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Death penalty panel looks at reasons for reversals

IN SECOND MEETING, STATE COMMISSION FOCUSES ON WORK BY DEFENSE, PROSECUTION

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The California Supreme Court last year overturned convicted killer James Hardy's 1984 death sentence because a defense lawyer's "meager" effort representing him undermined the chance of a fair trial. And just a few weeks ago, a federal appeals court gave a reprieve to Earl Lloyd Jackson, one of the state's longest-serving death row inmates, because of a prosecutor's blunders during his 1979 trial.

The appellate rulings provide an all-too-common snapshot of California's death penalty system. Shoddy representation and prosecutorial miscues are two of the most common reasons that death row inmates have had a better chance of getting their death sentences reversed than of being executed.

A state commission examining California's death penalty system on Wednesday will focus on those issues in the second round of hearings on the subject. The California Commission on the Fair Administration of Justice will hear from more than a dozen witnesses at the hearings, which are being held in Los Angeles.

The commission hearing last month focused on broad concerns about the state's death penalty, particularly the prolonged delays in state and federal appeals.

This week's hearing will zero in on problems with capital trials, which have left more than 660 inmates on the state's death row.

Generally, the handling of California's capital trials are "head and shoulders" above other states, Chief Justice Ronald George said in an interview last week. Still, statistics show persistent problems in how both defense lawyers and prosecutors handle such trials.

Inadequate legal representation has been the major factor in 38 of the 96 death sentences reversed by the state Supreme Court and federal courts since 1987, data gathered by the Mercury News shows. During the same time, the state has carried out only 13 executions. That is a fraction of the instances where lawyers did such a poor job defending their clients that a death sentence had to be scrapped.

Prosecutorial misconduct - from breaking ethical rules on evidence to making improper comments to jurors - has also been a major factor in nearly 20 percent of the death sentences overturned in the past 20 years.


In the cases of Hardy and Jackson, such mistakes will force prosecutors to retry them decades after their crimes, or settle for life in prison without parole. Hardy is on death row for the 1983 murder of a woman and her young son in Van Nuys, and Jackson was condemned for killing two elderly widowers as a teenager in Los Angeles in 1977.


The commission hopes to learn the factors behind such reversals, and also determine whether there are discrepancies across the state when prosecutors seek the death penalty in murder cases. The panel is scheduled to hold another hearing in March at Santa Clara University, then issue recommendations by the end of June.

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Statewide standards enacted five years ago for getting appointed to defend a death penalty case were supposed to solve the problems, but critics say they fall short of those in other states and those recommended by the American Bar Association.

Elisabeth Semel, head of Boalt Hall School of Law's death penalty clinic and a witness at the upcoming hearing, said "there is no available evidence" that the new rules have given defendants better representation in death penalty cases.

Many counties, she and others said, are increasingly relying on set contracts that discourage spending too much on costly capital trials. Santa Clara County has been among the counties to contract out defense work that cannot be handled by the public defender. County officials are considering ending that agreement.

It is a "myth" that counties across the state ensure that trained and experienced lawyers represent defendants facing the death penalty, said John Philipsborn, a veteran defense lawyer who is testifying for California Attorneys for Criminal Justice.

Others will urge the commission to reject such arguments, saying the state offers more resources and careful review than anywhere else in the country. Kent Scheidegger, legal director for the conservative Criminal Justice Legal Foundation, fears the commission may try to erode the death penalty.

"In both Illinois and New Jersey, we saw stacked commissions produce reports that read like propaganda pieces for one side," he said.

John Poyner, Colusa County's district attorney and president of the state's district attorneys association, said he will testify that prosecutors generally do a thorough job of screening potential

capital cases to focus on the worst of the worst.


"There are some ill-conceived thoughts that prosecutors don't use their discretion in making these decisions," Poyner said.

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