

# Just Mercy: A Story of Justice and Redemption<sup>1</sup>

Reviewed by Major Michael E. Gilbertson\*

*The real question of capital punishment in this country is, Do we deserve to kill?*<sup>2</sup>

## I. Introduction

For the past four years, violent and nonviolent protests have filled the streets of America and energized conversations at the dinner table, on the sports field, and in news studios across the country, demanding a fundamental change in how the police treat our African-American citizenry.<sup>3</sup> While justifiable outrage reignites each time an unarmed black man is killed by a police officer, another less public form of premeditated and calculated state-sanctioned killing,<sup>4</sup> the death penalty, continues “within the former borders of the Confederacy.”<sup>5</sup>

In *Just Mercy: A Story of Justice and Redemption*, Bryan Stevenson<sup>6</sup> details the pervasive racial and class bias in the U.S. criminal justice system through the simple and personal account of his more than thirty years litigating post-conviction death penalty appeals in the South.

With only 316 pages across eighteen chapters, Mr. Stevenson introduces his audience to several of his clients he successfully and unsuccessfully defended as well as the local politics and perceived discrimination that unmercifully condemned his clients to die.<sup>7</sup>

Throughout the memoir, Mr. Stevenson not only introduces us to an innocent black man from Alabama who spent six years on death row before being exonerated, but he also calmly voices the larger—but complicated and enduring—bias within our criminal justice system which is seemingly stacked against minorities, the mentally ill, and the poor. It is through the story of Walter McMillian, however,

that the reader is shocked into realizing the weight of Mr. Stevenson’s argument—injustice is done in the name of the law and that today’s attorneys can make a difference in reforming our criminal justice system.

## II. The Walter McMillian Case: A Study in Inequality

On August 17, 1988, the State of Alabama sentenced Walter McMillian, an innocent black man, to die for the 1986 murder and robbery of Ronda Morrison, an eighteen year old white woman.<sup>8</sup> It was not until six years later, on March 3, 1993, with the help of Bryan Stevenson and the publicity that the case received on the CBS series *60 Minutes* that Mr. McMillian’s case was overturned and Walter was released from death row.<sup>9</sup> Of the several cases that he introduces us to in *Just Mercy*, the story of Bryan Stevenson’s successful appellate defense of Walter McMillian gives the reader a sense that while inequality persists, one can bring about real justice for all in an otherwise imperfect criminal justice system.

### A. Racially Biased Investigation or Noble Cause Corruption

The lack of a thorough and independent criminal investigation looms large throughout the cases discussed in *Just Mercy*. Mr. Stevenson suggests throughout the memoir that the heavy political pressure to make an immediate arrest in high profile cases taints justice early and throughout the process. People who can afford an attorney or understand their right to remain silent are better able to avoid issues like self-incrimination.<sup>10</sup> The problem occurs, however, when

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<sup>1</sup> BRYAN STEVENSON, *JUST MERCY: A STORY OF JUSTICE AND REDEMPTION* (2015).

<sup>2</sup> *Id.* at 313.

<sup>3</sup> Holly Yan, ‘Black Lives Matter’ Cases: What Happened After the Protests?, CNN (Jul. 27, 2016), <http://www.cnn.com/2016/07/13/us/black-lives-matter-updates/index.html>.

<sup>4</sup> “Capital punishment keeps grinding on, out of sight of society.” Semon Frank Thompson, *What I Learned From Executing Two Men*, N.Y. TIMES (Sept. 25, 2016), <http://www.nytimes.com/2016/09/18/opinion/sunday/what-i-learned-from-executing-two-men.html?ref=opinion>.

<sup>5</sup> Emily Bazelon, *Where the Death Penalty Still Lives*, N.Y. TIMES (Aug. 23, 2016), [http://www.nytimes.com/2016/08/28/magazine/where-the-death-penalty-still-lives.html?\\_r=0](http://www.nytimes.com/2016/08/28/magazine/where-the-death-penalty-still-lives.html?_r=0).

