

SB

52

HFIN

FILE

(11)

HOUSE COMMITTEE REPORT

Date Referred to Committee: April 29, 1996

FURTHER REFERRALS:

Date of Committee Action: _____

The FINANCE Committee considered:

CSSSSB 52(JUD)

CS FOR SPONSOR SUBSTITUTE FOR SENATE BILL NO. 52(JUD)

ADVISORY VOTE ON CAPITAL PUNISHMENT

"An Act providing for an advisory vote on the issue of capital punishment."

recommends it be replaced with the following committee substitute _____ the same title a new title

additional referral to _____ Committee
 attached amendment(s)

ADOPTS: _____ Letter of Intent

ATTACHES NEW FISCAL NOTE(S): _____ (Dept)

APPROVES PREVIOUS: _____ (Dept/Date)

fiscal note(s) _____

fiscal note(s) _____

zero fiscal note(s) _____

zero fiscal note(s) _____

SIGNING WITH RECOMMENDATIONS	DP	DNP	NR	AM
Died				
in				
committee				

CHAIR'S SIGNATURE _____

Alaska State Legislature

Chairman
Judiciary Committee

Vice Chairman
Transportation Committee

Member
Resources Committee
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Sponsor Statement

Senate Bill 52

Senate Bill 52 is intended to seek the advice of the voters of Alaska on the controversial issue of capital punishment.

Passage of SB 52 will not impose the death penalty in Alaska. It simply places on the ballot the question "Shall the Alaska State Legislature enact a law providing for capital punishment for murder in the first degree and establishing procedures for the imposition of capital punishment that are consistent with the United States Constitution as interpreted by the United States Supreme Court?"

For years, opinion poll after opinion poll have reflected the desire of the people of Alaska to have the death penalty available as an option in this state. SB52 seeks to employ the ultimate poll, that of the ballot box, in a non-binding vote.

Given the option of a death penalty or life in prison without parole, 555 Alaskans polled statewide in March of this year, favored the death penalty by a 62% margin, with 35% choosing life without parole. It is especially significant that only 5% of the respondents said they were unsure.

Support for the death penalty crossed all demographics, including location, gender, age, party affiliation, employment status and time in the community.

There are those who argue that the people of Alaska are somehow unqualified to render advice on this issue. They argue that the ballot question itself is too simplistic.

Alaska has one of the youngest, best educated and well read populations in the nation. Judging from the campaign already mounted against SB52, the organized groups opposed to capital punishment most certainly will conduct a more intensive campaign as November approaches. Alaskans will vote based on information, not emotion.

Issues such as the cost and effectiveness of capital punishment will be part of any campaign on the ballot question and will need to be explored at length if the voters advise the 20th Alaska Legislature to pursue this issue.

For now, we are talking about placing an advisory vote on the ballot, at a cost of \$2,200.

WHICH PUNISHMENT DO YOU SUPPORT THE MOST FOR CRIMINALS CONVICTED OF PARTICULARLY TERRIBLE CRIMES AGAINST PEOPLE, INCLUDING FIRST DEGREE MURDER...

DEMOGRAPHICS	UNSURE	DEATH PENALTY	LIFE W-O PAROLE
TOTAL.....	5%	62%	33%
LOCATION			
RURAL.....	8%	59%	32%
CENTRAL.....	2%	56%	42%
SOUTH CENTRAL....	4%	63%	32%
ANCHORAGE.....	4%	66%	30%
SOUTH EAST.....	6%	59%	35%
GENDER			
MALE.....	4%	69%	27%
FEMALE.....	5%	55%	40%
RESIDENT AGE			
18-29 YRS OF AGE.	4%	57%	39%
30-44 YRS.....	2%	68%	30%
45-59 YRS.....	7%	57%	36%
60+ YEARS OF AGE.	6%	65%	29%
DEMOCRAT.....	6%	47%	47%
REPUBLICAN.....	6%	77%	17%
NON-PARTISAN.....	4%	62%	34%
OTHER.....	0%	55%	45%
NOT REGISTERED...	0%	61%	39%
EMPLOYMENT			
FEDERAL.....	0%	82%	18%
STATE.....	5%	53%	42%
LOCAL.....	7%	60%	32%
PRIVATE.....	4%	63%	33%
NOT IN WORKFORCE.	7%	59%	35%
TIME IN COMMUNITY			
TO 4 YEARS.....	6%	61%	33%
5-9 YEARS.....	0%	70%	30%
10-14 YEARS.....	1%	62%	37%
MORE THAN 15 YEARS.....	6%	61%	33%

MILLIONS MISSPENT:

What Politicians Don't Say About the High Costs of the Death Penalty

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"Whether you're for it or against it, I think the fact is that Oregon simply can't afford it."

