Remarks of Michael L. Radelet
California Commission on the Fair Administration of Justice
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Thank you for the opportunity to speak today. My name is Michael Radelet. I am the Chair of the Sociology Department at the University of Colorado. From 1979 to 2001, I was on the faculty at the University of Florida, where I also served as Chair of the Sociology Department from 1996 until 2001. Over the past 30 years I have written six books and several dozen research papers on different aspects of capital punishment. Included among my publications is a study on race and death sentencing in Florida, conducted for the Florida Supreme Court in 1991, a 2003 study on death sentencing patterns for Gov. George Ryan and the so-called “Ryan Commission” in Illinois, and studies of sentencing patterns in several states conducted over the past two years for the Death Penalty Moratorium Project, American Bar Association. All of my work on death sentencing patterns is coauthored with Dr. Glenn Pierce at Northeastern University in Boston. I am also on the Board of Directors of a group called “Families of Homicide Victims and Missing Persons,” a Colorado organization of 350 families who have had a relative murdered and that murder remains unsolved.

Today I would like to summarize a research project that Dr. Pierce and I published in Santa Clara Law Review in 2005. That paper examined death sentencing patterns here in California for homicides committed in the ten year span, 1990-1999. Neither Dr. Pierce nor I were paid for the hundreds of hours we spent on this project.
Studying death sentencing in California is not particularly easy. About 60 percent of the state’s population is white, with 12.3 percent Asian and 6.7 percent African American. Hispanics, who can be either black, white, or Asian, are the largest ethnic group in the state, making up about 1/3 of the population. California leads the U.S. in the number of homicides, with about 2,500 in 2005 and an average of about 3,400 annually during the 1990s. About 38 percent of those murdered in California are Hispanic, 29 percent are African American, and 28 percent are white. Per capita homicide victimization rates during the 1990s were 8 times higher for African Americans in California than for whites, and three times higher for Hispanics.

As you know, since 1990 there have been 13 executions in California. Ten of those inmates were convicted of killing whites, one for killing Latinos, and two for killing Asians. No one has been executed for killing an African American. This presents a mystery that our research endeavored to shed light on: whites are 28 percent of the homicide victims, but 77 percent of those executed were convicted of killing whites. Of course, this sample of 13 cases may not be representative, so our research focused on who was sentenced to death, not who was executed.

To begin we identified all defendants sentenced to death\(^1\) in California for a homicide that occurred over a ten-year period, January 1, 1990 through December 31, 1999. From the start we were surprised that no state agency in California collects this information, although the California Department of Corrections does publish some basic information about inmates on death row. Instead we had to construct our own data source, primarily with information in the files of the California Appellate Project. Their files, which are not public, include information about the homicides as well as about the defendants and victims, and also information about people sentenced to death who, for whatever reason, are no longer on death row. We also

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\(^1\) Some killers from the 1990s still have not been identified, and some of them may be still sentenced to death. We included only those sentenced to death before March 15, 2003.
obtained copies of death certificates in a fair number of cases to obtain or check information on the race and ethnicity of the victim in death penalty cases.

We also assembled a data set on all California homicides from the 1990s. Our primary source was the Supplemental Homicide Reports, which include data on all homicides reported to the FBI, and give case-by-case information on each homicide, including county, month, year, the defendant’s and victim’s sex, race, and ethnicity, and information on the number of victims and whether the homicide was accompanied by other felonies. We cross-checked these data with information on deaths due to homicides collected by the Office of Vital Records, California Department of Health Services. This data source does not provide any information about the facts involved in the homicides (such as, for example, whether it was committed in the course of a robbery or a rape), and does not include any information about the offender. The Vital Statistics data were used to make slight adjustments on the FBI-based figures to correct for a few missing cases and missing data on race and ethnicity of the victim.

Overall, there were 302 death sentences handed down for homicides in the 1990s. Death sentencing rates vary considerably by the race and ethnicity of the victim: 1.75 percent of those killing whites were sentenced to death, followed by .47 percent of those who killed blacks and .37 percent of those who killed Hispanics. In other words, for California homicides committed in the 1990s, those who killed whites were 3.7 times more likely to be sentenced to death than those who killed blacks, and 4.7 times more likely to be sentenced to death than those who killed Hispanics.

