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# In life and death cases, costly mistakes

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Willie Cooper, convicted of strangling his brother's girlfriend to death in a Germantown apartment, was awaiting a jury's decision on whether he should be sentenced to death, when his lawyer rose to speak on his behalf.

Citing the biblical passage "an eye for an eye," the lawyer told jurors that the ancient edict called for the death penalty only in the killing of a pregnant woman.

Cooper had killed a pregnant woman.

Inexplicably, his lawyer had forgotten that.

The jury voted to impose the death penalty.

Cooper's case is among more than 125 capital murder trials in Pennsylvania - 69 in Philadelphia alone - that state and federal appeals courts have reversed or sent back for new hearings because mistakes by defense lawyers deprived the accused of a fair trial.

That amounts to nearly one-third of the 391 capital convictions in Pennsylvania since the modern death penalty took effect in 1978.

An Inquirer review of death-penalty appeals spanning three decades found that defense lawyers in these high-stakes cases failed their clients in ways large and small.

Lawyers fighting for defendants' very lives often spend little time preparing their cases and put on only the barest defense. They neglect basic steps, such as interviewing defendants, seeking out witnesses, and investigating a defendant's background.

The problem is particularly acute in Philadelphia, where legal experts say the lawyers who handle such cases - typically at taxpayers' expense because defendants are indigent - are often overworked and underpaid.

Court-appointed lawyers get \$2,000 for trial preparation and \$400 a day in court to handle cases that a veteran defense attorney said required a minimum outlay of \$35,000 to \$40,000.

"The number of reversals on these cases is staggering," said Ronald L. Greenblatt, chairman of the Philadelphia chapter of the Pennsylvania Association of Criminal Defense Lawyers. "The attorneys who are doing this work, because of the low pay, are not doing it the right way. We really need it to stop."

The price of replaying such proceedings is costly. Death-penalty appeals consume hundreds of hours of work by dozens of lawyers, judges, police officers, and witnesses, and, even by modest estimates, cost taxpayers hundreds of thousands of dollars.

They take a toll on victims' families, who must revisit painful memories at multiple court hearings and often wait years for justice. And in rare instances, they force defendants to languish on death row, only to later be acquitted.

"There are systemic problems in indigent defense," said Robert Brett Dunham, an assistant federal defender, who handles death-penalty appeals and has tracked the outcomes of capital cases across the state.

Practically everyone in the legal system agrees, including Ronald D. Castille, the chief justice of the state Supreme Court. Last month, he ordered a review of one aspect of the problem: Philadelphia's pay rates for court-appointed lawyers in capital cases.

Critics say the fees, the lowest in the state, deter good lawyers and lead inevitably to reversals.

Castille described "intolerable" errors by defense lawyers and some "idiotic" appellate briefs, all but guaranteeing delays and new court hearings that can prolong cases for years and make justice seem elusive.

"That's why we want to be sure that these cases are done right," he said. "We want to be sure that these capital cases get decent representation, so we get it right the first time."

In many cases, mistakes by defense lawyers are so clear that prosecutors do not even contest the appeals and instead agree to new hearings or new trials.

The reversals have a high bar. In Pennsylvania, a defendant must prove not only that his lawyer erred but also that the mistake was severe enough to have prejudiced the case and potentially changed the outcome. In addition to the more than 125 cases reversed for ineffective assistance of counsel, The Inquirer review found dozens more in which courts ruled that lawyers clearly erred but that the mistakes did not reach the threshold of prejudice.

To be sure, many lawyers who handle such cases do a fine job, say judges, prosecutors, and legal experts. Those who don't fuel an appellate process that can stretch on for years or even decades, clogging an already overburdened court system and leaving defendants and victims alike in a painful kind of limbo.

Every death-penalty conviction in Pennsylvania is automatically appealed to the state Supreme Court, which reviews each case and has the power to overturn the guilty finding or set aside the sentence. That rarely happens. Most cases go through several layers of appeal, beginning with the trial court, then state and federal appeals courts, all of which can send the matter back for new proceedings.

The stale cases - most of which involve resentencing - pour back into a court system already struggling to keep up with fresh murder cases. There were 258 homicides in Philadelphia in 2010 and 271 so far this year.

