

JUSTICE FOR A FEW

FAIR AND EQUAL UNDER THE LAW?

Of the almost 20,000 murders that occur in the U.S. each year, only 1 percent result in death sentences. But it's not the "worst of the worst" being executed – which 1 percent depends largely on skin color, or geography, or how much the defendant can afford to pay his lawyer.

A CAPITAL PUNISHMENT FOR THE POOR

We've heard it in the movies countless times – "You have the right to an attorney." But there is little guarantee in most states that poor defendants will receive one with the right experience. Our nation's death penalty is littered with examples of lawyers who were drunk, asleep, or completely inexperienced. When public defenders don't have enough experience or resources to do an effective job, their mistakes can cost a life.

AN UNEVEN PLAYING FIELD

- Across the country, more than 90 percent of those on death row were too poor to afford their own attorneys at trial.
- Capital defense is much more time-consuming and complicated than other criminal defense work, and requires highly trained and experienced lawyers and hundreds of hours of work. Yet public defense offices are plagued by unmanageable caseloads, high turnover, small budgets, and some of the lowest pay in the profession.
- Poor defendants sentenced to die have been represented by lawyers who were drunk, asleep, or later disbarred. Others have been represented by collections or tax attorneys, or lawyers fresh out of school. Some court-appointed attorneys can be so overworked that they are unable to even mount a defense.

POOR DEFENDANTS GIVEN POOR LAWYERS

- Even the best public defenders must usually rely on the court's approval for funds to pay for investigators, forensic scientists, and other experts needed for a good defense. Such money can be extremely limited or unavailable.
- Caps on pay in many states mean that lawyers defending poor clients can earn less than minimum wage if they put on a decent defense.
- In 1999, the American Bar Association, a mostly conservative group of 400,000 lawyers, repeated its call for a stop on executions, due in part to the failure to provide adequate counsel and resources to capital defendants.

A LOTTERY OF GEOGRAPHY

- Where a crime occurs can play as big a role as the nature of the crime in determining who will live and who will die. Similar murders might get 40 years in one county, but death in the neighboring county.
- Numerous states, including Arkansas, have a large percentage of death sentences that come from just one or two counties.
- Geography plays a role across states as well. In 2007, for example, nearly three quarters of all executions took place in just three states.

"In this country, you are better off being rich and guilty than poor and innocent."

Steve Bright, Southern Center for Human Rights

"The Constitution guarantees the right to an attorney. It doesn't say the lawyer has to be awake."

Texas court ruling upholding the death sentence of George McFarland, whose lawyer slept through the trial

“If you’re rich, you’re not going to get capital punishment – period.”

Mark James, republican Nevada state legislator

IS A WHITE LIFE WORTH MORE?

- Across the country, the victim’s race has a large effect on which crimes receive the death penalty. Studies show that people convicted of murdering a white victim were many times more likely to get sentenced to death than those who killed African American or Latino victims.
- More than 80 percent of those executed in the U.S. were convicted of killing a white person, even though African Americans are the victims in about half of all murders.
- In Arkansas, those numbers are worse. Of the 42 men currently on death row only six of them had black victims. The rest – over 85 percent – were convicted of murdering white people.
- Arkansas has executed 195 people since beginning to keep records. Of those executed, 134 were black males.

“[I]f any basis can be discerned for the selection of these few to be sentenced to die, it is the constitutionally impermissible basis of race... I simply conclude that the Eighth and Fourteenth Amendments **cannot tolerate the infliction of a sentence of death under legal systems that permit this unique penalty to be so wantonly and so freakishly imposed.**”

U.S. Supreme Court Justice Potter Stewart
(nominated by President Eisenhower)

If a law is not applied fairly across racial, social and economic lines, then the law fails to protect the citizens it is meant to serve.

Justice is supposed to be blind, yet geography, poverty, and race continue to determine who lives and who dies. Such disparity in the death penalty compromises the entire criminal justice system, sending a message that some lives are more valuable than others.

In light of the action by the American Law Institute, along with studies proving racial and economic bias, how can Arkansas continue to have confidence that its death penalty can be administered fairly and equitably?

Sources available upon request.