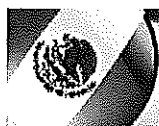


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Most state D.A.'s silent on death-penalty reasoning

Many refuse to answer a law school survey asking how each decided whether to seek execution. L.A. County's Steve Cooley was among the few who did.

By Henry Weinstein
Los Angeles Times Staff Writer

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Three-quarters of California's elected district attorneys refused to disclose how they choose defendants to face the death penalty, according to a report slated for presentation at a public hearing in Los Angeles today.

In a report to the California Commission on the Fair Administration of Justice, which is examining how the death penalty is applied in California, Pepperdine law school professors Harry M. Caldwell, Carol Chase and Christine Goodman said only 14 of the state's 58 counties agreed to provide detailed answers to questions about the selection process.

Los Angeles County Dist. Atty. Steve Cooley got high marks for his careful responses, but district attorneys in many large counties that frequently seek the death penalty -- including Orange, Riverside and San Diego -- submitted no answers, despite repeated entreaties by the professors and their research assistants, according to the report.

In all, 20 D.A.s did not respond to the commission, 14 said they would not cooperate and the remainder provided limited responses. Several issued identical or near-identical refusals: "With all due respect, I must decline to answer the questions in Part I of your survey. However, I can assure you that my decision to file a capital charge is based on my sound discretion, as vested pursuant to Government Code section 26500."

The professors said they believed that those offices "acted in concert in deciding to refuse participation" and expressed dismay at the lack of candor. "Of all the decisions that a government can make, the decision to seek to end the life of another human being must be the most important and sobering," Caldwell, Chase and Goodman wrote.

"As the ultimate decision for each county rests with an elected official, the district attorney, one would hope that the district attorney would value transparency in his/her decision-making process, both to ensure that these important decisions are being made as evenhandedly as possible and to give the electorate the opportunity to voice approval or disapproval of the process," the professors said.

"A record of 14 relatively complete responses out of 58 counties paints a distressing picture of the willingness of those who tinker with the machinery of the death penalty to expose their decision-making process to the electorate," the professors said.

California law reserves the death penalty for certain crimes and aggravating circumstances considered particularly grievous -- such as multiple victims, the use of a bomb, the killing of a police officer or a potential witness or a murder committed in the course of a rape, robbery or carjacking. But it is up to the state's 58 county district attorneys to decide whether to seek death in individual cases.

The professors asked the elected officials whether their offices had a special panel to decide whether to seek death in a particular case; how the review process was triggered; when the ultimate decision was made -- before or after a preliminary hearing; whether the defendant's lawyer participated in the review process; whether the office had written guidelines; and whether an individual's attitude about the death penalty affected whether he or she would be put on the review committee.

The three legal scholars said they were informed last year by Gregory Totten, the veteran district attorney of Ventura County, that "some offices (including his) would not respond due to concerns that responding to this survey may negatively impact ongoing, yet unspecified, federal litigation."

Totten said in an interview Tuesday that the decision came on the advice of the California attorney general's office, which defends death sentences on appeal in state and federal courts. The office warned that revealing how capital defendants are chosen could threaten not a particular case, but rather constitutional challenges filed in "almost all" death penalty cases.

"We deferred to their advice," Totten said.

Totten, whose office has prosecuted 14 murderers on death row, said, "I think we have a very discerning process in Ventura County. We convene the most experienced people and review the issues, invite defense counsel in to talk to the [death penalty review] committee before I make the decision. We try to be as solemn as possible. I think by and large D.A.s are very cautious in making that decision and understand the significance of that decision."

Colusa County Dist. Atty. John Poyner, president of the district attorneys' association, said "there is a movement afoot to eliminate the death penalty" or to reduce the number of special circumstances that would make a murder eligible for it. "We don't want to give that any fuel" by providing answers to a questionnaire, Poyner said.

The Pepperdine professors said they had hoped to "gather statistical information concerning death penalty cases that would shed some light on the decision-making process." But the information they were able to obtain "has been too minimal and incomplete to form the basis for any statistical analysis."

Along the same line, Susan Everingham, a criminal justice researcher with the Rand Corp., said her attempts to gather meaningful information on the

costs of the death penalty in California had been frustrated. Attorneys for prosecutors and the defense don't keep track of the hours they spend on particular cases, and reconstructing the data would be costly, she said.

Today's hearing at the Los Angeles County Board of Supervisors will be the commission's second on the death penalty. Last month, both federal appeals court Judge Arthur Alarcon and California's Chief Justice Ron George said there were serious problems with the way the death penalty is implemented in California, which, with 669 inmates, has the nation's largest death row.

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