Philadelphia's homicide docket is so crowded that such cases can take two years or more to reach trial, a length of time that defense lawyers, prosecutors, and judges agree is far too long.

A case in point is the prosecution of the men charged with murder in the highly publicized dual slaying at the Piazza at Schmidts in June 2009. The District Attorney's Office is seeking the death penalty at trial, which has yet to take place, more than two years after the crime.

Cases sent back following appeals also present difficulties for prosecutors, faced with putting on evidence of crimes that took place long ago. The passage of time fades memories. Witnesses die. They move away. They decide not to cooperate.

Edward McCann, the first assistant district attorney, said the lengthy appeals taxed prosecutors and prolonged the pain of victims' families.

"The length of time is unconscionable," he said. "To have to make phone calls to people 20 years after the fact and tell them: 'By the way, you know that death sentence you thought was final 20 years ago? We've got to talk to you about that.' I think it's unconscionable to put people through that."

Concern about the quality of legal work in capital cases has led Philadelphia judges to seek stricter standards on qualifications for lawyers who take on this high-stakes work, going beyond the current state rule that sets a minimum of five years' experience as a criminal defense lawyer.

Yet the pool of lawyers willing to take on court appointments in capital cases is small - fewer than 30 in a city of 13,000 lawyers.

Perhaps as a consequence, lawyers found to have provided ineffective assistance of counsel are routinely appointed to new cases. At least two lawyers whose work on death-penalty cases was labeled ineffective, in court opinions, now serve as Common Pleas Court judges: Willis W. Berry Jr. and William Austin Meehan Jr.

A legal challenge from defense lawyers pending before the state Supreme Court says the "absurdly low" fees for defense lawyers create a "presumption of ineffectiveness."

"No one could possibly do a competent job with those resources," said Marc Bookman, a former assistant public defender, who challenged the fees on behalf of four defendants now facing the death penalty. "It's not an accident that so many cases are being reversed."

The lengthy appeals notwithstanding, executions generally are not carried out in Pennsylvania. In the last three decades, only three people have been executed, and all had dropped their appeals and volunteered to be put to death. The state's last execution, of torture-murderer Gary Heidnik, was in 1999.

Of appellate cases returned to court for new hearings, most were sent back because of failings in the penalty phase. In arguing for the death penalty, prosecutors present evidence of so-called aggravating factors, such as a history of violent crime or committing a crime in a manner that puts bystanders at risk.

Defense lawyers aim to blunt those factors by pointing to mitigating evidence - the absence of a criminal record, a defendant's tender age, or a history of mental illness or childhood abuse that might argue against harsh punishment.

Yet this critical aspect of defense work is often given little attention, The Inquirer's review found.

Consider:

As a jury weighed whether to sentence Brian Thomas to death for the rape, torture, and murder of a West Philadelphia woman, his lawyer did not call a single witness in a bid to spare his life.

Instead, Lawrence R. Watson 2d delivered a brief but wandering closing argument, after which the jury pronounced a sentence of death.

Getting confused by his own syntax, Watson actually said at one point: "On behalf of Brian Thomas, I would ask that you consider very strongly, in your sentence, to consider the imposition of the death penalty. Thank you, ladies and gentlemen - the *non*-imposition of the death penalty, and bring back a verdict or a sentence of life imprisonment."

A federal appeals court later said Watson's "inept" performance and "incoherent" closing argument had "gravely prejudiced" his client. He "wholly failed in his duty to Thomas," the court said.

Thomas was convicted in 1986.

Twenty-five years later, after appeals that stretched all the way to the highest court in the land, he is poised to return to court for a hearing on whether his lawyer's deficient performance helped land him on death row.

Prosecutors, citing the brutality of Thomas' crime, appealed all the way to the U.S. Supreme Court in an effort to uphold his death sentence. The high court declined to hear the case, leaving in place the appellate court's call for a new hearing.

Verbal miscues aside, prosecutors say Watson did an adequate job. His decision not to mention Thomas' long history of mental illness may have been calculated, they said.

