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From the Los Angeles Times

## Lawyers divided on death penalty system

Prosecutors and defense attorneys tell a state panel that the system is dysfunctional but differ on solutions.

By Henry Weinstein  
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Defense lawyers and prosecutors agreed Wednesday that California's death penalty system was deeply troubled but split over the causes and solutions.

During a hearing in Los Angeles before a state reform commission, prosecutors called for quicker appeals and amending the state Constitution to permit the California state Supreme Court to transfer some of the initial review of cases to state appeals courts.

Defense attorneys opposed the proposal, saying it would make the process more cumbersome.

Instead, they asked that the state pare the list of crimes that qualify for the death penalty and provide more funding for lawyers who represent accused killers.

But John Van de Kamp, chairman of the California Commission on the Fair Administration of Justice who previously served as Los Angeles County district attorney and state attorney general, said the prospects of increased state funding were bleak.

The California Commission on the Fair Administration of Justice was set up by the state Senate in 2004 to study the problem of wrongful convictions. Wednesday's meeting was the second focusing on the death penalty.

California has the nation's largest death row, with 669 condemned inmates, but has held only 13 executions since reinstating the death penalty in 1978. It takes as long as 24 years for some killers to complete their appeals before execution.

Before the hearing, two professors from Pepperdine Law School attempted to survey district attorneys around the state to learn how they decide when to seek the death penalty. But they met with little cooperation.

On Wednesday, San Bernardino County Dist. Atty. Michael Ramos defended his resistance to the study.

"If you ask us to give detailed public information on each case, you will create a chilling effect" on how those decisions are made and it might lead to increased pressure on prosecutors from victims groups and police officers to seek the death penalty more often, Ramos said.

He also said that his office was very restrained in seeking death sentences and that he has "lost sleep" over what he called the "ultimate decision" a prosecutor can make: "taking someone's life."

"We had 142 murders in the county in 2007" but sought the death penalty in only one of them after top staff in the office reviewed the cases.

Ramos said he did not give weight to the fact that a death penalty case is considerably more expensive than one seeking a lesser penalty. "When you are deciding for a victim's family who has lost a loved one, it is hard to think about money," he said in response to a question about costs.

That comment struck a chord with Cliff Gardner, a veteran San Francisco defense lawyer who has gotten several death sentences reversed.

"When I heard Mr. Ramos, I was struck by his sincerity," Gardner said. "He said when he meets with victims, no decisions are based on money. What a marvelous way to practice law.

"When I take these cases," which could involve reviewing up to 100 boxes of material, "every decision I make is based on money" because there is a limit on how much the state will pay to represent a death row inmate, he said.

Typically, Gardner said, after he reviews the case record he makes a list of 40 areas to explore that were missed or botched by the trial lawyer. Then he has to tell his client "maybe I can only do seven of them. That is an inequity the system has to address," Gardner said.

After listening to more than a dozen lawyers, professors and a researcher from the Rand Corp., the commission heard moving testimony from Aba Gayle, whose teenage daughter, Catherine Blount, was murdered in Auburn in 1980. "The district attorney assured me that the execution of the man responsible for Catherine's murder would help me heal, and for many years I believed him."

She said she was consumed with a desire for revenge against Douglas Mickey, who was sentenced to death in 1983. But eight years after the killing, Gayle said, she had "a spiritual epiphany," forgave Mickey and has since visited him at San Quentin.

Two years ago, she said, a federal district judge overturned Mickey's death penalty because of the ineffectiveness of his defense lawyer. Gayle said she called the district attorney and asked him to drop his effort for execution.

"I told him I would be satisfied with a life sentence. I did not want state-sanctioned murder to tarnish the life of my beautiful child." But she said the

D.A. ignored her request and asked the state attorney general's office to appeal the ruling. The case is still pending.

The panel has one more hearing scheduled on the issue, on March 28 in Santa Clara.

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