

SUMMARY OF PRESENTATION BY GREG FISHER

Even within Los Angeles County, there is a significant disparity in the compensation of defense counsel and access to resources in death penalty cases which impacts the quality of representation.

- Approximately one third of potential death penalty cases in the county are handled by court appointed private attorneys.
- Unlike public defenders:
- Court appointed attorneys are prohibited from requesting second counsel until the District Attorney has made a decision to seek death.
- Court appointed attorneys are required to use investigators from a panel who are paid only \$28 per hour, far below the prevailing wage.
- Lead attorneys are paid a flat fee and not according to the actual work they do; second counsel is paid only 15% of the flat fee lead counsel is paid.

The large number of potential death penalty cases is overwhelming the system and straining defense resources.

- The Los Angeles County Public Defender currently has approximately 60 potential death penalty cases.
- The Alternate Public Defender and court appointed private attorneys together have approximately the same number, bringing the total number of potential death penalty cases in the county to approximately 120.
- Of the 60 cases in the Public Defender's Office, we estimate that only 10-12 will ultimately be taken to trial as death penalty cases.
- Until the District Attorney decides not to pursue death, we are ethically obliged to prepare the case for a possible penalty phase trial. This requires us to expend an immense amount of resources in attorney time, investigator time, and funding for experts.
- The most effective remedy for this problem is to narrow the special circumstances so that only the most egregious homicides are death eligible.

- In the absence of narrowing the statute, reforms should be implemented to reduce the number of cases initially charged as death eligible, to weed out at a very early stage those cases that will definitely not be pursued as death cases, and to notify the defense a reasonable time before trial of the final decision whether death will be sought.

Current jury selection procedures are not fair and uniform and, in some cases, place an undue burden on jurors.

- The process used for jury selection in death penalty cases varies from judge to judge within the county, and has a strong tendency to vary by geographical location.
- Group voir dire places additional time burdens on prospective jurors. Sequestered voir dire takes less time for individual jurors and the same amount of court time overall for jury selection.
- Group voir dire does not allow attorneys to effectively probe for potential bias. Jurors “learn” the acceptable answers and give less truthful answers to questions about their death penalty attitudes.
- Jurors are often not comfortable talking about personal moral views in large groups and are more willing to share this information in a private setting.
- In the last 4 capital cases tried by my office, there was individual voir dire in 2; small group voir dire in 1; and large group voir dire with a 10 potential jurors present in the court room. Jury selection took approximately 8-9 days in each cases. However, the jurors spent parts of three days in court (generally a morning or afternoon session) in the cases where there was individual and small group voir dire whereas jurors spent 9 full days in court in the case in which large group voir dire was conducted.