fifty-one Florida cases involving forty-seven defendants who were sentenced to life imprisonment for homicide convictions after the trial juries recommended that the defendants should be sentenced to death.¹²¹ The cases occurred over an eighteen-year span, 1974-1991. Of the forty-seven, ten with multiple homicide convictions were sentenced to death after their trial juries recommended death on other homicide counts.

As we explained in that article, identifying death-to-life overrides is not a simple task, and it is easy to miss cases. All cases ending with a death sentence are appealed to the Florida Supreme Court, and the state now maintains a website with all death penalty cases.¹²² However, defendants sentenced to life may not appeal their convictions, and even if they do there is no way to pick out the death-to-life overrides. Because of this, the task of compiling a list of death-to-life overrides relies heavily on word of mouth, principally among Florida defense attorneys. As was said in 1992, “[W]e cannot and do not claim completeness.”¹²³

Since the publication of that paper, at the very least an additional thirty-six death-to-life overrides have occurred in Florida, and one additional case from before 1991 was discovered.¹²⁴ This brings the total to eighty-

121. Radelet & Mello, *supra* note 15, at 210-11.

122. See *Death Row Roster*, FLA. DEP'T CORR., <http://www.dc.state.fl.us/activeinmates/deathrowroster.asp> (last visited Sept. 25, 2011).

123. Radelet & Mello, *supra* note 15, at 210. Indeed, after the publication of our 1992 paper, we found a case from 1976 that we missed. See *infra* Appendix C (case of Donald Armour).

124. Two other cases, although not included in the tally, could reasonably be considered “quasi” death-to-life overrides. Prosecutors argued that Gary Michael Glisson, Eric Rodriguez, and Jarvis Mosley robbed and murdered seventeen year-old Angelia “Angel” Headrick. Jason Geary, *Divided Jury Recommends Death for Killer*, THE LEDGER.COM, Sept. 8, 2009, <http://www.theledger.com/article/20090908/NEWS/909085045?p=1&tc=pg>. In separate trials, Glisson and Rodriguez were convicted of first-degree murder; Mosley agreed to plead guilty to lesser charges related to the murder and to testify against his two partners, in exchange for a fifteen year sentence. *Id.* Rodriguez’s jury recommended death by a seven-to-five vote, while Glisson received an eight-to-four vote for death. *Id.*; Jason Geary, *Jury Recommends Death for Gary Michael Glisson*, THE LEDGER.COM, Feb. 5, 2010, <http://www.theledger.com/article/20100205/NEWS/2055043?Title=Jury-Recommends-Death-for-Gary-Michael-Glisson>. Shortly thereafter and before sentencing, Glisson’s attorneys, Bob and Andrea Norgaard, filed a motion for a new trial. Jason Geary, *Two Get Life in Prison Without Parole for Killing of ‘Angel’ Headrick*, THE LEDGER.COM, Mar. 11, 2010, <http://www.theledger.com/article/20100311/NEWS/3115026>. Prosecutors worried that the a new trial would be granted and agreed to waive the death penalty in exchange for the withdrawal of the motion for the new trial. *Id.* Glisson agreed. *Id.* In addition, because Glisson was the major participant in the murder, prosecutors also decided to waive the death penalty for Rodriguez. *Id.* Both Glisson and Rodriguez were sentenced to life imprisonment. *Id.*

eight cases. There were fifty-two cases in the earlier eighteen-year span (an average of 2.9 per year) and thirty-six cases in the twenty-year period beginning in January 1992 to mid-2011 (an average of 1.8 per year). The number of death-to-life overrides by years is displayed in Table 4. Overall, the number of death-to-life cases over the thirty-seven year period is roughly consistent at about two per year, with the notable exception of 1987-89, when the State averaged 8.7 cases per year.

