

The case of N.I. Sequoyah

Two Decisions and Role of Civil Society
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1 Two Decisions

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Background

N. I. Sequoyah a.k.a. Billy Ray Waldon was convicted in 1992 for a series of crimes (murder, rape, arson, attempted murder, burglary, theft, robbery, etc.) committed in 1985. He was sentenced to death in 1991. As a condemned prisoner he was taken to San Quentin Prison in San Francisco Bay to await his execution. In 2012 Sequoyah filed his Notice of Appeal but the Appeal was not listed for hearing until 2022. The 20-year delay (1992–2012) was created neither by the Office of the State Public Defender – responsible for the Appeal – nor by Sequoyah himself.

In a unanimous decision by all 7 Justices of the Supreme Court of California in 2023, his convictions and sentence of death were overturned. He was returned to the trial Court in San Diego and has since been removed to a secure mental institution (Patton State Hospital, San Bernardino, California.) The legal ground for this “imprisonment” as well as the next steps in his trial are unknown.

1.1 Decision of the Inter-American Commission for Human Rights (2020)

In 2007 his case was brought before the Inter-American Commission for Human Rights (IACHR) which in 2020 decided in favour of N.I.

Sequoyah.

It [IACHR] not only found that his right to a trial without undue delay had been violated, but also concluded that the USA had violated Sequoyah’s right to life, liberty and security, his right to a fair trial, his right of appeal, his right to protection against arbitrary arrest and his right to due process. The Commission recommended that the USA commute Sequoyah’s death sentence to one of imprisonment and adopt a general moratorium on executions.

The decision of the IACHR represents a milestone in the recognition of the “Death Row Phenomenon” as inhuman and degrading treatment. This decision brings hope not only for Sequoyah, but also for many other death row inmates in the USA.

1.2 Decision of the Supreme Court of California (2023)

Background

Waldon represented himself at his trial. At a preliminary trial hearing in San Diego, the 1st trial judge (Zumwalt) denied Waldon’s request to represent himself, based on the fact that she found Waldon had a mental disorder after having seen several medical reports from Waldon’s past and contemporary psychiatric expertise. Expert psychiatric evidence specifically stated that they thought Waldon was unable to understand the nature of the proceedings against him as well as the responsibilities of self-representation.

Before a jury was empanelled and the trial got under way, Waldon re-submitted his request to

represent himself before a different Judge; this time his request was granted. The second judge (Boyle) deliberately said he had not reviewed the previous case file regarding the psychiatric reports on Waldon's mental health.

Upon granting Waldon's motion to represent himself the judge said to Waldon:

Its very clear – everybody in the business knows it – that self-representation is consistently, if not always, a detriment to the defendant's preparation of his own defense. Do you understand that that is our opinion? There is no question in this Court's mind of the defendant's ability to read and write, listen, be polite and cooperate if he chooses to do so.

Supreme Court's ruling

The Supreme Court held that it was sufficient for the purposes of this case to state the obvious:

When a trial court exercises its authority to reconsider another judge's ruling, the trial court must, at minimum, consider the basis for the prior ruling.

It found that the second judge abused his discretion by overturning the first judge's findings by intentionally ignoring her findings and the bases of her decision, and thus an arbitrary or irrational decision.

The effect of the judge's error regarding Waldon's ability to represent himself was that Waldon was deprived of two protections: (a) his constitutional right to counsel and (b) his right to a fair trial after he had been found unable to represent himself due to his mental impairment.

Conclusion

By a unanimous decision of all 7 Justices, the Supreme Court reversed the convictions and sentence of death entirely and remanded the case to the trial court (San Diego) for further proceedings and directions.

However, the Supreme Court did not state one word about the Death Row Phenomenon considering the fact that Waldon has been on "Death Row" for thirty two years; a fair consideration of European, English and international law leads inevitably to the conclusion that our humanity regards it as an inhuman act to keep a man facing the agony of execution over a long period of time. Indeed an inordinate delay in executing a death sentence is a departure from due process of law, so results in the execution of the sentence becoming itself an illegal act.

