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Common Sense Says...

that people on Death Row often had the state's worst lawyers at trial.

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One of the fundamental guarantees of our criminal justice system is the absolute right to a fair trial. That right requires competent counsel for the defendant. This report examines how North Carolina is meeting that basic requirement by taking an in-depth look at the lawyers who represented the men and women currently on North Carolina's death row. Almost all of those inmates could not afford to hire their own attorneys. Their lawyers were appointed by the state to try the most complicated and most important criminal cases considered by our court system, cases where defendants are on trial for their lives.

The conclusion is clear and inescapable: North Carolina has failed to provide fair trials for men and women facing the death penalty by repeatedly assigning some of the state's worst lawyers to try capital cases.

There are now 207 people on death row in North Carolina. More than one in six of them was represented at trial by lawyers who have been singled out for disciplinary action by the State Bar. These attorneys have committed felonies, embezzled money, intentionally prejudiced clients or failed to properly represent them.

One of those lawyers is Douglas Osborne, Jr. In 1991, Osborne was convicted of possession of child pornography and sent to federal prison for one year. As a result, his law license was suspended for five years. Immediately after his release from prison, his right to practice law was reinstated, and the state assigned him to represent Kenny Neal in a capital trial. It was Mr. Osborne's first capital case, and Mr. Neal received a death sentence. Later two jurors swore in affidavits that they had been aware of Mr. Osborne's child pornography conviction and that it was a factor when they considered his arguments to spare Mr. Neal's life. Mr. Osborne was later reprimanded by the Bar for "forgetting" to enter an appeal for another client, thereby forfeiting the client's right to appeal.

Another example is Sharon Jumper, an attorney from Charlotte. She was disbarred in June of 2002 for numerous violations, including mishandling client funds, falsely accusing an assistant district attorney during a murder trial, and failing to respond to inquiries from the State Bar in a timely manner. She was also convicted of felony financial card fraud. One of Ms. Jumper's clients was Melvin Hardy, who is currently on death row. The state had appointed Ms. Jumper to represent Mr. Hardy at his capital trial.

The Standards for a Trial Attorney

The professional standards for trial lawyers evolve as the court system, through precedent, raises or lowers the bar for acceptable legal representation. The American Bar Association recommends that lead attorneys in a capital trial have at least five years of criminal defense experience, have prior experience in at least nine serious jury trials, and experience as counsel in a case where the death penalty was sought. North Carolina has not demanded these standards of capital attorneys.

Most of the defendants facing capital charges in North Carolina are indigent and unable to afford a private attorney. Until recently, local judges assigned lawyers to poor defendants. State leaders recognized the problems in this system and recently established the Indigent Defense Commission to manage the process.

That change may make it less likely that poor people get bad lawyers, but it is little consolation to the 207 men and women sent to death row under the system that the state itself has recognized is flawed.

An Objective Measure of the Problem

One objective way to measure just how flawed the appointed counsel system has been in North Carolina is to use the lawyers' status with the profession's own licensing organization, the State Bar.

North Carolina State Bar records show that at least **37** of the 207 men and women currently on death row were represented by attorneys disciplined by the Bar. That means **one in six inmates facing execution**. By contrast, the State Bar estimates that fewer than 1% of the state's attorneys have been singled out for Bar discipline.

On February 21, 2000, Fred Williams pleaded guilty to one felony count of possession of cocaine and one misdemeanor count of possession of marijuana in Hart County Superior Court in Georgia. Due to his conviction, his law license was suspended for three years. Earlier in his career, he represented Norris Taylor in his capital trial. Taylor is now on death row.

Of the 21 North Carolinians executed since the death penalty was reinstated in 1977, **four**, or nearly 20%, were represented by attorneys who were disciplined by the Bar.

David Tamer, who represented Blanche Taylor Moore as well as Willie Fisher (Fisher was executed last year), was disbarred in 2000 for misappropriating funds. During the time that he represented Ms. Moore, he was suffering from severe depression and mental health problems, and had to seek professional help.

The Limits of Disciplinary Action

This study shows the number of death-penalty defense attorneys who have been disciplined by the State Bar, but it only begins to count the number of incompetent lawyers who are regularly appointed to do capital defense work. Stories abound of lawyers who sleep through large portions of capital trials or who spend few hours researching and preparing for trial. Lawyers with severe substance abuse problems often elude formal discipline, yet their performance can be devastating to a client.

For example, attorney Tom Portwood represented three capital defendants who ended up on death row. Portwood admitted to drinking 12 shots of rum every night during the trial of Ronnie Frye. Frye was executed last year. Yet Portwood has never been formally disciplined by the State Bar, so despite affidavits from his co-counsel that state that Portwood was ineffective at trial, Portwood is not included in this study.

Conclusion

A person on trial for his or her life should be guaranteed representation by two competent attorneys with at least some experience in capital defense. This study shows that for years, North Carolina has been sending men and women to death row without the benefit of adequate representation at trial.