Table 5 shows that among the thirty-six new cases where the jury's vote is known, about two thirds (twenty-four) had death recommendations of either seven-to-five or eight-to-four. But there were also two cases in which the trial judge overrode unanimous jury recommendations for death. In 2004, Brandon Gatlin (Case No. 11) was sentenced to life, despite a prior robbery conviction and a brutal beating that he and another inmate administered to a fellow prisoner while they awaited trial in the county jail.¹²⁵ In that case, the trial judge was strongly influenced by questions of intent and the unusually chaotic circumstances of Mr. Gatlin's childhood.¹²⁶ In the second case in which the trial judge rejected a twelve-to-zero vote for death, the trial judge reduced the value of the jury's vote because it was delivered so quickly that there was not enough time for proper deliberation (Case No. 18).¹²⁷ Table 5 also shows that there are ten cases where nine or ten members of the jury voted for death, showing that even strong jury recommendations for death can be overridden. Of course, in almost all death penalty jurisdictions, a unanimous jury recommendation is required before a defendant can be sentenced to death,¹²⁸ so these overrides can be seen as actions that bring Florida closer to what the other states are doing.

Why do judges override death recommendations? Table 6 presents fourteen reasons. Most of these justifications are fairly common types of mitigation known to jurors; only two reasons (jury error and the wishes of the family of the victim) are factors presumably not known to members of the jury. By far the most common reason for judicial overrides of death recommendations is the defendant's mental illness or mental retardation. In-

Thus, it was not the judge who took the initiative to override the death recommendations, although the judge had to approve the negotiated deal.

125. Jason Geary, *Convict Escapes Death: Judge Rejects Jury's Choice and Sends Murderer to Prison for Life*, LAKELAND LEDGER, Dec. 18, 2004; see *infra* Appendix C, Case No. 11.

126. Geary, *supra* note 125; see *infra* Appendix C, Case No. 11.

127. See *infra* Appendix C, Case No. 18 (Ronald Knight); David Holmberg, *Judge: Decision on Death Rushed*, PALM BEACH POST, Dec. 9, 1995, at A1; Stephanie Smith, *Judge Gives Killer Two Life Terms; Jury's 12-0 Death Recommendation Rejected*, SUN SENTINEL (Fort Lauderdale), Dec. 9, 1995, at 1A.

128. "The bottom line is that Florida is now the *only* state in the country that allows the death penalty to be imposed even though the penalty-phase jury may determine by a mere majority vote *both* whether aggravators exist and whether to recommend the death penalty." *State v. Steele*, 921 So. 2d 538, 550 (Fla. 2005).

deed, jurors might inappropriately misinterpret mental health mitigation as non-statutory *aggravation*: they may believe that a mentally ill or mentally retarded inmate may constitute a danger in the prison community.¹²⁹ Judges, however, may be in a position to reject such emotional arguments. Table 6 also shows that concerns about jury error prompted the life sentences in five cases. Together with a broader concern about the improper evaluation of mitigation or the improper weighing of aggravation and mitigation, it is likely that in most cases, had the defendant been sentenced to death, the sentence would have been vacated on appeal. As was suggested in the 1992 article, the death-to-life overrides clearly save the scarce resources of the Florida Supreme Court by reducing the number of death penalty cases they are mandated to review.

Table 7 combines the information presented in the 1992 article¹³⁰ with the new cases presented in Appendix C. It lists all eighty-eight death-to-life cases in summary form and chronological order. Names of the judges who rejected the death recommendations are also presented.

Are there a small handful of judges who are responsible for a large fraction of the death-to-life overrides? The data presented in Table 8, which also combines the data from all eighty-eight cases, indicates that the answer is no. Only two judges¹³¹ (John Antoon and J. Rogers Padgett) have overridden jury recommendations in three separate trials.¹³²

There is no evidence in the materials on any of the cases of any backlash against these judges for their decisions to override the death recommendations. In fact, after the overrides Judge Antoon enjoyed a successful tenure as a judge of Florida's Fifth District Court of Appeals, and since 2000 he has been a U.S. District Court judge.¹³³ In 2008, Judge Padgett retired, not because of any controversy, but because he reached the mandatory retirement age of seventy.¹³⁴ In the earlier set of cases, two of the overrides resulted in protests, but these protests were short-lived.¹³⁵ With public opin-

129. See Lawrence T. White, *The Mental Illness Defense in the Capital Penalty Hearing*, 5 BEHAV. SCI. & L. 411 (1987).

130. Radelet & Mello, *supra* note 15, at 216-28.

131. One other judge, Ralph Person, sentenced five people to life after their juries recommended death, but four were in one trial and one was in a second trial.