<sup>6</sup> Bryan Stevenson, EQUAL JUSTICE INITIATIVE, <http://eji.org/bryan-stevenson> (last visited Jan. 7, 2017). Bryan Stevenson is a Professor of Law

at the New York University School of Law and the founder and executive director of the Equal Justice Initiative in Montgomery, Alabama. *Id.*

<sup>7</sup> See STEVENSON, *supra* note 1. Otherwise interspersed throughout the memoir are biographic details about Mr. Stevenson and his family, about his first foray into capital defense as a Harvard Law student in 1983, and his about successful effort founding the Equal Justice Initiative in Montgomery, Alabama. *Id.* In addition—and helpful in facilitating future dialogues about the need for meaningful criminal justice reform—the memoir is also filled with compelling and verifiable statistics relating to race, class, and the death penalty. *Id.*

<sup>8</sup> *McMillian v. State*, 616 So. 2d 933, 935 (Ala. Crim. App. 1993).

<sup>9</sup> Peter Applebome, *Alabama Releases Man Held on Death Row for Six Years*, N.Y. TIMES (Mar. 3, 1993), <http://www.nytimes.com/1993/03/03/us/alabama-releases-man-held-on-death-row-for-six-years.html?pagewanted=all>.

<sup>10</sup> See generally *Miranda v. Arizona*, 384 U.S. 436, 457 (1966) (“It is obvious that such an interrogation environment is created for no purpose other than to subjugate the individual to the will of his examiner. This atmosphere carries its own badge of intimidation. To be sure, this is not

dealing with the poor or uneducated who do not understand the system. For them, it is easy to make a mistake that can lead to devastating consequences for their cases.

We learn in *Just Mercy* that the Monroe County Sheriff, Thomas Tate, arrested Walter McMillian on an unrelated charge of committing forcible sodomy against Ralph Myers.<sup>11</sup> Afterwards, it appears that Sheriff Tate promised a jailhouse informant, Bill Hooks, an early release from jail and reward money if he could place Mr. McMillian's truck at the scene of the Ronda Morrison murder.<sup>12</sup> To wrap up the investigation, Mr. Stevenson argues that Sheriff Tate coerced Ralph Myers, an uneducated white man with a long criminal history, into testifying that Mr. McMillian was the triggerman for the Morrison murder in a story that seemed to change every time he told it.<sup>13</sup> Ralph Myers would later testify about his coerced confession:

I kept telling these people that I didn't have anything to do with the murder of Ronda Morrison. They kept asking me did I have anything to do with Walter McMillian, was Walter McMillian there. Kept asking me all kinds of different questions about did I do this, did I do that. I kept telling them no, no, no. And it seemed like every day the pressure got more and more, worse and worse. And the next thing I knew, it had got so bad till I went ahead and started saying anything they wanted to hear . . .<sup>14</sup>

Moreover, Mr. Stevenson demonstrates that in our criminal justice system, there is often a bias against minorities. Simply put, the numerous cases throughout *Just Mercy* demonstrate to the reader that the assumption in our society is, if a black man did not commit this crime, he must have committed some crime to justify being arrested. Once again, we turn to the case in point with Walter McMillian.

Although Walter McMillian and Ralph Myers did not know each other, they both knew Ms. Karen Kelly, and Karen

and Ralph were implicated in an unrelated murder of a white woman named Vickie Pittman.<sup>15</sup> According to Mr. Stevenson, Ralph Myers, Sheriff Tate, and the rest of the Monroe County Community, knew Walter McMillian had a previous adulterous interracial relationship with Karen Kelly, a white woman.<sup>16</sup> The interracial adulterous relationship, as one reporter would later write, was proof enough against Walter McMillian.

Mr. McMillian, who had two jobs and no criminal record other than a misdemeanor charge stemming a barroom fight, did not have a history of violence, but he was well known in town for something else. Mr. McMillian, who is married with three children from his current marriage and has nine children altogether, was dating a white woman named Karen Kelly. And one of his sons had married a white woman.<sup>17</sup>

Consequently, when Ralph Myers finally accused Mr. McMillian of committing both murders, Sheriff Tate apparently latched on to the lead, no matter how conflated and contradictory was Ralph Myers' version of the murder.<sup>18</sup> The fact that Walter McMillian was all but convicted of interracial adultery in the court of public opinion, apparently meant that he was the prime suspect for any unsolved crime in Monroeville.

When Ralph Myers later objected to implicating Mr. McMillian, let alone himself, in the Ronda Morrison murder, Sheriff Tate took the unprecedented act of placing both men on Alabama's death row.<sup>19</sup> It is hard to imagine a similar case with financially well-off white defendants that would have proceeded in this way.

