

Theodore Howard Comments on Access to Justice in Recent SCOTUS Term

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Theodore A. Howard, Wiley Rein's Pro Bono Partner, was quoted by *Law360* in a July 7 article about access to justice during the recent U.S. Supreme Court (SCOTUS) term. The article highlighted four of the biggest cases of the term affecting access to justice issues, according to the legal news service web site.

"Things probably went as well as could have been expected under the circumstances, given the current makeup of the court and the nature of some of the issues with which they were presented," said Mr. Howard, who also serves as chair of the American Bar Association's Standing Committee on Legal Aid and Indigent Defendants.

Mr. Howard commented on two death penalty cases brought to the SCOTUS which were specifically concerned with how the respective executions would be performed. In March's *Murphy v. Collier* ruling, the court blocked the execution of a Buddhist prisoner, Patrick Murphy, because his Texas prison wouldn't allow a Buddhist priest to be with him as he died. In February, the court had reversed the Eleventh Circuit's stay of execution for Muslim inmate Domineque Ray. According to *Law360*, Mr. Ray's Alabama prison wouldn't allow his imam into the execution chamber, though it made similar accommodations for Christian chaplains. The conservative majority found Ray's establishment clause appeal had been filed too late.

According to Mr. Howard, it's possible that the court thought Ray's case was a one-off and when a second appeal on the same issue reached them, they may have said, "Well, wait a second, we can't have this be a regular practice where one religion is favored over

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another. If that means we got the other case wrong, so be it.”

The analogy between the religious inequality alleged in the two cases, and the court’s own disparate rulings may have contributed to “the passion with which competing justices expressed their views,” said Mr. Howard.

The Ray case also reflects a decades-old tension in death penalty appeals, Mr. Howard said. Inmate advocates believe “a meritorious constitutional claim irrespective of how it was raised deserves the court’s full consideration,” while the court maintains an “interest in the finality of resolutions, almost irrespective of the merits.”

The article can be found here (*subscription required*).