The attorneys listed in this study have been disciplined by the State Bar, which is an extremely rare and severe punishment for attorneys in North Carolina. Yet despite the rarity of Bar discipline, one in six current death row inmates were represented at trial by an attorney who has been penalized by the Bar in some fashion. This report does not include information about lawyers who provided ineffective representation in death penalty cases, only about those who have been singled out by the State Bar.

Some reforms to this broken system are already underway, such as the creation of Indigent Defense Services, set up in 2001 to coordinate the legal defense of North Carolinians who could not afford their own attorneys.

IDS may well improve the representation system by imposing minimum standards for capital trial attorneys and setting up a system of accountability. Any reform brought forth at the trial level by IDS, however, will not help the 207 people who are already on Death Row in North Carolina.

Recommendations

The heated debate about capital punishment continues in North Carolina, but both opponents and supporters of the death penalty believe that people facing the ultimate punishment deserve a fair trial.

The state of North Carolina has recognized that for years there were problems with the way lawyers were appointed to represent indigent clients. North Carolina Bar data shows that the state was right, that poor capital defendants who were forced to rely on court-appointed lawyers often were denied that basic right to a competent defense.

Now that the state has moved to reform that system, it must also finally provide a fair trial to the men and women on North Carolina's death row who were represented by lawyers who have been disciplined by the Bar.

New trials should be granted to each of those 37 death row inmates. Fairness and justice demand no less.

The following inmates currently on North Carolina's death row were represented by trial attorneys who have been disciplined by the State Bar:

Inmate

Attorney

Billy Anderson	Jerry Redfern
Terry Ball	Maynard Harrell
Kyle Berry	William Peregoy
Shawn Bonnett	Maynard Harrell
Michael Braxton	Jimmie R. "Sam" Barnes
Terrance Campbell	Maynard Harrell
Desmond Carter	Doug Hux
Frank Chambers	William Causey
Frank Chandler	Terry Collins
Glenn Chapman	Robert Adams
Daniel Cummings	Michael Ramos
Jerry Cummings	Edward Bodenheimer
Johnny Daughtry	Cindy Huntsberry
Keith East	Terry Collins
John Fleming	Jimmie R. "Sam" Barnes
James Gell	Maynard Harrell
Melvin Hardy	Sharon Jumper
Edward Hartman	Jimmie R. "Sam" Barnes
Michael Holmes	Cindy Huntsberry
James Jaynes	Michael Edney
Marcus Jones, Sr.	Samuel Popkin
Steven McHone	Terry Collins
Leroy McNeill	James Blackburn
Blanche Taylor Moore	David Tamer
Carl Moseley	Terry Collins
Kenneth Neal	Doug Osborne, Jr.

George Page	Larry Eubanks
Rex Penland	Terry Collins
Michael Reeves	Jerry Redfern
Christopher Roseboro	Curtis Harris
Donald Scanlon	Lee Castle
Clinton Smith	Jimmie R. "Sam"
Reche Smith	Maynard Harrell
Davy Stephens	Cindy Huntsberry
Norris Taylor	Fred Williams
Rodney Taylor	William Peregoy
Ronald Valentine	Regina Moore

Violations

- A:** Violating Professional Rules of Conduct
- B:** Conviction of a Criminal Act
- C:** Dishonesty, Fraud, Deceit, or Misrepresentation
- D:** Financial Dishonesty, Fraud, or Deceit
- E:** Conduct Prejudicial to the Administration of Justice
- F:** Intentionally Prejudicing or Damaging Client
- G:** Failure to Represent Client in a Diligent and Adequate Manner

Category Pctg. Of Attys Committing

- A 32.0%
- B 41.0%
- C 27.0%
- D 27.0%
- E 18.0%
- F 0.5%
- G 45.0%

The most frequent violation was the failure to diligently and adequately represent their clients. The second most committed violation was engaging in a criminal act.

DISCIPLINED ATTORNEYS AND DEATH ROW CLIENTS

The following is a complete list, by attorney's name, of all lawyers who have clients currently on death row AND have been disciplined by the State Bar:

Attorney Client Proceeding Order Date Order

<u>Attorney</u>	<u>Client</u>	<u>Proceeding</u>	<u>Order Date</u>	<u>Order</u>
Adams, Robert	G.Chapman	Grievance	4/30/97	Censure
	W.Bowie	Disciplinary	11/20/97	2 yr. Susp./stay
		Disciplinary	6/11/99	stay extended
		Disciplinary	5/8/00	3 yr. susp., stay
		Reinstatement	4/5/01	Reinstated
Barnes, Jimmie R.	E.Hartman	Disciplinary	6/21/01	5 yr. Susp.
	C.Smith			
	J.Fleming			
	M.Braxton			

