

**Summary of Points for Testimony before the California Commission
for the Fair Administration of Justice**
(Professors Christine Chambers Goodman and Carol A. Chase)

- I. **Recommendation: Reporting requirements are needed to systematically collect and make public data regarding the types of special circumstance murder cases for which the prosecuting authorities determine to seek the death penalty, as well as the disposition of such cases by dismissal, plea or verdict in the trial courts.**
 - a. **We recommend that a mandatory reporting requirement be implemented to include data about all murder prosecutions with special circumstances, including whether the death penalty was sought, whether the jury found that the special circumstance was proved, whether the jury recommended imposition of the death penalty, and whether the death penalty was imposed, as well as the age, gender and ethnicity of the defendants and their victims.**
 - b. **We recommend that funding be provided to cover the cost of compiling, organizing and reporting the data, particularly for the larger counties, and those with a larger number of murder cases.**

- II. **Basis for the Recommendation**
 - a. **A brief description of our research project**
 - i. **We prepared and sent a survey to each of the 58 county District Attorneys Offices in California.**
 - ii. **In Part I we sought statistical information concerning the process by which each office determines whether to seek the death penalty in a death-eligible case.**
 - iii. **In Part II we sought statistical information for special circumstance murder cases filed over the past ten years. This information was designed to help us determine which special circumstances were more likely to result in a capital murder prosecution as well as to determine whether other factors might be of particular significance in deciding to seek the death penalty.**
 - b. **The Quantity of Responses: Of the 58 counties,**
 - i. **20 counties never responded**

- ii. 14 counties responded by indicating that they would NOT participate in the survey.
- iii. 5 counties stated that they had no death penalty cases in the relevant time period.
- iv. 4 counties provided brief summary responses by letter.
- v. 15 counties responded to substantial portions of the survey.
- vi. Thus, more than ½ of the California counties, 34 out of 58, made no substantive response, and five more had no death penalty cases for which to provide responses.

c. Information Received Concerning Process

- i. We can only make very tentative findings about the substantive information provided, due to the low number of responses.
- ii. With that caveat, the majority of the responding counties used a panel or committee to review cases to determine whether to seek the death penalty.
- iii. Other counties indicate that only the elected DA makes the decision or note that the decision is solely at the discretion of the elected DA.
- iv. Most responding counties indicated that they had no written guidelines upon which to base their decisions to seek the death penalty, other than the statutory lists of special circumstances.

d. The Quality of Responses Regarding Statistical Information

- i. Almost all of the offices responding to the survey indicated that they do not maintain the type of statistical information sought by the survey.
- ii. The few offices which provided statistical information concerning past cases had few (7 or fewer) or no death penalty prosecutions in the past 10 years.
- iii. Therefore, we were not able to gather sufficient data concerning the types of special circumstances most likely to result in a capital prosecution to reach any meaningful conclusion, nor were we able to gather significant information

concerning the age, gender, or race of the defendants or victims.

III. Conclusion

- a. **We experienced a distressing lack of response from DAs offices, with fewer than half of the counties providing any substantive response to our survey.**
- b. **Because the decision to seek the death penalty is such an important one, transparency in the process is crucial. The public has a right to be able to scrutinize the process, particularly as the decision makers are elected officials.**
- c. **There needs to be a system of collecting and maintaining data concerning which special circumstances are most likely to result in a death penalty prosecution to enable the public and policy makers to determine whether the current legislative scheme and the system of administering the death penalty is yielding efficient and fair results. In addition, data on the age, gender and race of the defendant as well as results from geographically diverse areas can enable policy makers and researchers to determine whether the standards for seeking the death penalty are being consistently applied throughout the state.**
- d. **The argument is similar to the argument against failed Proposition 54 a few years ago. Without a systematic collection of data concerning the death penalty, it is impossible for this Commission and others to examine the efficacy of the death penalty in California.**
- e. **Based on the responses to our survey, we believe that many or most of the District Attorneys Offices will not maintain or report this data unless there is a mandate requiring them to do so.**