132. This is a paltry number compared to the two judges who overrode six life recommendations, and two others who overrode seven life recommendations. See *supra* note 115.

133. *Biographical Directory of Federal Judges: Antoon, John II*, FED. JUD. CENTER, <http://www.fjc.gov/servlet/nGetInfo?jid=2857&cid=999&ctype=na&instat=na> (last visited Sept. 25, 2011).

134. Colleen Jenkins, *Mandatory Retirement is Forcing out Florida Judges*, ST. PETERSBURG TIMES, Sept. 22, 2008, <http://www.tampabay.com/news/courts/article/821308.ece>.

135. Radelet & Mello, *supra* note 15, at 213 (cases of Ramirez and Taylor).

ion steadily moving away from the death penalty,¹³⁶ even less criticism and more support can be expected for future death-to-life overrides.

CONCLUSION

As any novice student of the death penalty quickly learns, it is impossible to predict the future for America's executioners. In 1984 there were eight executions in Florida and (as of December 31) 215 prisoners on its death row.¹³⁷ Many individuals working with death row inmates at the time, the present Author included, thought that monthly executions (at least) would soon become the norm. Yet, between then and August 1, 2011 (319 months) "only" fifty-nine more inmates have been put to death, an average of less than one execution every five months. Nine of those were executed only after dropping their appeals. In the hundreds of lonely fights over the death penalty in the past thirty years in Florida, the victories by defense attorneys have far, far outpaced the victories by prosecutors.

It is therefore a bit risky, in all probability, to declare that the last of life-to-death overrides has already occurred. This is especially true since the lack of overrides since 1999 has not been a function of any (direct) judicial or legislative actions. To be sure, the appellate courts have not been friendly toward overrides, but thus far they have resisted prohibiting them altogether. Today there is nothing that can stop a trial judge, perhaps nearing retirement or confident that the voters will not care, from overriding a jury's life recommendation—for pure spite if nothing else. We can hold a requiem, but the stake has not yet been driven through Dracula's heart.

With 166 overrides, five of which are "pending" because they involve men still on death row,¹³⁸ and four executions taking the lives of defendants whose juries thought that they did not deserve death,¹³⁹ prosecutors in override cases have had a dismal rate of success. Any factory that produced nine "successes" (at best) out of 166 tries (5.4%) would not stay in business for long. To be sure, some may argue that there is some benefit to sentencing people to death even if they are not executed, much like simulated executions in the seventeenth and eighteenth centuries when the person was brought to the gallows for the ritual of execution, while all present knew

136. See, e.g., *Death Penalty*, *supra* note 118; RICHARD C. DIETER, DEATH PENALTY INFO. CTR., A CRISIS OF CONFIDENCE: AMERICANS' DOUBTS ABOUT THE DEATH PENALTY 1 (2007), available at <http://www.deathpenaltyinfo.org/CoC.pdf>.

137. BUREAU OF JUSTICE STATISTICS, U.S. DEP'T OF JUSTICE, NCJ-99562, CAPITAL PUNISHMENT 1984, at 6 tbl.6 (1986), available at <https://www.ncjrs.gov/pdffiles1/Digitization/99562NCJRS.pdf>.

138. See *supra* note 107.

139. See *supra* note 112 and accompanying text.

that the execution would not be carried out.¹⁴⁰ But with ninety-five percent of the death sentences obtained by overrides vacated on appeal,¹⁴¹ it is beyond dispute that Florida taxpayers have wasted literally hundreds of millions of dollars on these cases.¹⁴²

On the other hand, Florida judges in eighty-eight cases have saved the taxpayers millions more by rejecting death recommendations from juries in highly mitigated cases and instead sentencing defendants to prison terms. These death-to-life overrides continue, so any requiem for overrides is in reality only half a requiem. In cases where juries return death recommendations, judges need to know that they are fully able to allow the defendant to live, and those who have done so in the past have not suffered a scintilla of political backlash.