Blackburn, James	L.McNeill	Surrender	4/16/93	DISBARRED
Bodenheimer, Ed	J.Cummings	Grievance Disciplinary	5/7/92 9/9/92	Reprimand DISBARRED
Castle, Lee	D.Scanlon	Grievance	10/30/01	Censure
Causey, William	F.Chambers	Disciplinary	5/10/93	Warning Letter
Collins, Terry	K.East S.McHone R.Penland F.Chandler C.Moseley	Disciplinary	6/10/98	DISBARRED
Edney, J. Michael	J.Jaynes	Grievance Disciplinary	5/17/97 6/11/99	Reprimand 2 yr. Susp., stay
Eubanks, Larry	G.Page	Disciplinary	2/8/85	Public Censure
Harrell, Maynard	J.Gell Reche Smith S.Bonnett T.Ball	Grievance	11/10/00	Reprimand
Harris, Curtis	C.Roseboro	Grievance Grievance Grievance Disciplinary	11/3/97 11/3/97 11/2/98 12/8/98	Reprimand Reprimand Reprimand DISBARRED
Huntsberry, Cindy	D.Stephens J.Daughtry M.Holmes	Grievance	8/21/91	Public Censure
Hux, Doug	D.Carter	Grievance	2/6/02	Reprimand
Jumper, Sharon	M.Hardy	Grievance Judicial Grievance Disciplinary	3/13/00 10/23/01 5/26/01 6/13/02	Reprimand Susp. 90 days Reprimand DISBARRED
Moore, Regina	R. Valentine	Disciplinary	2/23/95	Censure
Osborne, F.Douglas	K. Neal	Disciplinary Grievance Grievance	11/18/91 8/9/96 2/14/00	Susp. 5 yrs. Reprimand Censure
Peregoy, William	K.Berry R.Taylor	Grievance	8/10/93	Reprimand
Popkin, Samuel	M.Jones	Disciplinary Grievance Disciplinary Reinstatement Grievance	6/12/91 8/21/91 4/16/92 9/13/93 9/13/96	1 yr. susp., 3 stay Public Censure 3 yr. susp., 2 stay Reinstated Censure
Ramos, Michael	D.Cummings	Disciplinary	7/5/89	Public Censure
Redfern, Jerry	B.Anderson M.Reeves	Grievance Grievance	2/16/92 8/2/92	Reprimand Censure

Tamer, David	B.T.Moore	Surrender	4/14/00	DISBARRED
Williams, Fred	N.Taylor	Disciplinary Reinstatement	9/21/00 3/23/01	3 yr. susp., stay Reinstated

Procedure for Disciplinary Proceedings

The State Bar is the organization that tracks and maintains the quality level of licensed attorneys in North Carolina. Once an attorney passes the Bar exam and is given the authority to practice law, he or she agrees to uphold and follow the Bar's Rules of Professional Conduct. These rules serve as a code that dictates acceptable and unacceptable actions and behaviors for attorneys practicing law in the state. The primary reason that attorneys are sanctioned by the Bar is for engaging in professional misconduct, which is specified by Rule 8.4 in the Rules of Conduct. Though these are not the only rules that if broken merit disciplinary response, they are the ones violated at the highest rate.

Rule 8.4 states that it is professional misconduct for a lawyer to:

- (a) violate or attempt to violate the Rules of Professional Conduct, knowingly assist or induce another to do so, or do so through the acts of another;
- (b) commit a criminal act that reflects adversely on the lawyer's honesty, trustworthiness, or fitness as a lawyer in other respects;
- (c) engage in conduct involving dishonesty, fraud, deceit, or misrepresentation;
- (d) engage in conduct that is prejudicial to the administration of justice;
- (e) state or imply an ability to influence improperly a government agency or official;
- (f) knowingly assist a judge or judicial officer in conduct that is a violation of applicable rules of judicial conduct or other law; or
- (g) intentionally prejudice or damage his or her client during the course of the professional relationship, except as may be required by Rule 3.3.

Potential Disciplinary Actions

The Bar has designated several types of orders that can be made against an attorney once they have been found guilty of violating the Rules of Conduct. Disbarment is the most severe punishment the Bar can impose, but once disbarred, an attorney can seek to reinstate his or her license after five years. The other disciplinary actions serve as warnings to help correct misconduct. Here are the primary potential actions, listed by level of severity:

1. Letter of Warning
2. Reprimand
3. Censure
4. Suspension and/or Stay
5. Disbarment

The Process

For an attorney to be disciplined by the State Bar, someone must file a formal complaint or notice of grievance against the attorney. The Bar decides if the complaint has enough merit to pursue, and then notifies the attorney in question that a grievance has been filed. As stated by Rule .0112(c) of the Discipline and Disabilities Rules, a lawyer must respond to a letter of notice within 15 days with "a full and fair disclosure of all the facts and circumstances pertaining to the alleged misconduct."

The matter will then be heard by a Grievance Committee, which meets quarterly. This committee can issue disciplinary orders up to a censure. If the committee feels that an attorney's violations deserve suspension or disbarment, the matter is then sent to the Disciplinary Hearing Committee, which will then make the final decision as to whether a sanction should be imposed, and if so, what action should be taken. Each committee also has the authority to dismiss a charge.

Report written by Frances Ferris, a student at UNC-Chapel Hill and an intern at the Common Sense Foundation.

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