How can this be? Is it possible that there is some sort of non-intentional racial bias operating, where prosecutors are more likely to seek death when white people are killed, and jurors are more likely to deliver death sentences in such cases? Or is it that homicides with white victims are more “aggravated” or “deserving of the death penalty” than other homicides?
To begin to answer these questions, we divided the homicides into three groups, based on 1) whether it was a multiple-victim homicide OR whether the homicide involved other felony circumstances, such as a rape or a robbery, 2) whether both of these factors are present, and 3) whether neither of these factors was present. Obviously, this differentiation does not capture all of the factors that make a homicide a death penalty case, but research from other states indicates that these are the main factors. Indeed, research in other states, such as Illinois, shows that statistical controls for additional factors may actually increase any racial and ethnic disparities rather than make them disappear.

Our analysis found that even after controlling for the level of aggravation, the racial and ethnic factors remained and in some cases their explanatory power actually increased. When neither of the aggravators were present, the odds of a death sentence for those who killed whites were 7.6 times higher than the odds for those who killed blacks, and the odds of a death sentence were 11 times higher for those who killed whites than for those who killed Hispanics. When one aggravator was present, the odds of a death sentence were 2.3 higher for those who killed whites than for those who killed blacks, and 2.9 times higher for those who killed whites than for those who killed Hispanics. Where both aggravators were present, the odds of a death sentence are still two times higher for those who kill whites than for those who kill blacks, and 1.6 times higher than for those who kill Hispanics. Overall, the strongest racial and ethnic differences in death sentencing were observed in the least aggravated homicide cases.

We also examined regional variations. Death sentencing rates by counties varied considerably in California in the 1990s. There were no death sentences in almost half the counties. Some counties, like San Diego and Los Angeles, had low death sentencing rates for homicides in the 1990s, while others, such as Riverside, Santa Clara, and Orange had rates considerably higher than the state average.
Here again we are left with the challenge of figuring out why these patterns exist. Such patterns might arise or change relatively quickly with personnel changes in prosecutorial offices, variations in the demographic character of counties, and/or variations types of homicide across counties. Although we could not examine the potential impact of differences in county prosecutorial offices, we were able to examine the potential effect on death sentencing of differences in the demographic makeup of counties. Overall, for homicides in the 1990s, death sentencing rates are highest in rural counties with a low population density; death sentencing rates are lower in the urban counties with a high population density. In addition, we examined the racial/ethnic makeup of counties. Specifically, we looked at how “white” each county is — with some counties obviously more ethnically and racially diverse than others. We found that counties that had the highest proportion of their population classified as “white” also had the highest death sentencing rate.

Finally, to examine the combined effects of region, race/ethnicity, and aggravating circumstances on death penalty decisions we used a multivariate statistical technique called “logistic regression.” This procedure allows us to assess the unique explanatory power of each of several variables operating at the same time. Here the results show that when we simultaneously consider the effects of all variables:

- As expected, the odds of a death sentence increase greatly when one or two aggravating circumstances are present.
- However, even with similar levels of aggravation, the odds of a death sentence are 67 percent lower for Hispanic-victim homicides, and 59 percent lower for homicides with black victims, than cases in which whites are killed.
- Also among cases with similar levels of aggravation, the odds of receiving a death sentence are 40 percent lower in racially diverse counties (where the county is less than 40 percent white) than in counties where the majority of the population is white.

In the end, this study supports the argument that both the race and ethnicity of victims in California play important roles in understanding who is sentenced to death. The study does not tell us that the reason for this is any intentional racial or ethnic bias by prosecutors. Instead it is likely that the disparities are more subtle. Death penalty prosecutions are quite expensive and time-consuming, and prosecutors have a great deal of discretion in deciding which cases to select for death prosecutions and in which to allow for plea bargains. Prosecutors may feel stronger political pressure to seek death when prominent white citizens are murdered than when comparable crimes victimize blacks or Hispanics. The bias may not even be realized until studies like this look at the forest rather than solely at individual trees.

**Recommendations**

1. If there is truly an interest in monitoring whether or not death sentencing is equitable, the Legislature must require systematic data collection on all homicides and death sentencing.