That said, the real story of the research reported herein may be in Alabama. The portraits we have painted of the life-to-death override in Delaware, Indiana, and Florida are all very similar: in the past dozen years the only life-to-death override in those three states involved Sadiki Garden in Delaware.¹⁴³ Indiana has abandoned the override, and in Delaware and Florida the override has become a one-way street in favor of life. Even looking back beyond a decade in those three states, when life-to-death overrides occurred, the death sentences were almost always overturned on appeal. Only nine overrides in the three states “survive” to this day—the five cases of current death row inmates in Florida that have not reached final disposition, and the four others from Florida that ended with executions.

But Alabama is a different beast. It is an outlier. In contrast to every other death penalty state, it not only regularly allows life-to-death overrides, but does so without standards, without appellate courts that regularly reduce such death sentences to life imprisonment, without governors extending executive clemency, and with a continuing practice of sending those with life recommendations to its death chamber. The way that Alabama treats capital cases with life recommendations is utterly unique; it is different in both form and practice from all other death penalty states.

Looked at in this light, the Alabama statute seems ripe for a Supreme Court challenge. In the past decade the Supreme Court looked at trends

140. STUART BANNER, *THE DEATH PENALTY: AN AMERICAN HISTORY* 53-54, 62-70 (2002).

141. This excludes the four cases in which the death sentence was vacated by the trial court or the defendant died before the direct appeal was decided. The resulting calculation is 154 override cases in which the death penalty was removed out of 162 cases that went through a direct appeal ($154 \div 162 = 95.1\%$).

142. For a review of studies on the cost of the death penalty, see *Costs of the Death Penalty*, DEATH PENALTY INFO. CTR., <http://www.deathpenaltyinfo.org/costs-death-penalty> (last visited Sept. 25, 2011).

143. See *Garden v. State*, 815 A.2d 327 (2003); see *supra* note 32 and accompanying text.

away from the death penalty for the mentally retarded¹⁴⁴ and trends away from the death penalty for juveniles¹⁴⁵ to enact wholesale bans on the practices. Perhaps the uniqueness of the Alabama law and the increasing dissimilarity of its override cases to other death penalty cases will soon lead the Supreme Court to find that such overrides clearly violate evolving standards of decency and guarantee the power of the jurors to firmly reject the death penalty.

Stay tuned.

144. See *Atkins v. Virginia*, 536 U.S. 304 (2002).

145. See *Roper v. Simmons*, 543 U.S. 551 (2005).

Table 1
Cases in which the Death Penalty was Imposed in Indiana, 1981-1994,
after the Trial Jury Recommended a Life Sentence (n=10)¹⁴⁶

<u>Def.'s Name</u>	<u>Date of Sent.</u>	<u>Dec. Vacating Death Sent.</u>
1. Schiro, Thomas	10.02.81	669 N.E.2d 1357 (Ind. 1996)
2. Thompson, Jay R.	03.18.82 492	N.E.2d 264 (Ind. 1986)
3. Martinez Chavez, Eladio	05.15.81 534	N.E.2d 731 (Ind. 1989)
4. Minnick, William A.	10.16.85 2005	U.S. Dist LEXIS 14456
5. Kennedy, Stuart #1	03.21.88 578	N.E.2d 633 (Ind. 1991)
6. Jackson, Donald Lee	06.07.88 597	N.E.2d 950 (Ind. 1992)
7. Kennedy, Stuart #2	04.28.92 620	N.E.2d 17 (Ind. 1993)
8. Ben-Yisrayl, Obadyah (f/k/a Christopher Peterson)	06.05.92 2006	U.S. Dist. LEXIS 32722
9. Roark, Dennis R.	10.30.92 644	N.E.2d 565 (Ind. 1994)
10. Saylor, Benny L.	02.17.94 808	N.E.2d 646 (Ind. 2004)

Table 2
Death-to-Life Overrides in Indiana, 1984-Present
(n=9)

<u>Defendant's Name</u>	<u>Date of Override</u>	<u>Sentence County</u>
1. Danks, Larry	12.10.84	Laporte
2. Jackson, Patrick	05.02.85	Lake
3. Mitchell, Paul	12.10.86	Hamilton
4. Harden, Mark	11.19.87	Marion
5. Anderson, Timothy D.	11.07.91	Vanderburg
6. Helfenbein, Theodore	05.26.92	Clark
7. Bellmore, Larry	11.29.93	Morgan
8. Rogers, Thomas Lee	04.26.96	Lake
9. Jones, Roman	12.27.96	Lake

146. I would like to thank Paula Sites, Assistant Executive Director, Indiana Public Defender Council, for providing the data on death-to-life and life-to-death overrides in Indiana.

