

## **Myths About Lawyers, Appeals, and Courtroom Practice**

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Recently, I overheard some UMPI students and colleagues asking: how "lawyers could defend such 'monsters' as: child molesters, those engaged in torturing others, and pornographers." These discussants had certainly zeroed in on the most demonized and despised defendants in our midst. That many citizens do not understand why all of us need quality legal representation is an alarming situation. Within the above discussion I also overheard an assertion that: "These low-lives will probably 'get off' and if they are found guilty, they will probably get an appeals court to set them free." This comment, too, belies usual U.S. jurisprudence practice and exposes a lack of understanding of basic legal procedure.

The long standing mantra that "everyone is entitled to a defense" is not meant as a liberal benefit to the worst criminals among us. Lawyers defend such people because it is their job; their willingness to assure that even the worst of us gets to make the government [in criminal cases] prove its case. This is designed as a guarantee that we, should we sometime find our-selves accused of a crime [rightly or wrongly], would be assured of the right to legal counsel. We do not want someone else deciding whose case is worthy of defense, for our case could be so judged. All cases are deemed worthy. Quality defense, even for the vilest among us, assures the rest of us that no level of government is free to set-up, take advantage of, or whimsically accuse someone of a crime knowing, suspecting, or hoping that a solid legal defense will be unavailable or that lawyers will be unwilling to provide such a defense. It is a basic check on the criminal justice system.

We have all heard defendants claim: "I'll take this all the way to the Supreme Court...." Well, very few cases ever have the slimmest chance of legitimately requesting a hearing before the U.S. Supreme Court, or State Supreme Courts, either. In order for there to be legitimacy to request an appeals court hearing, there must be a formal substantiation of errors made in the lower court case hearing. If lawyers can demonstrate to an appeals court that substantive and/or procedural errors were made that individually or in the aggregate likely contributed to the lower court result and that that result may have differed had those errors not occurred, lawyers may be able to secure a hearing. The U.S. Supreme Court also intervenes when multiple lower appeals courts have ruled in contradictory fashion. One fact about Supreme Court case acceptance that too many people fail to recognize or acknowledge in arguments is that the Court may decline any case and that decision is unappealable. The U.S.

Supreme Court decides its docket; there is no "right to a hearing." Appeals courts do not retry the substance of a case nor do they second guess jury decisions. They do entertain claims that errors were made in the course of a trial (or lower appeals court decisions) and that such errors were egregious enough to skew the final verdict/sentence. Most court cases never have a basis for an appeal.

Appeals courts do not "let off" convicted defendants; they declare the guilt of certain defendants or their sentences to have been seriously flawed due to error and therefore put that flawed decision aside. Some errors are deemed to be so premeditated or so venal that defendants are released from further legal action, set free. The "system" is thus punished for wrong doing. This is a protection against the system doing wrong against us in anticipation that they won't get caught, and if they are exposed, will try again. Other errors are deemed by appeals courts to be innocuous, innocent, or less malicious and many such cases are tried over. This is a recognition that errors do occur, defendants who are thus innocently victimized are entitled to redress, but they do not totally escape the legal system.

The majority of our laws and legal procedures make sense; they are built upon a structure of precedents and judicial review (appeals). Judicial errors and flukes do infrequently occur; sometimes these are horrible in their effects like past rulings on slavery, but most awful judicial errors are rectified by corrective legislative action.