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Death penalty and race: Scales of justice may weigh heavily against blacks

Statistics indicate sentence meted out highly selectively.

By Claire Cooper - Special to The Bee

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For Bill Babbitt, a black man, the question comes down to this: Why did Sacramento County condemn his brother Manny to death for killing a white woman but sentence his cousin Butchie's white killer to a year in jail?

"I'm looking at all these murders that have occurred, hundreds, and I'm thinking, how did Manny's name come up?" says Babbitt, who witnessed his brother's execution by lethal injection in 1999.

How did Manuel Babbitt become one of the 827 first-degree murderers chosen for California's ultimate penalty? The same question is being asked, in effect, by a state commission that tried to learn whether race or other inappropriate factors have been determining who gets the death penalty and who does not.

After failing to obtain most of the relevant data, the California Commission on the Fair Administration of Justice, appointed by the state Senate and chaired by former California Attorney General John Van de Kamp, last week called for legislation requiring prosecutors to collect and report all information on their decisions whether to seek the death penalty. The commission also wants courts and defense lawyers, as well as prosecutors, to collect and report information showing whether race affects the outcome of murder prosecutions.

The commission calculated that 87 percent of first-degree murders in California could be prosecuted as death-penalty cases. But the great majority are not. The commission was unable to find out what makes the difference partly because most county district attorneys refused to cooperate with Pepperdine University law school researchers employed to construct and conduct a survey. District attorneys in each county have their own standards and procedures for evaluating murder cases. But even those internal rules are kept secret in most counties, including Sacramento.

Some information is available, however, from other sources. It reveals disturbing patterns. Records show administration of the death penalty is highly selective – 5.6 percent of about 12,000 first-degree murderers now in prison are sentenced to death.

Since capital punishment was reinstated in California in 1977, death sentences against black defendants, but not Latinos, have been disproportionately enormous by almost every measure: population, homicide rates, victim data and the sentencing patterns of other

states.

California's 5-to-1 ratio of blacks on death row to blacks in the state population, measured in percentages, is much higher than the ratios in Texas, Georgia, Alabama and South Carolina. The national average is 3 to 1.

Most of the raw data come from published and unpublished reports of statisticians in the state Department of Justice, the Department of Corrections and Rehabilitation, and the California Appellate Project, which provides technical support to defense lawyers appointed by the state Supreme Court in capital appeals. The project tries to collect ethnic data matching death row inmates and victims, and does its best to verify the information.

The problem with the high death penalty rate for blacks isn't the number arrested for homicide. Twenty-four percent of the people arrested for homicide are black, but blacks make up 36 percent of the current death row population. Latinos are 46 percent of homicide arrestees but 20 percent of death row inmates.

One factor causing this imbalance seems to be a large number of cases in which blacks have been sentenced to death for killing white victims. Statewide, where the victim's race is known, nearly half of all death sentences against black defendants have involved the killing of at least one white victim. In death sentences against all ethnic groups, 59 percent have involved a white victim. Yet whites are only about 22 percent of homicide victims.

The numbers for Sacramento County are similar to the state figures in some respects but not others. The defendant was black in one of every three death sentences handed down in Sacramento County. A white victim was involved in four out of five death sentences against blacks. The county's black population is about one in 10.

Sacramento's percentage for death sentences against blacks for killing whites is about double the percentage statewide. But the percentage of white murder victims in the county also is about double the state average.

The county has a relatively high death-sentencing rate – almost one-third higher than California's as a whole, according to sociologists Glenn Pierce and Michael Radelet, authors of "The Impact of Legally Inappropriate Factors on Death Sentencing in California Homicides, 1990-1999."

Pierce and Radelet said victim statistics are key to understanding the disparities that show up in the death row population. They concluded that in homicides with comparable circumstances, the likelihood of getting a death sentence for killing a white victim was vastly greater than for killing a black or Latino.

The U.S. General Accounting Office reported in 1990 that those who murder white victims are most likely to be sentenced to death nationally.

In Sacramento County, if the black-on-white cases weren't counted, the percentages of blacks in the population and death sentences against blacks would be about even. But in Los Angeles County, crimes committed by blacks against whites are a relatively small part of the mix, despite the county's 43 death sentences against black defendants for killing white victims and two death sentences against white defendants for killing black victims.

Some counties, including Alameda and San Bernardino, haven't sentenced a single white person to death for killing a black person since the death penalty was reinstated in 1977.

Sacramento did so in two cases.

Albert Locher, Sacramento County's assistant district attorney, says his office takes race or ethnicity into account only when it must identify a perpetrator described by witnesses in racial terms, or in hate crimes, which by definition may involve crimes committed because of the victims' race or ethnicity.

He also says that not filing a death penalty case because there are too many in a particular category, such as black crimes against whites, would be inappropriate.

None of the numbers proves that race is the reason why some murderers have been sentenced to death but not others. And much more information would be needed to prove or disprove a connection between the district attorneys and any bias that may exist.

The problem may lie elsewhere, within or outside the criminal justice system. Pierce and Radelet suggested bias may enter a case when police investigators work harder to collect evidence in the deaths of white victims.

"We just deal with the cases as they come in the door," Locher says. "The district attorney doesn't investigate the cases or have an effect on who commits what crimes."

Even Bill Babbitt thinks race was just one of several reasons why his brother was put to death. Among other possible factors: Poor people like Manny Babbitt often do not get good lawyers. Manny Babbitt's lawyer later resigned from the bar with disciplinary charges pending.

The legislative proposal by the Commission on the Fair Administration of Justice doesn't cover all the possible reasons why so many blacks are on death row. And the recommendation already is being opposed by police, prosecutors and victims' representatives, who say there's been no evidence of abuse by prosecutors in three decades of deciding which murders warrant the death penalty.

The critics also don't want prosecutors to adopt formal, written, public policies on when they'll seek the death penalty, as the commission has recommended. Such documents would serve primarily to create new grounds for condemned prisoners to challenge their convictions, the critics say.

They may be right. Maybe racial factors haven't been influencing prosecutors' decisions to ask for the death penalty. If that's true, though, developing and disclosing more information might reassure Bill Babbitt and the state's policymakers, and it would improve public confidence in California's criminal justice system.

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