Table 3
Death Sentences Imposed After Jury Recommendation
of Life Imprisonment in Florida, by Year
1973-Current (n=166)

1973—6
1974—10
1975—5
1976—10
1977—3
1978—11
1979—6
1980—12
1981—7
1982—10
1983—12
1984—5
1985—9
1986—10
1987—7
1988—7
1989—10
1990—3
1991—7
1992—3
1993—3
1994—4
1995—2
1996—2
1997—0
1998—1
1999—1
2000-current—0

Annual Averages

1973-74: 8.0
1975-79: 7.0
1980-84: 9.2
1985-89: 8.6
1990-94: 4.0
1995-99: 1.2
2000-10: 0

Table 4
Death-to-Life Overrides in Florida by Year (n=91)

1974—2
1975—2
1976—1
1977—1
1978—1
1979—0
1980—4
1981—0
1982—2
1983—0
1984—2
1985—5
1986—2
1987—12
1988—6
1989—8
1990—3
1991—1
1992—0
1993—1
1994—3
1995—2
1996—3
1997—2
1998—3
1999—1
2000—0
2001—1
2002—1
2003—3
2004—3
2005—1
2006—3
2007—0
2008—5
2009—3
2010—0
2011—4

Annual Averages

1974-79: 1.2
 1980-84: 1.6
 1985-89: 6.6
 1990-94: 2.7
 1995-99: 2.0
 2000-04: 1.6
 2005-10: 2.0
 2011: 4

Table 5
Number of Death Votes in Florida Death-to-Life Cases (n=40)

7 Death Votes	14 cases
8 Death Votes	12 cases
9 Death Votes	6 cases
10 Death Votes	5 cases
11 Death Votes	0 cases
12 Death Votes	2 cases
Unknown	1 case

Table 6
Factors Used to Justify Death-to-Life Overrides in Florida (n=40)

	<i>Case Numbers</i>
Retardation or Mental Illness	1, 3, 10, 12, 13, 15, 22, 23-24, 25, 26, 27, 29, 31, 32-33, 38, 40
Questions about Premeditation or Intent	6-7, 11, 13, 18, 21, 28, 37, 40
Proportionality	5, 8, 13, 17, 18, 20, 25, 30, 35, 36
Abusive Childhood	11, 13, 14, 26, 27, 29, 31, 39
Jury Error	18, 23, 29, 34
Questions about Who Was Triggerman	6-7, 17, 35
Mitigation outweighed aggravation	2, 4, 9, 12, 23-24
Lingering Doubt about Guilt	2, 3, 37
Wishes of Victim's Family	3, 4, 31
Defendant's Remorse, Responsibility, Or Cooperation	19, 20, 25, 40
Defendant's Age	6, 16, 23-24, 38
Alcohol	5, 16
Lack of Prior Criminal Record	1, 10, 23-24
Victim Did Not Suffer	14

Table 7
Death-to-Life Overrides, Florida, 1972-2011 (n=91)