Thomas' mental-health records included reports that he was a "sexual deviate with sadistic tendencies" who had previously committed "horrifying" violent acts, including attacks on animals and assaults on two young children.

Such evidence "would have painted Thomas in the worst possible light," wrote Assistant District Attorney Thomas W. Dolgenos in an appeal to the Supreme Court.

Thomas' appellate lawyers at the Federal Defenders Office countered that evidence of his "severe mental disturbance" might have convinced jurors that he was ill rather than "evil" and did not deserve to be put to death.

In an interview, Watson said he did not remember the case.

Jesse Bond, convicted of killing a North Philadelphia deli manager during a 1991 robbery, was sentenced to death after his lawyer, who later said he was "exhausted" and surprised by the guilty verdict, yielded the crucial sentencing phase of the trial to his cocounsel, a lawyer who had never handled a capital case.

That lawyer, Dean Owens, later testified that he was ill-prepared and spent "no more than 15 minutes" marshaling an argument against the death penalty.

This phase of the trial was all the more critical in Bond's case because he had a prior murder conviction for a fatal shooting during a robbery at a fast-food restaurant. Prosecutors planned to present this evidence in support of their argument that Bond should be sentenced to death.

By his own admission, Owens did little to delve into Bond's history of childhood abuse and mental-health problems, including a head injury that doctors said had caused brain damage, all things that could have been cited as factors arguing against the death penalty.

A federal appellate court later ruled that Owens and Bond's lead lawyer, James Bruno, were "patently ineffective" for failing to raise those issues, which the court said "might well have persuaded the jury" not to impose the death penalty.

While Bruno said that the earlier murder conviction presented a hurdle, he acknowledged that he and Owens could have done more in their bid to spare Bond's life.

"It's as a result of cases like Bond that we now have all-day training where you sit for six hours and go through how to do this," he said. "It's different now. Back then, you just put on mom and dad" to ask the jury to spare the defendant's life.

Bond is to return to court for a new penalty hearing.

Sloppy legal work at the sentencing stage of a capital case almost certainly dooms the verdict, said Judge Benjamin Lerner, who presides over homicide cases in Common Pleas Court and who will lead the high court's study.

"It's simply a matter of constitutional law that if you want to sentence someone to death, that person has the right to have their life story told in the most sympathetic way to a jury," he said. "There's no denying that's what the law requires, and it requires it in every state in the United States."

In Willie Cooper's case, his lawyer, Norman Scott, bid the jury to turn to the book of Exodus, Chapter 21, Verse 24. There, he said, the Bible states, "If there is an assault on a woman and that woman is pregnant, and that woman loses the child, and there is damage beyond that to the woman, then an eye for an eye and a tooth for a tooth."

The woman Cooper killed was pregnant.

Scott later said he made the biblical argument "out of habit" because he routinely used it to discourage juries from sentencing defendants to death. In this case, he said, he realized he had made "a terrible error."

A judge later ruled that by citing the biblical passage, Scott "was effectively telling the jury that the Bible commanded them to sentence [the] defendant to death" and that the Bible "sanctioned death as the just punishment."

Calling Scott's remarks "a breakdown in the adversary system," Common Pleas Court Judge Jane Cutler Greenspan ruled that he had been ineffective in his client's defense. She overturned Cooper's death sentence, and in April 2009 a jury resentenced him to life in prison.

In rare cases, The Inquirer's review found, a lawyer's missteps can put a defendant behind bars who later wins acquittal.

Harold Wilson spent 17 years in prison, most of it on death row, for a triple ax murder that a jury later said he did not commit.

At Wilson's first trial, in 1989, a jury found him guilty of hacking three people to death in a South Philadelphia crack house and sentenced him to death.

After years of appeals, a judge ruled that his defense lawyer, Willis W. Berry Jr., had been ineffective and granted Wilson a new trial.

Common Pleas Court Judge Carolyn Engel Temin said Berry "made only a cursory, if any, attempt to prepare for the penalty-phase hearing in the case." She said he made "absolutely no effort" to investigate Wilson's background or search for evidence that might argue against a death sentence.