Although Mr. Stevenson does not mention the issue, it is important to note that there is also a phenomenon in policing called "Noble Cause Corruption."<sup>20</sup> This is the situation where police officers are "trying to do the right thing (noble cause), but due to bureaucratic red tape, a lack of evidence, or

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physical intimidation, but it is equally destructive of human dignity." *Id.* at 457.

<sup>11</sup> STEVENSON, *supra* note 1, at 47-48. See also *McMillian v. Johnson*, 88 F.3d 1554, 1558 (11th Cir.), *opinion amended on reh'g*, 101 F.3d 1363 (11th Cir. 1996) ("There is evidence that Tate, Ikner, and Benson coerced Myers into falsely accusing McMillian of sodomy so that they could obtain custody of McMillian while constructing evidence inculcating McMillian in the Morrison murder.").

<sup>12</sup> *Id.* at 50.

<sup>13</sup> *Id.* at 33.

<sup>14</sup> *McMillian v. State*, 616 So. 2d 933, 937 (Ala. Crim. App. 1993).

<sup>15</sup> STEVENSON, *supra* note 1, at 33.

<sup>16</sup> *Id.* at 25-30.

<sup>17</sup> Peter Applebome, *Alabama Releases Man Held on Death Row for Six Years*, N.Y. TIMES (Mar. 3, 1993),

<http://www.nytimes.com/1993/03/03/us/alabama-releases-man-held-on-death-row-for-six-years.html?pagewanted=all>.

<sup>18</sup> STEVENSON, *supra* note 1, at 49-50.

<sup>19</sup> *Id.* at 52-53.

<sup>20</sup> See Thomas J. Martinelli, *Unconstitutional Policing: The Ethical Challenges in Dealing with Noble Cause Corruption*, THE POLICE CHIEF (Oct. 2006), [http://www.policemagazine.org/magazine/index.cfm?function=display&article\\_id=1025&issue\\_id=102006](http://www.policemagazine.org/magazine/index.cfm?function=display&article_id=1025&issue_id=102006).

Noble cause corruption in policing is defined as "corruption committed in the name of good ends, corruption that happens when police officers care too much about their work. It is corruption committed in order to get the bad guys off the streets . . . the corruption of police power, when officers do bad things because they believe that the outcomes will be good."

*Id.*

any other roadblock to ‘getting the job done,’ they feel forced to bend or even break the rules to catch the bad guy (corruption).”<sup>21</sup>

Although this issue does not excuse the wrongs committed by some rouge police officers who “rationalize constitutional violations for their own perceived greater good: a safer community,”<sup>22</sup> it does explain an alternative view counter to Mr. Stevenson’s implicit position that racism drove the investigation. As applied to the Walter McMillian case, there is an alternative possibility that Sheriff Tate was not racially driven to fabricate evidence Mr. McMillian but that he was motivated by his skewed sense of justice. As hard as it may seem to believe for the reader, Sheriff Tate may have truly thought that Walter McMillian was guilty and that he simply had to find or manufacture the evidence that proved that fact. Unfortunately, we will likely never know Sheriff Tate’s true motivations in this case.<sup>23</sup>

## B. Pretrial Detainees: On Death Row

On August 1, 1987, a year before he eventually went to trial, Sheriff Tate inexplicably transferred Mr. McMillian, as a pretrial detainee, from the county jail to Alabama’s death row.<sup>24</sup> Mr. Stevenson alludes that this unprecedented pretrial incarceration of Mr. McMillian and his alleged co-accomplice, Ralph Myers, to death row was an attempt to pressure Ralph Myers into falsely testifying against Mr. McMillian.<sup>25</sup> The U.S. Court of Appeals for the Eleventh Circuit would later find that holding Walter on death row was intended “to punish him before he was tried” and “violated McMillian’s due process rights.”<sup>26</sup>

As Bryan Stevenson would later detail, Ralph Myers had significant lingering psychological trauma from being

horribly burned in a fire as a child.<sup>27</sup> Consequently, the longer Ralph Myers spent on death row, as a pretrial detainee, hearing the electrocutions of his fellow prisoners and smelling their burning flesh, the more willing he was to falsely testify against Mr. McMillian.<sup>28</sup>

In return for a pretrial offer that allowed him to plead guilty to a lesser noncapital offense, Ralph Myers promised to testify that he saw Mr. McMillian kill Ronda Morrison during a robbery. The Alabama Appeals Court would later say, “Myers was the key witness for the prosecution. Without his testimony, the state could not have obtained a conviction.”<sup>29</sup>

