Summary of Testimony: Professor Steven F. Shatz
(with attachments)

Constitutional Background

- The U.S. Supreme Court has held that there are two constitutional requirements limiting the scope of state death penalty statutes:

  1) In order to avoid the risk of arbitrary imposition of the death penalty, the statute must “genuinely narrow” death-eligibility to a point where juries impose death on a “substantial portion” of those who are eligible.

  2) In order to insure that the death penalty is a proportionate punishment, the statute may not authorize the death penalty for the “average” murder – it must be reserved for the “worst of the worst.”

California’s Death Penalty

- California’s 1978 Death Penalty Law, enacted by Proposition 7, was not drafted with a view toward meeting either of these constitutional concerns.

  o The proponents’ ballot proposition argument stated: “[T]he Legislature’s weak death penalty law does not apply to every murderer. Proposition 7 would.”

  o California’s statute is almost certainly the broadest in the country, with 33 separately enumerated special circumstances making a first degree murder death-eligible.

- Two empirical studies of California first degree murder conviction cases found that:

  1) More than 90% of adults convicted of first degree murder are eligible for the death penalty under the current special circumstances.

  2) During the five-year period 2002-2006, 4.1% of all convicted first degree murderers were sentenced to death. Thus, the percentage of “death-eligible” murderers presently being sentenced to death is roughly 4.8%.

- California’s death penalty statute is substantially overbroad because:

  1) If over 90% of adult first degree murderers are death-eligible, the statute necessarily makes “average” murderers death-eligible.

  2) If less than 1 in 20 death-eligible murderers is sentenced to death, then death sentences are not being imposed on a “substantial portion” of those who are death-eligible.
The "Worst of the Worst"

- The two empirical studies of California murder cases demonstrate what kinds of murders are considered by prosecutors and juries to warrant a death sentence:
  
  o First degree murder cases involving multiple murders (or where the defendant had committed a prior murder) or involving the infliction of additional serious injury on the victim or others (such as torture or rape) were the cases most likely to result in a death sentence.

  o First degree murder cases involving ordinary theft related felony-murders (robbery, burglary, carjacking) or involving ordinary premeditated murders (lying in wait murders or murder from a car) very infrequently resulted in a death sentence.

  o Eliminating these 5 special circumstances (the 3 theft related felony-murders, lying in wait, and murder from a car) would narrow the class of death-eligible murderers by roughly 60-65%.

- In addition to narrowing the scope of the California death penalty statute by reducing the number of special circumstances, the state might consider two other changes:

  1) Restricting the death penalty to defendants who intended to kill, as do the majority of death penalty states, including, e.g., Texas and Virginia.

  2) Restricting the death penalty to actual killers.

Conclusion

- Addressing the overbreadth of the California death penalty statute will not alone solve all the current problems with the California death penalty, but, as the U.S. Supreme Court long ago recognized, it is a critical first step.