Wilson had a history of psychotic behavior, grew up in an abusive household, and suffered a head injury when, as a child, he was hit with a bat. Temin faulted Berry for not telling any of that to the jury as it weighed whether to sentence him to death. She also said Berry was remiss for not emphasizing that Wilson had "no significant history of prior convictions," which might have argued against a death sentence.

In awarding Wilson a new trial, Temin lamented Berry's "sloppiness" and his "paucity of preparation and presentation."

"The record is replete with evidence of counsel's ineffectiveness," she wrote. In particular, she criticized Berry for noting at the sentencing hearing that one of the three victims was a drug dealer and arguing that, by committing the crime, Wilson had rid society of a scourge.

"Many people may look to my client as a sort of hero - and I don't know if that's a morbid way of looking at things," said Berry, "but to clean up the city and do something that nobody else had done - a lot of people would look at this and say they deserved every little [bit] they got and no more."

Temin said Berry's remarks "could only have shocked and disgusted the jurors and hardened their hearts against the defendant." She said his comments "served no strategic purpose and were extremely prejudicial."

Wilson went on to two new trials. The second ended in a mistrial. At his third trial, in 2005, he was acquitted.

The verdict came after DNA testing that was not available at the time of the first trial. It showed that blood on a jacket prosecutors said belonged to the killer contained DNA from each of the three victims and a fourth person - not Wilson - suggesting the presence of another person.

"That's reasonable doubt," said Robert Brett Dunham, the assistant federal defender, who handled Wilson's appeal, clearing the way for a new trial at which Wilson was represented by Marc Bookman, then an assistant public defender. "If you're innocent, that's the result that you would get."

Now 53 and living in coastal Virginia, Wilson laments that it took so many years to be vindicated, but says he's not bitter. "I could not survive with anger," he said.

Wilson said he had misgivings about Berry, his first lawyer, from the earliest moments of the trial.

"Willis Berry was scary," he said. "It was all new to me, but I knew he wasn't doing what he needed to do."

When Wilson made suggestions on trial strategy, he said Berry told him, "If you're so damn smart, Harold, represent your damn self."

Berry declined to be interviewed. Through his lawyer, Samuel C. Stretton, he said he had handled the case "appropriately."

After he became a judge, Berry ran a real estate business out of his judicial chambers for more than a decade, using his taxpayer-paid secretary to collect rent on a string of ramshackle apartments he owned in North Philadelphia. In 2009, the state Judicial Conduct Board handed him a four-month suspension after ruling that he had violated judicial canons and brought "disrepute" to the bench. Berry was briefly transferred to the civil division but later returned to hearing criminal cases in Common Pleas Court.

Wilson has sued the city, the District Attorney's Office, and the police officers who arrested him, alleging wrongful conviction.

"I was innocent from the start, and they failed to protect my rights," he said in an interview. "I'm a living witness. If you don't have the money, you're not going to get quality representation at trial."

"In death-penalty cases, by law, you should be represented by the best-quality lawyer - the quality that only comes from experience in litigating death-penalty cases," Wilson said. "You're not talking about purse-snatching or parking-meter vandalism; you're talking about the state putting you through a process to put you to death."

Despite the verdict, prosecutors continue to maintain that Wilson committed the crime - a position that galls him.

"The evidence of his guilt was overwhelming," said Edward McMann of the District Attorney's Office. "The fact that we had to try the case 16 years later, that's an unbelievably difficult proposition. Trying to resurrect a case of that age and try it and put it before a jury is so difficult. I don't think the result was just."

William Nieves, too, was sentenced to death for a crime a jury later said he did not commit. Nieves spent six years on death row after he was convicted of shooting a man to death in Hunting Park in 1992 in what prosecutors said was a dispute over drugs.

At trial, Nieves was represented by a divorce lawyer with no criminal-trial experience who was paid \$2,500 to handle his case. The lawyer, Thomas Ciccione, prevented Nieves from taking the stand in his own defense by telling him - wrongly - that this would allow prosecutors to introduce evidence of his prior drug convictions.

"It was just not true. That's like Law School 101," said Jack McMahon, who represented Nieves at retrial after a judge ruled that Ciccione had been ineffective.

