

Panel told trial errors are pervasive

WITHHELD EVIDENCE, POOR FUNDING, SCANT DISCIPLINE CITED

By Fredric N. Tulsy
Mercury News
San Jose Mercury News

Article Launched: 07/12/2007 01:33:26 AM PDT

LOS ANGELES - At a daylong hearing probing the roles that prosecutorial and defense misconduct play in wrongful convictions, a parade of attorneys and legal experts told a statewide commission that both problems are pervasive and that more must be done to address them.

For prosecutors, the commission heard Wednesday, the misconduct often involves withholding evidence from defendants or giving improper closing arguments to juries. For defense attorneys, the failures often involve poorly investigated cases - a problem tied to inadequate spending.

And neither are likely to face any public repercussions when they do commit such errors.

"What gets squashed is the truth," said Professor Laurence Benner of the California Western School of Law, who called the combination of withheld evidence and poorly funded defense attorneys the "vice of our criminal justice system."

But some district attorneys attending the hearing of the California Commission for the Fair Administration of Justice were concerned that the panel would craft misguided new rules to try to address misconduct.

'Ahead of the curve'

Speaking between sessions of the hearing, where she also testified, Santa Clara County District Attorney Dolores Carr reiterated her plans to eliminate, as much as possible, prosecutorial misconduct.

"Our office is working to stay ahead of the curve," Carr said.

The hearing, focused statewide, mirrored findings in the Mercury News' "Tainted Trials, Stolen Justice" series, which found that questionable conduct by prosecutors and defense lawyers in Santa Clara County increased the small but significant risk of wrongful convictions.

The commission, chaired by former state Attorney General John Van De Kamp, is considering a range of steps to address the problems: more rigorous reporting of prosecutorial misconduct; more training on prosecutors' duty to promptly turn over potentially helpful defense evidence; and addressing inadequate funding for defense work in many counties.

Among the other statements Wednesday that drew concern was a claim that the statewide district attorneys' association had discouraged attorneys from cooperating with the law professors who were doing research for the commission.

"Overall there was suspicion" among district attorneys, said Loyola Law School professor Laurie Levenson - and that impeded her effort to gather information from prosecutors. Carr, for her part, pledged at the hearing that her office would cooperate with Levenson's work.

Punishment lacking

Meanwhile, the commission heard testimony that one weapon against misconduct - aggressive punishment of errant prosecutors and defense attorneys - has been lacking.

Kathleen Ridolfi, a commission member and the director of the Northern California Innocence Project, told the commission that her own current study of prosecutorial misconduct in California identified 347 prosecutors who had engaged in misconduct during a 10-year period, but only one had been publicly disciplined for that conduct.

Scott Drexel, chief trial counsel of the state bar, told the commission that many judges do not report instances in which they witness apparent misconduct. But even if they did, Drexel said, his agency is limited by a high standard of proof required to warrant discipline. "Only in the most egregious cases would we go forward," he said.

Commission members also heard testimony that an increasing number of counties are turning over the representation of impoverished defendants to firms willing to do the work on the cheap.

Leonard Tauman, whose firm provided Placer County's public defenders for 16 years, told the commission that when his firm was replaced last year, county officials said it was "just a matter of dollars and cents. Our level of service, I think, was very high."

Contact Fredric N. Tulsy at rtulsy@mercurynews.com.

Close Window

Send To Printer