## C. A Jury of Your Peers

There were at least a dozen church parishioners and other witnesses who saw Mr. McMillian at a family fish fry during the time that Ronda Morrison was murdered. Despite the fact that there is no way a rational jury could find Walter guilty, his trial lasted for a day and a half with only three hours of jury deliberation before the jury found Walter guilty and the trial judge sentenced him to die.<sup>30</sup>

Mr. Stevenson details how Mr. McMillian’s defense attorneys successfully transferred the case out of Monroe County because of pretrial publicity in order to avoid the probability that the jury was already decided against Walter. Unfortunately, and over the subsequent objections of those defense attorneys, the trial judge, Robert E. Lee Key, Jr., moved the trial to nearby Baldwin County, which was disproportionately whiter, politically conservative, and wealthier.<sup>31</sup> In doing so, Mr. Stevenson argues that the trial judge intentionally avoided an otherwise appealable challenge based on the then-recent U.S. Supreme Court’s

<sup>21</sup> Dr. Bruce Bayley, *Noble Cause Corruption: Do the Ends Justify the Means?*, POLICEONE.COM (Feb. 12, 2010), <https://www.policeone.com/chiefs-sheriffs/articles/2003646-Noble-cause-corruption-Do-the-ends-justify-the-means/>.

<sup>22</sup> *Id.*

<sup>23</sup> See, e.g., Sandee Richardson, *Wrongfully convicted man recalls death row*, MONTGOMERY ADVERTISER (Dec. 14, 1997), <http://ejl.org/sites/default/files/dp-mgm-mcmillian-wrongfully-convicted-man-recalls-death-row-12-14-97.pdf>. When Sheriff Tate was asked about the case after Walter McMillian was released, he would not comment except to say, “I’m not going to tell you anything . . . . You’re just going to twist this around. I know what you’re going to do.” *Id.*

<sup>24</sup> *Id.*

<sup>25</sup> STEVENSON, *supra* note 1, at 31-32, 57-58.

<sup>26</sup> *McMillian v. Johnson*, 88 F.3d 1554, 1565 (11th Cir.), *opinion amended on reh’g*, 101 F.3d 1363 (11th Cir. 1996)

There is evidence that Tate made threatening and hateful remarks to McMillian suggesting that Tate was more interested in punishing McMillian than in keeping him safe and secure. The DOC accepted custody of McMillian and Myers even though (1) the state court had no authority under Alabama law to order their transfers, (2) housing pretrial detainees violated DOC policy, and (3) housing pretrial

detainees on death row was unprecedented. In addition, Tate, Ikner, and Benson exercised some control over transfers to and from death row. While McMillian remained on death row, Myers was transferred back to the Monroe County Jail and then returned to death row about four months later.

*Id.* at 1560.

<sup>27</sup> *McMillian*, 88 F.3d at 1560.

<sup>28</sup> As the reader, we see a real-life example of the prisoner’s dilemma unfold before us. “In the traditional version of the game, the police have arrested two suspects and are interrogating them in separate rooms. Each can either confess, thereby implicating the other, or keep silent. No matter what the other suspect does, each can improve his own position by confessing . . . . But when both confess, the outcome is worse for both than when both keep silent.” Avinash Dixit and Barry Nalebuff, *Prisoners’ Dilemma*, THE CONCISE ENCYCLOPEDIA OF ECONOMICS, <http://www.econlib.org/library/Enc/PrisonersDilemma.html> (last visited Jan. 17, 2017).

<sup>29</sup> *McMillian v. State*, 616 So. 2d 933, 937 (Ala. Crim. App. 1993).

<sup>30</sup> STEVENSON, *supra* note 1, at 31-32, 57-58.

<sup>31</sup> *Id.* at 59-62.

decision in *Batson v. Kentucky*.<sup>32</sup> Consequently, the smaller black proportion of prospective jurors allowed the prosecutor to strike most of them without giving the defense sufficient support to argue that such racially-based preemptory strikes were unconstitutional.