McMahon learned from the court file that witnesses had given police a description of the killers that bore no resemblance to Nieves. They described the two shooters as tall, thin black men. Nieves, a light-skinned Hispanic, weighed 225 pounds.

Ciccione, who is now deceased, had not called the witnesses to testify.

McMahon put the witnesses on the stand at Nieves' second trial in 2000, and he was acquitted.

After his release from death row, Nieves spent years crusading against the death penalty. In 2005, he died at age 39 from complications of hepatitis C that he had contracted in prison.

McMahon, a prominent defense lawyer and former homicide prosecutor, said the Nieves case illustrated the need for the courts to appoint quality lawyers in death-penalty cases - and to pay them accordingly.

"The government gives people a constitutional right to an attorney, but by lowering the [lawyers'] fees to pauper's level, they have severely hindered that right," he said. "To me, that's inexcusable, particularly in a homicide case, where the government is either seeking to kill you or put you in jail for the rest of your natural life."

McMahon, who estimated the minimum cost to defend a death-penalty case at \$35,000 to \$40,000, said the courts' practice of paying low wages and, thus, attracting some less-than-capable lawyers, was shortsighted.

"To me, it's just unconscionable," he said. "For not paying on the front end, you're paying on the back end," with years of appeals.

Shortcomings in legal representation are not limited to the trial itself, The Inquirer review found.

In some cases, deficient legal work extends to appellate cases, where the very lawyers hired to correct the errors of others themselves prove ineffective.

Appellate lawyers sometimes file legal challenges that make only the most meager arguments in their clients' defense. They cite little or no case law, mangle grammar, and miss key filing deadlines.

Consider the case of James Melvin Smith. In 1985, Smith was convicted of the revenge killing of a West Oak Lane woman he suspected of killing a friend. Appeals in his case dragged on for more than two decades before prosecutors agreed to a new sentencing hearing in 2009, saying Smith's trial lawyer had been ineffective.

That result came only after years of delays and mistakes by a series of court-appointed appellate lawyers.

Jeremy Gelb, the lawyer initially appointed to represent Smith on appeal, continued the proceedings 19 times and did not file any documents, so a Common Pleas Court judge dismissed Smith's initial challenge to the verdict.

Smith, acting without a lawyer, later filed an appeal on his own behalf, and the court appointed a new lawyer, Richard Hoy. Hoy, in turn, failed to file documents, defying a judge's order to do so, and did not appear for key court hearings, according to court records.

In an interview, Hoy, a Philadelphia lawyer, said he only vaguely remembered the case. One of the problems, he said, was finding time to travel the nearly four hours to see his client on death row at the state correctional institution in Waynesburg, Greene County, in Western Pennsylvania.

"Unless I want to go to the Creamery [ice cream shop] up in Penn State, I'm not going to be up there, so unless you can get them [capital defendants] down here, your hands are tied. And it's not easy to do that. The whole system is laid out with obstacles and roadblocks."

The court dismissed Hoy and appointed new counsel. After additional appeals, the state Supreme Court granted Smith a new sentencing hearing earlier this year. He awaits that hearing.

Justice Thomas G. Saylor decried the quality of the legal work on Smith's behalf.

"Several attorneys who have represented [Smith] on post-conviction did very little or nothing to advance the case," Saylor wrote in a March 2011 opinion. He said the case was emblematic of the "unconscionable delay, disarray, and inconsistencies" in death-penalty appeals in general. "This case, and many others like it, demonstrates the need for immediate reform."

When lawyers working on capital cases make mistakes or have their cases overturned on appeal, The Inquirer's review found, they are rarely sanctioned.

In fact, two ascended to the Common Pleas Court bench.

William Austin Meehan Jr. was the defense lawyer for Saharris Rollins, who was convicted of killing a North Philadelphia man in a drug-related shooting in 1987 and sentenced to death. Meehan later told a judge he did not begin to prepare for the penalty phase of the trial until the day before sentencing. He did little investigation of his client's background, did not prepare the few witnesses he called to testify on Rollins' behalf, and did not have Rollins tested by a psychologist to examine his mental health.

