

The Plain Truth

DEATH ROW INJUSTICES

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Too many death-row inmates were represented by lawyers who would not even meet the minimum standards of today

If you were on trial for your life, would you want a qualified attorney to represent you?

The Common Sense Foundation has conducted a ground-breaking study that has found **at least 37 people** currently on N.C.'s death row who did not have lawyers at trial who would meet today's minimum standards of qualification. Moreover, of those who have been executed since 1977, **at least 16 people** did not have lawyers with the minimum qualifications required of capital defense attorneys today.

For those 37 death-row inmates who have not received similar help from any court, justice demands that they all receive new trials immediately with appointed counsel that meets current standards of qualification.

A New Hanover County attorney talked about how he was unable to adequately defend his client even though he had successfully tried two capital cases previously. His first two cases, he said, were relatively straightforward and included facts that were good for the defendant. However, when he was suddenly charged with representing a defendant who had a relatively complex case with

unfavorable facts, this attorney said he realized he lacked some of the basic knowledge needed to properly defend people facing the death penalty.

Indigent Defense Services

In August 2000, the North Carolina General Assembly passed the Indigent Defense Services Act, creating the Office of Indigent Defense Services (IDS) and charging it with the responsibility of overseeing the provision of legal representation to indigent defendants and others entitled to counsel under North Carolina law, including capital defendants.

IDS created a benchmark of statewide standards for capital defense attorneys, standards that had no precedent in recent state history. The new rules required certain minimal levels of experience before an attorney could be appointed to represent a capital defendant.

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Among other standards, IDS required that each capital defendant be appointed two defense lawyers, one lead counsel and one associate counsel. Attorneys in the lead role were held to an even higher standard than those serving as associate counsel. Extensive experience (either in previous capital trials or other homicide trials), "substantial

PEOPLE ON DEATH ROW WHO HAD AT LEAST ONE “UNQUALIFIED” ATTORNEY:

Jeffrey Barrett
Norfolk Best
Charles P. Bond
Nathan Bowie
William Bowie
George C. Buckner
John Burr
Eric Call
Frank J. Chambers
John R. Elliott
Andre L. Fletcher
David Gainey
Malcolm Geddie

Tilmon Golphin
George E. Goode
Gary Greene
Warren Gregory
Timmy Grooms
Jeffrey Kandies
Allen Holman
Michael D. Holmes
Patricia W. Jennings
Levon J. Jones
Wayne A. Laws
Guy T. LeGrande
Ernest P. McCarver

Elmer R. McNeill
James Morgan
Darrell Strickland
Isaac J. Stroud
Gary A. Trull
Leslie Warren
James Hollis Watts
Phillip Wilkinson
Keith Wiley
David K. Williams
Darrell C. Woods

familiarity” with a range of subjects from scientific to medical evidence, and familiarity with ethics requirements and capital jurisprudence all became necessary in order to be appointed to a North Carolina death-penalty trial case.

Most knowledgeable people rejoiced at the creation of IDS, hailing its creation of minimal standards of qualification for such an important task as representing someone whose life was on the line. And the impact of better counsel through IDS appointment has been dramatic: from 1997-2001, North Carolina averaged more than 19 death sentences per year, but after IDS, from 2002-2005, less than 6 per year.

But the tragic flaw in the legislature’s creation of IDS was the lack of retroactivity in the standards. In other words, the new law left out those who were already on death row who had not had qualified lawyers.

Until today, no one has quantified just how many of the defendants on death row should have been affected by IDS had it been created with retroactive powers. This study breaks new ground in making that determination.

It is crucial to remember that these numbers are conservative. Our research was not able to uncover full data on all 147 clients covered by the

scope of the study. **The actual number of death-row inmates whose lawyers would not have qualified is almost certainly higher,** and probably significantly higher.

“If I knew half as much then as I know now, George [Goode] wouldn’t be on death row. In fact, at that time there were very few people in this county that would meet the IDS standards. If there is one thing that has improved the death penalty in N.C. it’s IDS. It’s the number one thing.”—Bob Denning, Johnston County defense attorney.

Methods of Data Collection

For the purposes of this study, legal records of all prisoners convicted of a capital offense and sentenced to death, currently alive or dead, prior to the creation of IDS in 2001 were reviewed.

Self-reported data was obtained through an electronic Internet-based survey, which attorneys received via e-mail, and through structured interviews via telephone. Both methods extracted data pertaining to attorneys’ qualifications at the time they represented prisoners who fall within the scope of the study. Surveys that were incomplete were followed up with structured telephone interviews.

The Common Sense Foundation is an activist think tank whose mission is to develop progressive public policy and act as an uncompromising voice for social change.