<u>Defendant</u>	<u>Date</u>	<u>Trial Location</u>	<u>Trial Judge</u>
1-2.*Zadnick, Rudolph	Nov. 1974	Orlando	Peter de Manio
3-4.*Chandler, Ronald & Richard Cravero	July 1975	Miami	Dan Satin
5.#Armour, David	Mar. 1976	Pasco County	Lawrence E. Keough
6.*Lusk, Bobby	May 1977	Miami	Wilkie D. Ferguson
7.*Jackson, James	Apr. 1978	Starke	Wayne Carlisle
8.*Marter, Joseph	Mar. 1980	Orlando	Frank N. Kaney
9.*Robinson, Lovonza	May 1980	Sebring	John H. Dewell
10.*Cleveland, Edward	Sept. 1980	Pensacola	William Frye III
11.*Graham, Doyle	Sept 1980	Fernandina Beach	Henry Lee Adams, Jr.
12.*Nelson, Michael	Mar. 1982	West Palm Beach	Marvin Mounts
13.*Bullard, James	Oct. 1982	West Palm Beach	Edward Rodgers
14.*Morris, Clarence	May 1984	St. Petersburg	Susan Schaeffer
15.*Hale, Ronald	Oct. 1984	Tampa	John P. Griffin
16.*Crow, Thomas	Apr. 1985	Panama City	N. Russell Bower
17.*Hall, Thomas	July 1985	Tampa	M. William Graybill
18.*Cochran, Guy	Oct. 1985	Tampa	Donald Evans
19.*Garron, Joseph	Oct. 1985	New Port Richey	Lawrence E. Keough
20.*Cook, David	Oct 1985	Miami	Thomas M. Carney
21.*Rivera, Juan	Aug. 1986	Fort Myers	Thomas Reese
22.*Ferguson, Christopher	Dec. 1986	Fort Myers	Thomas Reese
23.*Camper, Carlton	Jan. 1987	Orlando	Gary Formet
24.*Canady, Michael	Mar. 1987	West Palm Beach	William Owen
25.*Ramirez, Jesse	June 1987	Miami	Steven Robinson
26.*Jones, Freddie	May 1987	Miami	Norman Gerstein
27.*White, Victor	July 1987	Sanford	O. H. Eaton, Jr.
28.*Sorey, William	Aug. 1987	Marianna	Robert L. McCrary
29.*Taylor, George	Aug. 1987	Tampa	John P. Griffin
30-33.*Bryant, James Dee Casteel, Michael Irvine & William Rhodes	Sept. 1987	Miami	Ralph N. Person
34.*Occhicone, Dominick	Nov. 1987	New Port Richey	Lawrence E. Keough
35.*Porter, George	Mar. 1988	Melbourne	John Antoon
36.*Mitchell, Joseph	May 1988	Live Oak	John Peach
37.*Lackner, Ronald	Mar. 1988	Inverness	Thomas Sawaya
38.*De Parias, Julita	Sept. 1988	Miami	Ralph Person
39.*Bailey, James	Sept. 1988	Tampa	Richard A. Lazzara
40.*Combs, Robert	Oct. 1988	Fort Myers	Thomas S. Reese
41.*Rippley, Michael	Feb. 1989	Bartow	J. Tim Strickland
42.*Selver, Gilbert	Feb. 1989	West Palm Beach	Harold Cohen
43.*Mays, James, Jr.	Feb. 1989	Melbourne	John Antoon
44-47.*Cruse, William Bryan	July 1989	Bartow ¹⁴⁷	John Antoon
48.*Bassett, Ted	Nov. 1989	Daytona Beach	S. James Foxman
49.*Jones, Daniel	Jan. 1990	Bartow	E. Randolph Bentley
50.*Young, Charles "Biff"	July 1990	West Palm Beach	Walter Colbath
51.*Ferguson, Eddie	Nov. 1990	Fort Myers	William Nelson
52.*Telemachos, Katherine	Dec. 1991	Ft. Lauderdale	Charles Green
53.#Silas, Willie	Nov. 1993	Miami	Thomas Carney
54-55.#Chilmonik, Adam & David Hubbard	Mar. 1994	Lee County	William Nelson