Last year, a federal appeals court said Meehan's performance had prejudiced Rollins, and it ordered a new sentencing hearing. Meehan did not return phone calls seeking comment on the case.

"The dirty little secret is these lawyers are perfectly respectable members of the bar," said Dolgenos of the District Attorney's Office. "It's not a black mark."

"They never get disciplined," agreed Deputy District Attorney Ronald Eisenberg, the office's chief of appeals.

In the rare cases where lawyers who do shoddy work are punished by the state disciplinary board, that is no bar to future court-appointed work. Nor is a criminal conviction.

In 2009, lawyer Bernard L. Siegel was publicly censured by the Disciplinary Board of the Supreme Court of Pennsylvania for repeatedly failing to comply with a judge's orders to file briefs on behalf of two clients whose cases he handled on appeal. In both cases, Siegel ignored those orders and did not file the required documents.

The disciplinary board said he violated the rules of professional conduct for lawyers by failing to act with "reasonable diligence and promptness in representing a client" and by engaging in conduct that was "prejudicial to the administration of justice."

Yet Siegel continued to receive court-appointed work in Philadelphia, handling several capital cases until earlier this year, when he was diagnosed with inoperable cancer.

Thomas McGill was publicly censured by the state disciplinary board in 1995 after a federal conviction for tax evasion. That did not keep him from receiving court appointments to represent clients in death-penalty cases.

McGill was found guilty of failing to pay taxes for three years in the mid-1980s. In the same case, he was acquitted of charges that he conspired with a Philadelphia judge to fix an embezzlement case. McGill told the jury he paid \$1,000 to Common Pleas Court Judge Kenneth S. Harris, but said the payment was one in a series of about 10 "referral fees" he paid the judge for sending him clients.

One of McGill's recent clients, Lionel Campfield, said he had no idea his lawyer was a felon.

"They should have told me that," said Campfield, who was facing the death penalty for his role in a drug-related shooting that killed two people, including an 11-year-old boy, when McGill was appointed to represent him in 2009.

Campfield said McGill and his cocounsel, Gary Server, paid little attention to the case. With his life on the line, Campfield said, he was frustrated that his lawyers barely spoke to him and asked few questions about the 2005 shooting that led to his arrest.

In fact, it was not until about two weeks before trial that they realized he had been 16 at the time of the shooting and, thus, not eligible for the death penalty.

This elementary mistake cost Campfield and his family two years of anxiety while the specter of the death penalty loomed.

"I went to sleep every night thinking about it, whether I would live through this," Campfield said in an interview from prison, where he is serving a life sentence. "They were supposed to be fighting for my life, and they didn't even come to see me until like two weeks before the trial."

McGill could not be reached for comment.

Although Campfield's date of birth, as listed on his arrest report, put him at 16 on the day of the crime, Server said other documents contained conflicting information about Campfield's birth date.

Server said he and McGill worked hard on the case and filed a motion to bar the death penalty as soon as they had confirmed Campfield's age.

"It was really of no consequence that he shouldn't have been facing the death penalty," he said, "because whether it was a capital case or a noncapital case, you still provide the defendant with a full range of social services."

The mistake, Server said, "didn't really result in any acute stress to anybody."

Campfield begs to differ.

"It was hard dealing with that," he said. "I laid down with that every night. I was scared. I was 16 when they said I did this. It was [the lawyers'] responsibility to do something about that."

Server said the low fees for court-appointed work did not factor into his handling of the case and were not a concern to him. "Most of us who do this work, we're true believers," he said. "We don't do it for the money."

He said he was "ambivalent" about the legal action seeking higher fees. "If they raise counsel fees in homicides dramatically, you're going to get a lot of lawyers who don't have the expertise, but who are in it for the money."

Since 2004, the state Supreme Court has required lawyers who accept court appointments in capital cases to have at least five years of criminal experience and to take 18 hours of training in the handling of death-penalty cases. Philadelphia wants to go a step further and adopt even more rigorous requirements, including requiring that lawyers have experience as lead counsel in a minimum of 10 felony cases and at least one death-penalty case.