#### D. The Judicial Override

Although the jury found the testimony from Ralph Myers and Bill Hooks was enough evidence to convict Walter McMillian, it did not sentence him to death. In fact, seven out of the twelve jurors recommended that the court sentence Mr. McMillian to life in prison but the trial judge overrode the jury and sentenced Walter to die.<sup>33</sup> Elected trial judges in Alabama had and still have the authority to override a jury's sentence of life and unilaterally impose a sentence of death.<sup>34</sup> However, Alabama trial judges overwhelmingly override cases from life to death when it involves a white victim.<sup>35</sup> This is still the case even though a recent study shows "override cases involve a disproportionate number of wrongful convictions."<sup>36</sup>

#### E. Appeal, Exoneration, and Aftermath

In February 1993, the Alabama Court of Criminal Appeals reversed Mr. McMillian's conviction because, it held, "the state suppressed exculpatory and impeachment evidence that had been requested by the defense, thus denying [Walter] the appellant due process of law, requiring the reversal of his conviction and death sentence . . ."<sup>37</sup> Mr. McMillian later unsuccessfully sued Sheriff Tate and two other Monroe County officials for violating his federal constitutional rights.<sup>38</sup> Sheriff Tate is still at work in Monroe County.<sup>39</sup>

In a recently released report into how the death penalty operates and endures in seven states in the South and West, the Fair Punishment Project found that "[r]acial bias infects every aspect of death penalty cases, from jury selection to sentencing, from the decision to seek death to the ability to access effective representation."<sup>40</sup> It appears that Mr. Bryan

Stevenson and the attorneys at the Equal Justice Initiative can be proud of their success in defending innocent death row inmates, like Walter McMillian, but their work is not finished.

#### III. Conclusion

Overall, *Just Mercy* reminds the reader that "[c]apital punishment means 'them without the capital get the punishment.'"<sup>41</sup> Its ease of reading and lack of imperious legalese or self-indulgent inflammatory rhetoric makes *Just Mercy* a suitable study in Law and Society for most high school and college students or anyone interested in the politics propping up capital punishment.

The criminal justice attorney may be inspired to delve deeper into an underlying investigation before taking a questionable case to trial. For the fan of the documentary television series *Making a Murder* or the investigative radio program *Serial*, this memoir highlights the power that the national media can play in convincing judges and prosecutors to relook questionable convictions.

For all readers, this memoir is a tragic reminder that when the U.S. criminal system gets it wrong, real people suffer unnecessarily for long periods in heart-wrenching conditions.

<sup>32</sup> *Batson v. Kentucky*, 476 U.S. 79 (1986) ("Selection procedures that purposefully exclude black persons from juries undermine public confidence in the fairness of our system of justice.").

<sup>33</sup> *McMillian v. State*, 594 So. 2d 1253, 1284 (Ala.Cr. App.1991).

<sup>34</sup> See *Judge Override*, EQUAL JUSTICE INITIATIVE, <http://eji.org/death-penalty/judge-override> (last visited Jan. 7, 2017) ("Nearly 20 percent of the people currently on Alabama's death row were sentenced to death through judicial override.").

<sup>35</sup> See *Id.* (Seventy-five percent of all death sentences imposed by override involve white victims, even though fewer than 35 percent of all homicide victims in Alabama are white.").

<sup>36</sup> The Editorial Board, *When Juries Say Life and Judges Say Death*, N.Y. TIMES (Sept. 16, 1993), [http://www.nytimes.com/2016/09/16/opinion/when-juries-say-life-and-judges-say-death.html?ref=opinion&\\_r=0](http://www.nytimes.com/2016/09/16/opinion/when-juries-say-life-and-judges-say-death.html?ref=opinion&_r=0).

<sup>37</sup> *McMillian*, 616 So. 2d at 949.

<sup>38</sup> *McMillian v. Monroe Cty*, 520 U.S. 781, 793 (1997) (holding that Sheriff Tate could not be sued in his official capacity for his unlawful acts because he was not a Monroe County official).

<sup>39</sup> *Monroe County, ALA. SHERIFF'S ASS'N*, [http://www.alabamasheriffs.com/county\\_map/county/50](http://www.alabamasheriffs.com/county_map/county/50) (last visited Jan. 7, 2017).

<sup>40</sup> Fair Punishment Project, *Too Broken to Fix: An In-depth Look at America's Outlier Death Penalty Counties* (Aug. 2016), <http://fairpunishment.org/wp-content/uploads/2016/08/FPP-TooBroken.pdf>.

<sup>41</sup> STEVENSON, *supra* note 1, at 6 (quoting Steve Bright, Director of the Southern Prisoners Defense Committee).