



## Reason #3 to Support a National Moratorium on Executions

### Most Capital Defendants Do Not Receive Adequate Legal Representation

- According to the American Bar Association, no state meets its standards for competent legal representation in capital cases. In 1997 the American Bar Association passed a moratorium resolution, calling on each state that imposes the death penalty to suspend executions until all death penalty cases are administered fairly and impartially, in accordance with due process, so that the risk of executing innocent people is minimized.

As part of the moratorium resolution, the ABA cited established guidelines for competent representation including the appointment of two experienced attorneys at each stage of a capital case. Counsel should be provided with the necessary funding to conduct proper investigations, hire expert witnesses, and obtain other support services. No state meets these standards.

- The ABA has also recommended that judges be removed from appointing lawyers in capital cases. Instead each state should establish a special committee of experienced attorneys. Judges in 32 of the 38 death penalty states are elected and subject to political pressures when choosing lawyers in death penalty cases.
- In many instances, it is not just a question of inadequate lawyers – there are no lawyers available to take capital cases during the appeals process. In California, half of the 249 death row inmates awaiting their first appeals have no lawyers, and about 33 new inmates are added to death row each year. In Pennsylvania, there are 190 people on death row, most of whom are not represented by lawyers after the direct appeal stage. These are states that have better than average systems for representing indigent defendants.
- Inadequate counsel accounts for many wrongful convictions. Studies by the Innocence Project of Cardozo Law School have found that 27 percent of the wrongfully convicted (not just death row cases) had subpar or outright incompetent legal help. A study of all capital cases in the United States from 1973-1995 documents a national error rate of 68%. Of those cases, the single most common cause of reversible error was incompetent defense lawyering, which accounted for 37% of all state post-conviction reversals.
- One of the factors leading to bad representation is the fact that court appointed attorneys are not adequately compensated for their work. Court appointed counsel's compensation rates vary widely, ranging from a low of \$20 an hour for out-of-court fees in Ohio to a high of \$150 an hour for in-court fees in California. A recent report for the Texas state bar committee found that handling a post-capital conviction case requires between 400 - 900 hours of an attorney's time. However, the Texas Court of Criminal Appeals compensates post-capital conviction lawyers for a maximum of only 150 hours of work per case.
- Congress eliminated funding for death penalty resource centers that represented many death row inmates. In 1996, Congress ended funding for the nation's 20 death penalty resource centers, eliminating major resources for indigent defendants. Now, only about a dozen of the 38 states with

the death penalty have state-organized public defender programs that handle capital cases. Only eight states have specialized death penalty units that serve all or part of the state.

- In the state of Illinois alone, 33 out of a total of 285 capital cases were tried by attorneys who were later disbarred or had their license suspended. In his testimony before the House Judiciary Committee Sub-Committee on Crime in June of 2000, Governor Ryan cited this fact as one of the reasons he declared a moratorium in Illinois.

In Texas, the state with the most executions, one attorney, whose competence has been widely questioned, has represented 10% of the people on death row. The lawyer, Ron Mock, starts each day at the bar he owns in Houston. Of his 15 capital clients, 12 ended up on death row, including Gary Graham, a 17-year-old who was convicted largely on the basis of a single eyewitness and no physical evidence.

Mock's investigator, Merv West, said Mock discouraged him from working hard on the case: "I remember from the first Ron Mock insinuated that Gary was guilty, and that definitely affected my investigation. Since we both assumed Gary was guilty, I decided not to waste time trying to substantiate his alibi."

Standards for adequate counsel are so low that lawyers can sleep through their clients' trials. In 1996, the Texas Court of Appeals turned down three petitions from death-row inmates whose lawyers slept through significant parts of their trials, refusing to rule that sleeping during a capital trial was ineffective counsel.

To explain his sleeping, one lawyer was quoted as saying, "Capital trials are boring."

## Case Examples: Inadequate Representation

**Sylvester Adams** was sentenced to death and was executed in South Carolina on August 17, 1999 after his attorney failed to disclose his client was suffering from mental retardation and mental illness. Later, at least one of the jurors said that she would not have voted for death if she had known Adams was retarded. Her vote for life would have spared Adams.

**Troy Lee Jones** was convicted of murder in California in 1982 when his defense attorney failed to speak with possible witnesses, obtain a relevant police report, or seek pretrial investigative funds. Moreover, the attorney elicited damaging testimony against his own client during the cross-examination of a witness.

The California Supreme Court ruled that Jones should have a new trial. The prosecution announced that it was dropping all charges against Jones in November 1996, after he had been on death row for 14 years.

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