The mandate of this Commission is to insure that the administration of criminal justice in California is just, fair, and accurate. In capital cases, it is extremely difficult for members of this Commission or legislators or scholars or anyone else to do this because there is an astonishing lack of information available about California homicides in general and death penalty cases in particular. For our study, we had to piece together information from several sources to learn about the crimes for which inmates were sentenced to death. I would be the first to admit that a study such as ours could be improved and expanded if better data were available. No state
agency collects even minimal information, such as the race and ethnicity of the homicide victim -- we got it by purchasing death certificates for the homicide victims. As a result, it becomes extremely difficult for this Commission or independent scholars to determine if the death penalty is "just fair and accurate" as your mandate instructs.

2. We also need more research that might be able to determine where the disparities enter into the system. For example, back in the mid-1970s, when California was making a commitment to reenact the death penalty, some 79 percent of homicides in the U.S. were cleared by arrest. By 2005 this clearance rate has fallen to 62 percent. Let me repeat that: today almost 40 percent of homicides never result in an arrest. That would mean that there about 13,500 homicides in California from the 1990s that did not result in an arrest, or 45 unsolved homicides for every death sentence. We do not know if the probability of an arrest or conviction in homicide cases varies by the race of the victim. We do not know if the racial disparities in death sentencing are caused by prosecutorial charging patterns or by jurors' decisions to return a verdict of death. We do not know whether variations in death sentencing may be attributable to inadequate resources such a inexperienced defense counsel or poorly conducted police investigations. We do not know if the racial composition of the jury or the racial composition of prosecutors' offices are factors. Similarly, we do not know if political pressures (exerted by events such as crime waves, high visibility crime, elections etc.) on police departments, prosecutors and/or judges may also be factors. In short, there are multiple stages in the criminal justice system where racial disparities can enter, and we need further study to pinpoint this. At this point in time there is absolutely no systematic collection of the type of information necessary to fairly monitor death penalty decisions.

I would be pleased to answer any questions.

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2 http://www.ojp.usdoj.gov/bjs/homicide/cleared.htm
Summary of Findings: Professor Michael Radelet

Background Facts on California

- California is the most diverse state in the nation. One third of the population is Latino, 12.3% is Asian, and 6.7% is African-American.

- In 2005, there were 2,503 homicides in the state and 1,956 arrests for homicide.

- The death rate by homicide in California varies substantially by race. During the 1990s, African Americans are eight times more likely to be murdered than whites in California.

- While 27.6% of murder victims are white, 77% of executions in California have been for those convicted of killing whites.

- 28 of 58 California counties had no death sentences from 1990 to 1999.

Race and Ethnicity of Victim in Death Sentences

- Those who kill white victims are over three times more likely to be sentenced to die as those who kill African-American victims.

- Those who kill white victims are over four times more likely to be sentenced to die as those who kill Latino victims.

- In cases where only one victim was killed and no felony was involved, those who kill white victims are over seven times more likely to be sentenced to die as those who kill African-American victims.

- In cases where only one victim was killed and no felony was involved, those who kill white victims are over eleven times more likely to be sentenced to die as those who kill Latino victims.

Geography and Community Diversity in Death Sentences

- The percentage of homicides that result in a death sentence, or the “death sentence rate,” varies substantially in California from county to county.

- The highest rate of death sentencing occurs in rural counties with a high percentage of white residents.
• In counties where more the majority of the population is white, 1.75 out of every 100 homicides results in a death sentence, but where whites are a minority and less than 40 percent of the population, only .77 out of every 100 homicides results in a death sentence. In other words, a death sentence is twice as likely in counties where the majority of the population is white than in counties with the most racial and ethnic diversity.

• Los Angeles County, with the highest number of homicides in the state, has one of the lowest death sentence rates, with only 5.8 out of every 1,000 killers sentenced to death. The highest death sentence rates for homicides in the 1990s were found in Napa, King, Colusa, and Shasta Counties (all small counties with death sentencing rates ranging from 50 or 60 death sentences per 1,000 murders or even more).

• In other counties with substantial numbers of homicides, death sentencing rates vary significantly. In Orange County, the death sentencing rate is 16.1 per 1,000 homicides; in Riverside, it is 24.4 per 1,000 homicides.

Challenges for the Future

• The Legislature should require systemic data collection on homicides and death sentencing for additional analysis and to allow future researchers to assess if the administration of the death penalty in California is, as your mandate dictates, “just, fair, and accurate.”

• Further research must be undertaken to determine where in the process the disparities enter; is the disparity caused by prosecutors’ charging practices, jurors’ decisions to return a death sentence, or somewhere in between?