

**We've heard it in the movies a thousand times – “You have the right to an attorney.”** But in most states there is little guarantee that poor defendants will receive a competent one. Our nation's death penalty system is littered with shocking examples of lawyers who were drunk, asleep, or completely inexperienced. Most people cannot afford a “dream team” of expensive lawyers. When court-appointed lawyers lack the experience or resources to do an effective job in a capital case, their mistakes can cost a life.

### No Dollars, No Defense?

- ◆ Upfront costs for a competent criminal defense lawyer can start at \$25,000 or more. Across the country, almost none of the defendants that face the death penalty can afford such a price.
- ◆ 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 lawyers can be so overworked or indifferent that they don't even bother to defend their clients at all.
- ◆ Defense in capital cases is much more time-consuming and complicated than in other criminal defense work. It requires highly trained and experienced lawyers receiving appropriate compensation for hundreds of hours of work. Yet public defense offices are plagued by unmanageable caseloads, high turnover, and some of the lowest pay in the profession.
- ◆ Courts often allow the most egregious mistakes to stand. In the famous “sleeping lawyer” case of George McFarland, a Texas court ruled, “the Constitution guarantees the right to an attorney. It doesn't say the lawyer has to be awake.”

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

*– Texas trial judge in the case of George McFarland, whose lawyer slept through much of his trial*

### Incompetent Lawyers: Stories of a Broken System

- ◆ *Mose Young* was executed in Missouri in 2001. His lawyer, Jack Walsh, inherited the case at the last minute. He saw Young just one time prior to the trial, never visited the crime scene, conducted no investigation or preparation, and failed to interview a witness who said Young was not the shooter. During the trial, Walsh went drinking every night and came to court with a can of soda spiked with alcohol.

- ♦ *Justin Chaz Fuller's* court-appointed lawyer filed an appeal that was riddled with typos, inconsistencies, and errors. The brief was so illogical that another lawyer said it should have been submitted “using an eight-count box of Crayolas.” Fuller was executed in 2006.
- ♦ *Gary Nelson's* lawyer had never tried a capital case but was denied his request for co-counsel. He was paid less than \$20 per hour and did not request any funds for an investigator, assuming that the request would be turned down. His closing argument was 255 words long – less than half the length of this fact sheet. Nelson was sentenced to death. He was later found innocent and released.
- ♦ *Jesús Romero* was executed in Texas in 1992. His lawyer's *entire* closing argument for the penalty phase of his trial was four sentences: “You are an extremely intelligent jury. You’ve got that man’s life in your hands. You can take it or not. That’s all I have to say.”

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

– Steve Bright, Southern Center for Human Rights

## Poor Defendants Dealt Poor Lawyers

- ♦ Even the best public defenders often rely on court approval for funds to pay for investigators, forensic scientists, and other experts needed for an effective defense. Such funds can be limited or unavailable.
- ♦ Caps on pay in many states mean that lawyers defending poor clients can earn less than minimum wage if they provide a decent defense. In Ohio, for example, costs are often only approved after a case is completed – meaning defense lawyers can work for *weeks, months, or even years* without knowing if they will be paid for all their time.

## Below the Standard

- ♦ The American Bar Association sets minimum standards for lawyers in death penalty cases, but many states fail meet them.
- ♦ Many people are sent to death row despite the fact that their lawyers failed to meet these standards. A North Carolina study found at least three-dozen people on death row – and 16 who had been executed – whose lawyers would not meet the state’s current minimum standards.

**The right to an attorney is one of the basic hallmarks of our justice system.** But it’s not justice at all when a select few can hire a “dream team” of expensive lawyers and everyone else is lucky if theirs is competent. When a life is on the line, good luck isn’t good enough.

*Sources available at [ejusa.org](http://ejusa.org)*