

In America
BOB HERBERT

Mr. Hance's 'Perfect Punishment'

Ten years ago Gayle Lewis Daniels, then 26 years old, was the only African-American on a jury in Columbus, Ga., that was deciding whether to impose the death penalty on a man named William Henry Hance.

Mr. Hance, a black soldier from Fort Benning, had, in separate incidents in 1978, beaten two black prostitutes to death. The victims were named Gail Faison and Irene Thirklid.

There does not seem to be much doubt that Mr. Hance was seriously mentally disturbed, but he was not found to be psychotic. His mental state was so poor, however, that a clinical psychologist who examined him said he did not feel that Mr. Hance was capable of assisting "in an appropriate, rational way" in his own defense.

Not only was that judgment disregarded, but the court allowed Mr. Hance to act as his own co-counsel. That was madness, a move comparable to placing a blind man on the shoulder of a superhighway and telling him to walk to the other side. Mr. Hance was convicted in state court of murdering Ms. Faison and, in a separate proceeding, was condemned to death.

The death penalty verdict was reversed because of prosecutorial misconduct. A new sentencing trial was ordered, and Ms. Daniels was a juror at that trial.

Last week Ms. Daniels prepared a sworn affidavit in which she said, "I believe that the death penalty is right for people who commit murder when they are in their right mind, but I did not vote for the death penalty in Mr.

Hance's case because I did not believe that he knew what he was doing at the time of his crimes."

She went on to provide a harrowing account of the haphazard way in which a jury arrived at the profound decision to put someone to death. "We were all inclined to give a life sentence," she said. "However, the prosecutor had talked about how Mr. Hance might be dangerous in the future, and we were concerned that he might get out of jail in just a few years."

How one man was sentenced to death.

The jurors sent a note to the judge asking what a "life sentence" meant. The judge declined to answer. Ms. Daniels said the jurors were frustrated and a number of them "began advocating for a death penalty" as the only way to insure that Mr. Hance would never be released.

Several secret votes were taken and each time there were fewer votes for a life sentence. But Ms. Daniels did not change her mind. The other jurors reminded her that she had sworn in court that she "could" impose the death penalty "and implied that I could get in trouble if I continued to hold out. One of the jurors said that we needed to go ahead and get it

over with because the next day was Mother's Day."

As the pressure against her mounted, Ms. Daniels stood up and said, "You do what you have to do, but I won't vote for a death sentence." She refused to participate in further votes.

The remaining jurors then came up with an astounding solution to the apparent deadlock. According to Ms. Daniels: "The other jurors decided to go and tell the judge that we had voted for a death sentence. The foreman told a bailiff that we had reached a verdict." All of the jurors, including Ms. Daniels, filed into the courtroom.

"I was scared to death," Ms. Daniels said.

Afraid that she could be charged with perjury for having said that she could vote for a death sentence, and afraid that she would get in trouble for not participating in the jury's final votes, Ms. Daniels said yes — "just like all the others" — when the jurors were polled on their verdict.

That was how Mr. Hance was sentenced to death.

George Kendall of the NAACP Legal Defense and Educational Fund has said, "We are far too imperfect to administer a punishment like the death penalty, which is a kind of infinite and perfect punishment." He finds the death penalty indefensible because of the unbridgeable gap between the awesomeness and permanence of death and "our ability to be fair, to be rational, to exclude prejudice and ugly biases."

There are not many in the criminal justice system who are moved by such concerns. Mr. Hance is to be electrocuted on Thursday at 7 P.M. □

incorporated into law. The classic example is slavery. Abolitionists were radical in being unaccommodating. But this view overlooked the rigid mindset of slaveholders, who compromised on the matter of slavery as an inalienable property right.

Today's interpretation of RICO could have served as a deterrent to the abolition of slavery. Moreover, the courageous actions of Dr. Martin Luther King Jr., and the civil rights movement, might well have fallen under the present interpretation of RICO.

Contrary to assertions made by NOW's Legal Defense Fund, the impact of RICO is limited to violent activity. It can and will be applied to a broad spectrum of non-violent activity. The application of federal racketeering laws against protestors is a frightful assault on the guarantees of free speech.

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