

## The Opposite of Poverty



BY PETER J. TOREN '85

I am a lifelong opponent of the death penalty, but did not work in this area until 2005. That's when Sidley Austin LLP, the firm where I was practicing, partnered with the Equal Justice Initiative in Montgomery, Ala., to become counsel of record in a dozen death penalty cases.

I volunteered for this pro bono program and was assigned to a team representing an inmate convicted of murdering a couple during a card game in Birmingham. Like many individuals on death row, my client (I will call him "JA") is African-American, and the victims were white. Since all direct appeals had been exhausted, we began the process of seeking habeas relief from the state courts on the ground that JA's trial counsel, who lacked capital experience, failed to meet constitutional requirements.

We almost immediately discovered mitigating facts about JA's background that trial counsel did not present because he failed to investigate the defendant's background. Indeed, trial counsel met JA for the first time at the preliminary hearing and didn't meet with him again until three days before the trial started.

Had trial counsel even engaged in a cursory investigation, he would have learned, among other facts, the following: when JA was 3 years old, he witnessed his mother kill his father with a shotgun; as a young teen, JA was raped repeatedly by his stepfather and was forced to engage in sexual relations with his siblings while his stepfather watched; JA witnessed his stepfather subject his mother to frequent and extreme physical abuse; JA's IQ-test scores are consistent with borderline mental retardation; and he dropped out of school in 10th grade and was forced to deal drugs by his older sister.

After a three-day trial, the jury convicted JA of capital murder at 2:10 p.m. on a Friday afternoon. Judge Tommy Nail (no, I'm not making this up) attempted to immediately convene the penalty phase of the trial. Trial counsel requested an adjournment until the following Monday, stating in open court that he needed time to prepare. Judge Nail granted a 30-minute adjournment.

During the penalty phase, trial counsel proffered a single witness, JA's mother, who testified as to a very limited number

of events during her son's childhood. Because trial counsel had failed to conduct any investigation, he did not ask JA's mother any questions that would have led to the jury hearing about JA's horrific childhood. The jury recommended a death sentence with a vote of 10 to two, the minimum number of votes required by Alabama for a death recommendation. Judge Nail accepted the recommendation. Notably, the father of one of the victims asked the court to spare JA's life, saying there had already been too many deaths. Subsequently, the Alabama Court of Criminal Appeals and the Alabama Supreme Court affirmed the convictions and the United States Supreme Court denied certiorari.

Despite the overwhelming evidence that trial counsel failed to meet constitutional standards, state courts in Alabama denied our petitions for post-conviction relief. We are awaiting a response to our application for a writ of habeas corpus filed with the U.S. District Court in Birmingham.

I am passionate about this case because life is at stake and we are providing legal assistance to a person who, because of his poverty and race, was never given an opportunity. Society failed him at every stage.

Equal Justice Initiative Director Bryan Stevenson recently gave a speech explaining what drives his work: "The opposite of poverty is not wealth. We are not working for wealth; we're not working for riches. In this country—in Alabama, in Georgia, in Atlanta—I recognize that the opposite of poverty is justice. We cannot have an end to poverty without having more justice."

This case is so important to me because it is my only case where I am not working for riches, but, in one very small way, I am working for justice. [USF]

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