2 Role of Civil Society

Claudio Marinucci
fos•ters

Motivation

As a long-standing active member of Amnesty International (AI) the author desires to be involved in a more creative activity.

2.1 Initiation (1992)

- 22 Oct. 1992. Long (11 min.) TV report by the Swiss-German News "10vor10"
 - Sequoyah is condemned to death in 1991 and since February 1992 is in San Quentin
 - He is interviewed in chains¹
 - Convinced to have been "framed", he defended himself refusing a public defender
 - He was 10 years in the US Navy (electronic warfare), stationed in Japan and Italy
 - Cherokee, he was fascinated by languages²
 - Expert of Esperanto, he is well known in the Esperanto Community worldwide
 - Sequoyah is married to B. Holenstein, a Swiss woman (a) member of AI and (b) founder of "Music for Life". The group raises funds for a private lawyer
- 23 Oct. 1992. Eight hours after the TV report the author is flying to San Francisco for a wedding. It is impossible to visit Sequoyah (6 months for clearance) but has contacts with media and a priest. His first visit in San Quentin is in October 1993
- 24 Oct. 1992. The author's wife, Katharina, meets Holenstein at the first "Music for Life" concert in Baden
- Oct.-Nov. 1992. Several media reports in CH, e.g.: Schweizer Illustrierte, Le Matin (Fingal, 10 articles).

2.2 No progress with AI (1993–1994)

- Nov. 1992. Marinucci's presentation to AI Baden and first meeting with Holenstein
- Feb-Mar 1993. An article is published in the AI-CH Magazine. Marinucci's trip to London to motivate AI but the answer is: "we could not find any evidence for an adoption ... are too busy!"

¹Last interview of a Death Row inmate in San Quentin.

²When teenager he adopted the name of the inventor of the Cherokee syllabary, Sequoyah.

- Dec. 1993. Start of the "interest group" with five friends. Study of the documentation provided by Holenstein
- Feb. 1994. AI-CH Petition for the Sequoyah's adoption as "Prisoner of conscience" is officially rejected by AI London
- Apr. 1994. Marinucci meets the AI Secretary General Pierre Sané in Neuchatel:
 - (a) independent research (no AI) is fine
 - (b) AI is open to reconsider the adoption in case of relevant findings
- Jun. 1994. All attempts to involve human rights organizations in USA and Europe fail and the group decides to stop its activity.

2.3 BHRC on board (1994–1996)

- Jul. 1994. **Lucky coincidence.** During his vacation in Elba, the author meets A. Akiwumi, an English barrister, member of the Bar Human Rights Committee (BHRC) in London. He claims that an appeal against Sequoyah's conviction must be launched
- Jul.-Dec 1994. Preparation of the detailed report delivered in person by the author in London
- Aug. 1995. Philip Sapsford of BHRC visits Sequoyah and is ready to support his case. A prerequisite is the delivery of the trial transcripts (27'000 pages). These are provided by **fos•ters** after the request to AI for financial support is denied
- Nov. 1995. Marinucci & his wife meet Sapsford in London
- 1996. Contacts with Father Matthew Regan – author of an article on Sequoyah in the book "Catholics and the Death Penalty" – and the Esperanto community.

2.4 fos•ters is born (1996)

- 20 Jan. 1996. **After two years of informal work, the charity fos•ters is founded:**
8 founding members / 2 goals:
 - (a) to provide Sequoyah with the legal support for a fair appeal trial and
 - (b) to engage against its execution if his death penalty is confirmed**Synergy** of 3 components:
 - (a) legal support by BHRC,
 - (b) personal/humanitarian support by Regan & Esperanto Community,
 - (c) financial support and coordination of *all* activities by **fos•ters**

