

Statement of

The Honorable Edward Kennedy

United States Senator
Massachusetts
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The death penalty brings out the worst in the American criminal justice system. It has proven ineffective as a deterrent and cannot be carried out in a humane way. The validity of the verdicts on which it is based are often left in doubt, leaving real fears that innocent people have been put to death.

In many states, the responsibility of representing defendants in capital cases is often left in the hands of lawyers least prepared for the task. Death penalty cases raise the most complex issues faced by criminal defense attorneys. The procedures alone are intricate and require experience to understand. Many states lack capital defense units or public defenders dedicated to this complex litigation, and instead rely on appointed attorneys, whose compensation is at levels more consistent with minor offenses than death penalty cases.

The situation is even worse at the post-conviction level. States must provide some form of representation at trial, but no such obligation exists when a defendant complains after trial that his attorney was deficient or erred in some way. Some states provide attorneys for this important stage, but others leave it to defendants with little or no education, training, or assistance. Yet to defend their innocence and protect their lives, they have to navigate a legal system that even many lawyers are hard-pressed to understand.

The passage of the Antiterrorism and Effective Death Penalty Act exacerbated this problem by reducing funds for organizations that assist death row inmates and imposing new limitations on access to federal courts.

The death penalty is an issue that invokes strong passions. Many strongly support it, and just as many vehemently oppose it. But surely, when it is clear that defendants who face the death penalty are not receiving even the basic protection of competent counsel, we should be able to agree that this problem must be fixed. If the death penalty itself is to continue, it can only do so in a system that ensures it is not imposed unfairly or by mistake, and that has the basic protections that the rule of law demands.

If our country is to continue to be a beacon of freedom and democracy, we have to get our own house in order. If criminal defendants facing death sentences are not adequately represented in our own country, how can we criticize other nations for the same thing?