



Equal Justice Initiative (www.eji.org)

26 Years on Death Row: Time to Annul Judicial Override

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By BERNARD E. HARCOURT

He spent 26 years on Alabama's Death Row, confined in a 5-by-8 cell for more than 23 hours every day, waiting to meet his executioner, watching as more than two dozen of his neighbors were put to death. Phillip Tomlin is one of a small group of Death Row inmates who have been awaiting execution longer than anyone else in the country. He's been there since 1978, back when Jimmy Carter was president.

You may ask, why so many years on Death Row? The answer has to do primarily with a peculiarity of Alabama's criminal justice system. It's called judicial override. In this state, a trial judge has the unique ability to override a jury's verdict of life imprisonment without parole and sentence someone to death despite the jury's verdict for life. In Tomlin's case, since 1990 a series of judges in Mobile improperly exercised that power and imposed a death sentence despite the jury's verdict for life - only to be told by the Alabama Supreme Court, many years later, that they had failed to properly consider the jury's decision.

Note: This was not a divided jury. In Tomlin's case, all 12 jurors agreed, after finding him guilty of capital murder, that the right sentence was life imprisonment without parole. And yet, judge after judge in Mobile - starting with Ferrill McRae, running through William McDermott and ending with Herman Thomas - simply ignored the unanimous jury verdict and sentenced Tomlin to death.

To make matters worse, the judges were not aware of any evidence the jury had not heard - no new incriminating evidence of guilt or aggravating evidence. In fact, the only reason the judges overrode the jury's verdict - namely, the fact that Tomlin's co-defendant had been sentenced to death - had been improperly told to the jury by the prosecuting attorney. That was the reason Alabama appellate courts ordered a new trial for Tomlin in 1993. The sentencing jury knew the only reason for the judicial override - and unanimously rejected it.

In most of our peer countries, 26 years on Death Row would be considered a form of torture. Judges in Britain - our closest ally in the war on terrorism - have held that five years on Death Row is cruel and unusual. Our other European allies are bound by a decision of the European Court of Human Rights, which prohibits such lengthy detentions on Death Row. And a number of other countries, ranging from India to South Africa and Zimbabwe, also recognize what is called the "Death Row phenomenon," the fact that such long stretches on Death Row may be torturous to the prisoner.

Last October, the Alabama Supreme Court finally corrected Tomlin's case and ruled that the judicial override was improper. Monday, Tomlin was finally sentenced pursuant to the jury's unanimous jury verdict of life in prison without parole.

There are several lessons here. The first is that Alabama should eliminate judicial override. The Legislature has considered doing just this. It is high time. Twelve citizens, sworn to uphold their civic obligation and fulfilling their duties as public citizens, are in a far better position to express the conscience of the community than judicial officers seeking re-election. The death penalty is too charged to put in the hands of electoral politics.

Second, it is time to declare that 26 years on Death Row is too long for a civilized nation. When our appellate courts order new trials for entirely legitimate reasons - in this case, prosecutorial and juror misconduct, reasons that were beyond the control of Tomlin - the courts should intervene to eliminate such prolonged detention on Death Row.

It is extremely hard for Americans to preach human rights and human decency abroad when we engage in practices at home that are universally condemned abroad. Just last week, our Department of State was forced to delay publishing its worldwide human rights report because of the terrible abuses that took place in U.S. prisons in Iraq.

If we plan on being leaders in the area of human rights and democracy, we must start acting like leaders.

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