147. On venue change from Brevard County.

56. #Williams, Walter E.	Aug. 1994	Clearwater	Karl Grube
57. #Jamison, Lewis	Oct. 1995	Bartow	J. Tim Strickland
58. #Knight, Ronald	Dec. 1995	W. Palm Beach	Edward Rodgers
59-60. #Saum, Dustin ¹⁴⁸	Sept. 1996	Bartow	Robert Young
61. #Terranova, Joseph	Nov. 1996	Tampa	J. Rogers Padgett
62. #Rogers, Alvin	Feb. 1997	Clearwater	Brandt Downey
63. #Davis, Darrell	June 1997	Jacksonville	Henry Davis
64. #Durain, Daniel G.	Mar. 1998	Ft. Myers	Isaac Anderson
65. #Walker, James	Aug. 1998	Miami	Michael Salmon
66. #Galloway, David	Nov. 1998	Largo	David Seth Walker
67. #Steverson, Bobby Lamar	Sept. 1999	Lakeland	Dennis Maloney
68. #Morris, Walter	Feb. 2001	Pinellas	Robert Beach
69. #Harris, Alfred B.	May 2002	Tampa	J. Rogers Padgett
70. #Green, Troy	Mar. 2003	Tampa	J. Rogers Padgett
71. #Carpenter, David	June 2003	Largo	Dee Anna Farnell
72. #Robinson, Kevin	Sept. 2003	Orlando	A. Thomas Mihok
73. #Johnson, Lloyd	June 2004	West Palm Beach	Stephen Rapp
74. #Barnes, Corrie	July 2004	Shalimar	Thomas Remington
75. #Gatlin, Brandan	Dec. 2004	Polk County	Dennis Maloney
76. #Roca-Moreno, Alfredo	May 2005	Titusville	Warren Burk
77. #Bennett, Christopher	May 2006	Key West	Trish Docherty
78. #Tucker, Jason	Aug. 2006	Viera	Lisa Davidson
79. #Barber, Justin	Sept. 2006	St. Augustine	Edward Hedstrom
80. #Lewis, James Darnel I	May 2008	Titusville	Lisa Davidson
81. #Smith, Lawrence Joey	Apr. 2008	Dade City	Lynn Tepper
82. #Murphy, Gregory	July 2008	Daytona Beach	J. David Walsh
83. #Saintil, Wilson	Aug. 2008	Pinellas County	Nancy Moate Ley
84. #Permenter, Timothy	Oct. 2008	Pinellas County	R. Timothy Peters
85. #Norman, Rhonda	July 2009	West Palm Beach	Sandra McSorley
86. #Grodin, Justin	Sept. 2009	Ft. Myers	Edward Volz, Jr.
87. #Heyne, Justin	Dec. 2009	Titusville	O.H. Eaton, Jr.
88. #McBride, Kenneth	Feb. 2011	Green Cove Springs	John Skinner
89. #Rolle, Brandon	June 2011	Miami	J. Dennis Murphy
90-91. # Myers, David ¹⁴⁹	June 2011	Sarasota	Charles Roberts

* See Radelet & Mello, *supra* note 15, at 216-28.

See App. C, *infra*.

Table 8
Florida Judges Who Have Overridden Death Recommendations
In More Than One Trial

John Antoon	William Cruse*
	James Mays*
	George Porter*
Thomas Carney	Willie Silas, <i>infra</i> .
	David Cook*
Lisa Davidson	James Lewis, <i>infra</i> .
	Jason Tucker, <i>infra</i> .
O.H. Eaton, Jr.	Justin Heyne, <i>infra</i> .

148. Judge overrode two death recommendations.

149. Judge overrode two death recommendations.

	Victor White*
John Griffin	Ronald Hale
	George Taylor
Lawrence E. Keough	David Armour
	Joseph Garron
Dennis Maloney	Brandan Gatlin, <i>infra</i> .
	Bobby Steverson, <i>infra</i> .
William Nelson	Adam Chilmonik and David Hubbard, <i>infra</i> .
	Eddie Ferguson*
J. Rogers Padgett	Troy Green, <i>infra</i> .
	Alfred Harris, <i>infra</i> .
	Joseph Terranova, <i>infra</i> .
Ralph Person	James Bryant, Dee Casteel, Michael Irvine, and William Rhodes*
	Julita de Parias*
Edward Rodgers	James Ballard
	Ronald Knight
Thomas Reese	Christopher Ferguson*
	Juan Rivera*
J. Timothy Strickland	Lewis Jamison, <i>infra</i> .
	Michael Rippley*

* For case information, see Radelet & Mello, *supra* note 15, at 216-28.