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EXECUTED PEOPLE WITH AT LEAST ONE "UNQUALIFIED" ATTORNEY

Velma M. Barfield
Ernest West Basden
Joseph Bates
David Junior Brown
Willie Brown
Ronald W. Frye

John S. Gardner
Zane Hill
Henry L. Hunt
James W. Hutchins
Patrick Land Moody
John Noland

William Dillard Powell
Kermit Smith
Earl Richmond
David Junior Ward

Several Johnston County attorneys described how the local criminal defense bar was unprepared when then-newly elected District Attorney Tom Lock began seeking the death penalty in murder cases occurring in his district, which includes Harnett, Johnston and Lee counties. Capital prosecutions were exceedingly rare under the previous District Attorney for the 11th Prosecutorial District. When Lock took office, very few defense attorneys who worked in Harnett, Johnston or Lee counties had any of the experience necessary to vigorously represent defendants charged with capital crimes. In the 1980s and 90s, many criminal defense attorneys who practiced in rural areas found themselves at a distinct disadvantage when they were appointed to represent a capital defendant. According to one McDowell County attorney, limited judicial resources in rural areas made trials quite rare in the early 80s and 90s, and this meant that rural attorneys had much less trial experience than their counterparts in North Carolina's bigger cities. This situation led to many rural attorneys being caught completely off guard when they were suddenly faced with the prospect of a lengthy and sensational capital trial.

N.C. Study Commission

In 2003, the North Carolina Senate passed a two-year moratorium on executions citing systematic problems related to racial bias; arbitrariness; ineffective defense counsel; cheating prosecutors; the conviction of innocent persons; and cost. Despite the Senate's support for reform, the House of Representatives has yet to vote on a moratorium or enact several other significant reforms.

In response to the growing concern about the administration of capital punishment in our state,

House Speaker Jim Black created the House Select Study Commission on Capital Punishment in 2006. This body will make recommendations to the full House of Representatives at the end of the current calendar year.

Among the issues that the House Select Commission has heard expert testimony on is the quality of trial representation. Central to that issue is the level of qualification of the attorneys who represent the accused at trial. With less than three months until its final recommendations are made, the House Select Study Commission on Capital Punishment should hold hearings on the issue of retroactive capital defense standards immediately.

A number of attorneys complained that judges had too much discretion in allocating funds to the defense; this lack of resources frequently led to substandard representation. A Duplin County attorney complained that judges were overly stingy about giving defense attorneys money to hire investigators and experts. A Cumberland County attorney reported similar issues, but also mentioned that courts would second-guess his time sheets, ultimately paying him for a fraction of the work he actually did. Another attorney who practices in Cumberland County said the low pay rate for attorneys representing capital defendants led to a very short capital defense list. Out of desperation, judges

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began encouraging attorneys with very limited criminal law experience to add their names to the list because there were so few attorneys who would represent individuals facing the death penalty.

Conclusion

Of the people currently on N.C.'s death row, a disturbingly large number had lawyers at trial who would not even meet the minimum standards of today.

We now know that **at least sixteen people have been executed who did not have qualified trial attorneys.** How many more will be executed before we address these systematic wrongs?

During any pause in executions, meaningful reforms must be enacted if the death penalty is to be reinstated. Flaws in the administration of the death penalty in North Carolina have already led to important reforms; among them, the removal of the mentally retarded from death-row, open-file discovery, and the creation of

Defendants Currently on Death Row in North Carolina				
Sent to death row before IDS	Data available on attorneys	Attorneys failed to meet IDS standards	Percentage of studied group	Percentage of group with data available
147	115	37	25%	32%

IDS. The lack of retroactive capital defense standards requires similar attention. The following actions must be taken immediately to ensure that every North Carolinian receives a fair trial.

Defendants Who Have Been Executed By The State of N.C. Since 1977				
Number of people executed since 1977	Data available on attorneys	Attorneys failed to meet IDS standards	Percentage of studied group	Percentage of group with data available
43	30	16	37%	53%

Justice in North Carolina demands the following changes to our

system:

Recommendations

The death penalty is inherently an ineffective and discriminatory procedure that should be abolished. In North Carolina, capital punishment has repeatedly been shown to be racially biased, costly, arbitrary, and ineffective at deterring crime. Legal challenges to the constitutionality of lethal injection, the exoneration of death-row inmates, and the exposing of cheating prosecutors add to the already loud claims for reform.

Short of abolition, a moratorium on executions is necessary to keep the state from killing anyone else until these injustices can be adequately and retroactively addressed. A poll conducted last year by the North Carolina Academy of Trial Lawyers showed that a majority of North Carolinians want a pause in all executions until our system of capital punishment can be fixed.

- **Immediate new trials** for the 37 death-row inmates named in this study
- **A full investigation** by the N.C. General Assembly to determine how many other death-row inmates did not have lawyers who would have met IDS qualification standards
- **A two-year moratorium** on executions during which time an extensive review of capital punishment in our state can be conducted

Research conducted by attorney Nicholas Woomer-Deters.

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