



## Murder sentences not much of a deterrent

By Paul T. Rosynsky  
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Alameda County District attorney Tom Orloff  
(Laura A. Oda/Staff file)

OAKLAND — A common refrain in the city's most violent neighborhoods advises that "it's better to be convicted by 12 than be buried by 6."

Surrounded by crime and believing living past 30 years old is a feat in itself, most of the city's teenagers would rather be convicted by a jury and sent to prison than carried to a grave by pallbearers.

It's under that atmosphere that many of the city's killings occur, carried out by people who didn't care or didn't think about the consequences associated with taking someone else's life.

"People are so broken down in some of these communities (that their) options are limited. You either shoot or get shot," said Anne Beles, a defense attorney for more than 10 years. "You have a different perception of violence if that is what you see every day."

Given those circumstances, believing harsh punishments can reduce violence is a myth to those on the fringes of society, said people who work in the criminal justice system and study it.

"They have a very steep discount rate for the future," said Jonathan Simon, a professor of law at UC Berkeley's Boalt Hall School of Law. "They put no value on their own tomorrow, and that is the worst possible situation for deterring, because they are not thinking about tomorrow."

### Change has come

That thinking is evident in the types of killings that are occurring now compared with a decade ago, Alameda County District Attorney Tom Orloff said.

Last year, for example, a 23-year-old was convicted of murdering his sister's friend's brother after the sister fought with the brother over who would control a television remote. And in March, an Alameda 20-year-old was found guilty of first-degree murder for killing his 19-year-old friend because the friend flirted with his girlfriend.

"It used to be you had some shooting or robberies or someone taking over someone's drug spot," Orloff said. "That is stupid, but you can say OK, this is a businessman trying to take over a business."

"But in the last several years, the motives have become much more trivial, people are willing to shoot people over wearing the wrong color in the wrong neighborhood or this whole disrespect thing,

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saying something wrong to someone's girlfriend," Orloff continued.

In these situations, punishment does not appear to be something thought about by those committing the killings even though, Simon said, the United States has some of the harshest punishments for murder in the world.

Being found guilty of first-degree murder will automatically result in a 25-years-to-life punishment. A second-degree murder is punished with a 15-years-to-life sentence. Commit multiple murders or murder someone while committing another violent crime such as rape, and there is a strong possibility the death penalty will be enacted.

On top of those punishments are California's numerous "use" clauses, which add time in prison for using weapons.

For example, if you show a gun while committing a crime you will get 10 years added to your punishment, if you fire the gun you get 20 years added, and if you hit someone with a bullet you can get a life sentence behind bars.

Yet, these murderers either don't believe they will be caught or live in a situation in which killing is an everyday part of life.

"I grew up and never saw anyone get shot, but there are many people who walk out of their homes and see or know someone who got shot the night before," Beles, the defense attorney, said. "We are dealing with people who are functioning on a daily basis with traumatic stress disorder."

**'Punishment does deter them'**

While Orloff agrees that not everyone is deterred by punishment, he believes long prison terms for

violent criminals do keep a lid on crime.

"Obviously, there are a number of people who it does not deter," Orloff said. "But can you imagine if there were not any sanctions what would be going on out there."

Orloff compares society's reaction to punishment to the bell curve. On one side are people who would never commit a crime, on the other are those who will commit a crime regardless and in the middle are those who choose not to commit a violent felony because of the consequences.

"The vast majority in the middle, punishment does deter them," Orloff said.

Despite the hopelessness associated with trying to prevent senseless killings, all is not lost.

Many murderers sent to prison appear to realize the mistakes they made after serving decades behind bars.

In fact, many murderers serving a 15- or 25-years-to-life sentence are some of the best behaved prisoners in the state, said Simon, the law professor. In addition, studies have shown that after serving a quarter of their life in prison, the chances are slim that once released a murderer will kill again.

"The good news is we have always known that murderers have a low rate of recidivism," Simon said. "There is something that gets their attention after they are convicted to a life sentence."

These prisoners often mentor others while sharing a jail cell, Simon said. There is a hope among this group if they behave in prison, they will be granted parole once their 25-year sentence is served, Simon said.

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"People have this extraordinary ability to be optimistic, while they are aware of the large amount of people that are denied parole, they believe that if they can get that college degree, or complete that one program, they are going to get lucky," he said.

**Waiting too long**

But the lessons learned by these "lifers" are rarely shared with the population that needs to learn that killing someone has consequences. Rarely does a defendant sentenced to 25 years to life for murder get released on parole. As punishments increase, their chances to re-enter society dwindle.

"Right now, we are basically making no distinction between the people that have tried very hard and those who have not tried at all," Simon said. "We treat them the same way as the people who are just sitting there steaming."

The longer prison terms and almost nonexistence of parole approvals for murder are a reaction to the more lenient punishments doled out in the 1960s and 1970s. But the harsher punishments have not directly resulted in a reduction of killings, proving that the courthouse is not the place to begin when looking at reducing crime, those in the criminal justice system said.

Instead, many argue, policing, education and social programs need to be the center of attention in the debate.

"In terms of core function, (the court system) is pretty reactive," Orloff said.

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