"Those of us who have sat homicide have seen some pretty scary situations where lawyers are in over their heads," said President Judge Pamela Pryor Dembe of Common Pleas Court. "Particularly for the death-penalty cases, we just want to be awfully sure that these cases are handled properly."

The proposed Philadelphia rules, which must be approved by the state Supreme Court, would take effect in January.

Skeptics say the new requirements alone will not increase the quality of legal representation.

"If you go to a track and you see a horse that's run 30 times and never won, that's not a horse you're going to bet on," said Bookman, who with his colleague Dana L. Cook, is challenging the fees paid to court-appointed lawyers. "Lawyers that continue to do a bad job, that continue not to see their clients, that don't file motions, those lawyers should not continue to do capital cases."

In cash-strapped Philadelphia, lawyers for indigent defendants facing the death penalty are paid such low fees that many lawyers simply will not take on such work.

A key reason for that, defense lawyers say, is money. Pennsylvania is the only state in the nation that leaves funding for lawyers for the indigent up to local counties. The result is a mélange of programs of varying quality and disparate funding.

"Effective assistance goes hand in glove with the money that's being paid to court-appointed counsel," said F. Michael Medway, a veteran defense lawyer who handles court-appointed capital cases. He said he does so out of principle - and at a significant financial loss.

"I wind up making about \$10 an hour, and I'm trying to save your life."

Medway said the low fees were a disincentive to good lawyers.

Prosecutors scoff at this. "The ethical obligation of an attorney to zealously represent a client once that representation has been undertaken does not vary with the fee," Assistant District Attorney Hugh J. Burns Jr. wrote in response to the fee challenge. "No one is forced to practice law if they are dissatisfied with its financial emoluments."

Defense lawyers say that's precisely why so few lawyers are willing to take court-appointed work in capital cases.

"You get what you pay for," said Ellen Greenlee, head of the Defender Association of Philadelphia. "So many [cases] have been overturned, it's really amazing."

Her office, which represents 20 percent of all indigent defendants in the city, zealously defends capital cases, puts on extensive mitigation evidence, and, since it began taking on death-penalty cases in 1993, has not had a single client sentenced to death.

Greenlee declined to say how much her office spends on average to defend such cases, but she acknowledged that it was expensive, which is why the Defender Association won't increase its caseload.

Following the guidelines set up by the American Bar Association, two lawyers are assigned to each case, along with a mitigation specialist and an investigator.

"We will spend what we need to spend on a case," said Greenlee. "We have our protocols in place, and we won't do any less on a case."

The contrast between how the Defender Association prepares cases and how other court-appointed lawyers handle them is stark, say judges, prosecutors, and defense lawyers.

This will be part of the review that Lerner, who preceded Greenlee as chief defender, will conduct for the state Supreme Court.

Castille said the court was concerned about the pattern of errors and reversals - and attendant court delays - and wanted to study whether money was a factor.

While that review is under way and while the city moves to step up requirements for lawyers in capital cases, judges and lawyers say problems with court-appointed defense work persist.

"If you are a judge who sits on these cases, it can be very painful to watch a lawyer who is not qualified," said Carolyn Engel Temin, now a homicide judge. She recalled a recent trial in which a defense lawyer repeatedly stumbled. "I kept thinking, This is just going to come back" on appeal, she said.

Just a few weeks ago, Temin granted new sentencing hearings to two men sentenced to death for a 1998 murder and kidnapping, whose lawyers she said did an abysmal job. That case will now return to Common Pleas Court.

For the families of victims, such delays prolong an already-painful process.

"When you are hit with these appeals, it is truly a sucker punch," said Kathleen Boyle Wrigley, whose brother, Philadelphia Police Officer Daniel Boyle, was killed in 1991 by a man now facing the death penalty. "It truly takes the wind right out of you. It all comes flooding back.

"Literally, it makes you sick to your stomach to have to go back to court," she said.

Edward Bracey, the man convicted of killing her brother, has filed repeated appeals, including one that unsuccessfully alleged ineffective assistance of counsel. Another challenge to the case is pending.

"It's hard to get closure," said Wrigley. "It's one step forward, 10 steps back. Two steps forward, five steps back. It's endless."