2.5 European Amicus Curiae Brief (1997–2006)

- Jan. 1997. Sapsford gives a lecture in Baden. He is interested in the Amicus Curiae Brief (ACB) for the appeal.
- Apr. 1997. Thanks to Christian Grobet, contacts are established with the Swiss Ministry of Foreign Affairs. First meeting with Minister Flavio Cotti (Holenstein & Marinucci).
- Mar-Apr 1999. Cotti informs that Prof. Walter Kaelin of the University of Bern will prepare the European ACB with Sapsford
- 21 Apr. 1999. Second meeting with Cotti (Holenstein & Marinucci) who confirms:
 - (a) full support for European ACB but
 - (b) no financial support for a privat lawyer
- End Apr. 1999. Cotti resigns. **Drawback**
- Nov. 2000. Marinucci meets the Office of the State Public Defender (OSPD) in Sacramento CA, responsible for (a) Appeal and (b) Habeas Corpus
- May 2003. Kaelin is appointed Representative of the UN Secretary General on the Human Rights of Internally Displaced Persons and can no longer sign the ACB. Although requested by **fos•ters**, there are no further meetings with Swiss foreign ministers. **Drawback.**
- 1999-2001. Interaction with the media: Tribune de Geneve, Impartial, la Liberte, L'Express, Flash EPFL, Asistilo (French Esperanto journal).

2.6 Petition to IACHR (2003–2012) / de la Vega

- Oct. 2003. Invited by Prof. Connie de la Vega – University of San Francisco and founder of Human Rights Advocates (HRA) – Sapsford gives two lectures. De la Vega is interested in a Petition to the Inter-American Commission on Human Rights (IACHR) based on the "long delay" argument
- 15 Oct. 2004. Relevant meeting in Berkeley: OSPD (director Hersek and Haines), de la Vega and Marinucci. OSPD is in favor of the Petition because is not responsible for any delay
- Sep. 2006. The new OSPD director (McComb) confirms the support for the Petition in a meeting with de la Vega and **fos•ters** in Berkeley

- 7 Feb. 2007. The Petition to IACHR is filed by de la Vega, Human Rights Advocates and **fos•ters**
- 2007–2010. Five addendums to the Petition are delivered by HRA and **fos•ters**
- Apr. 2020. **The decision of the IACHR is a major contribution to the fight against the Death Row Phenomenon [details in 1.1]**
- Dec. 2020. An article about the IACHR Decision is published in the AI-CH Magazin.

2.7 Decision of the CA Supreme Court (2023)

- Jan. 2023. **The CA Supreme Court reverses the judgment in its entirety and remands the case to the trial court [details in 1.2].**

2.8 Activities outside mandate

In the 32 years of activity (1992–2024) **fos•ters**:

- visits Sequoyah 14 times (last one in 2019)³
- provides Sequoyah with commodities urgently needed (typewriter & TV)
- finds a publisher for one of several books Sequoyah wrote in Death Row⁴
- establishes contacts with the Esperanto community⁵
- prepares the first contact of Sequoyah's daughter Eli with her father
- meets Sequoyah's former wife in Tokyo
- establishes contacts with the media
- organizes fund raising events
- motivates the Swiss Social Archive in Zurich to store the complete collection of documents⁶.

Epilogue

By chance I came cross the case of N.I. Sequoyah, and purely by chance I had the opportunity to bring his case to the attention of two of the world's most highly-renowned human rights legal organizations.

These two coincidences not only generated a major advancement in technical legal support but also have come to represent a strong incentive for activity over three decades, one that has not been abandoned despite inordinate frustration and dismay.

From the book by C. Marinucci: "The Right to Kill? Capital Punishment: One Case, One Study, One Story. The **fos•ters** Story", ISBN 978-3-033-10061-9, available in some major Swiss Libraries and on the Web⁷.

³Travelling and other expenses by **fos•ters** members are privately financed.

⁴Gutenberg Project.

⁵In Switzerland, Germany, France and USA.

⁶Delivered by **fos•ters** in 2025 and made public in 2027.

⁷<https://nextcloud.devlux.ch/s/rzdW8jWanXFRaTe>