*—James Ellis,
Chief Criminal Judge, Oregon*

A Report by
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October 1992

Executive Summary

Across the country, police are being laid off, prisoners are being released early, the courts are clogged, and crime continues to rise. The economic recession has caused cutbacks in the backbone of the criminal justice system. In Florida, the budget crisis resulted in the early release of 3,000 prisoners. In Texas, prisoners are serving only 20% of their time and rearrests are common. Georgia is laying off 900 correctional personnel and New Jersey has had to dismiss 500 police officers. Yet these same states, and many others like them, are pouring millions of dollars into the death penalty with no resultant reduction in crime.

The exorbitant costs of capital punishment are actually making America less safe because badly needed financial and legal resources are being diverted from effective crime fighting strategies. Before the Los Angeles riots, for example, California had little money for innovations like community policing, but was managing to spend an extra \$90 million per year on capital punishment. Texas, with over 300 people on death row, is spending an estimated \$2.3 million per case, but its murder rate remains one of the highest in the country.

The death penalty is escaping the decisive cost-benefit analysis to which every other program is being put in times of austerity. Rather than being posed as a single, but costly, alternative in a spectrum of approaches to crime, the death penalty operates at the extremes of political rhetoric. Candidates use the death penalty as a facile solution to crime which allows them to distinguish themselves by

the toughness of their position rather than its effectiveness.

The death penalty is much more expensive than its closest alternative—life imprisonment with no parole. Capital trials are longer and more expensive at every step than other murder trials. Pre-trial motions, expert witness investigations, jury selection, and the necessity for two trials—one on guilt and one on sentencing—make capital cases extremely costly, even before the appeals process begins. Guilty pleas are almost unheard of when the punishment is death. In addition, many of these trials result in a life sentence rather than the death penalty, so the state pays the cost of life imprisonment on top of the expensive trial.

The high price of the death penalty is often most keenly felt in those counties responsible for both the prosecution and defense of capital defendants. A single trial can mean near bankruptcy, tax increases, and the laying off of vital personnel. Trials costing a small county \$100,000 from unbudgeted funds are common and some officials have even gone to jail in resisting payment.

Nevertheless, politicians from prosecutors to presidents choose symbol over substance in their support of the death penalty. Campaign rhetoric becomes legislative policy with no analysis of whether the expense will produce any good for the people. The death penalty, in short, has been given a free ride. The expansion of the death penalty in America is on a collision course with a shrinking budget for crime prevention. It is time for politicians and the public to give this costly punishment a hard look.

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"When politicians offer voters the death penalty as a solution to violence, the people actually become worse off in their fight against crime."

Introduction

Over two-thirds of the states and the federal government have installed an exorbitantly expensive system of capital punishment which has been a failure by any measure of effectiveness. Literally hundreds of millions of dollars have already been spent on a response to crime which is calculated to be carried out on a few people each year and which has done nothing to stem the rise in violent crime.

For years, candidates have been using the death penalty to portray themselves as tough on crime. But when politicians offer voters the death penalty as a solution to violence, the people actually become worse off in their fight against crime. The public is left with fewer resources and little discussion about proven crime prevention programs which could benefit their entire community. In today's depressed economy, the criminal justice system is breaking down for lack of funds while states pour more money into the black hole of capital punishment expense.

Local governments often bear the brunt of capital punishment costs and are particularly burdened. A single death penalty trial can exhaust a county's resources. Politicians singing the praises of the death penalty rarely address the question of whether a government's resources might be more effectively put to use in other methods of fighting crime. A million dollars spent pursuing the execution of one defendant

could provide far more effective long-term crime reduction: many additional police officers; speedier trials; or drug rehabilitation programs. Instead, in today's political atmosphere, politicians worry about appearing soft on crime, even if soft means espousing proven methods of crime reduction. Thus, there is little debate about whether the death penalty accomplishes any good at all.

Meanwhile, the death penalty is reaching a critical stage in America. No longer isolated in the South, the death penalty has become a national phenomenon. There are more people on death row than at any time in the nation's history. The list of states actually carrying out executions has grown to 20, with 4 new states added this year. The number of executions in 1992 is likely to be the largest in 30 years and the costs of pursuing the death penalty continue to mount. At the same time, the United States has parted company from the other democratic countries of the world which have largely abandoned capital punishment.

In the 1990 elections, politicians were particularly blatant in their promotion of the death penalty. It was advanced at all levels of the political process as an answer to crime and was used by liberals and conservatives alike. This year, the death

The Financial Costs of the Death Penalty

Death penalty cases are much more expensive than other criminal cases and cost more than imprisonment for life with no possibility of parole. In California, capital trials are six times more costly than other murder trials.¹ A study in Kansas indicated that a capital trial costs \$116,700 more than an ordinary murder trial.² Complex pre-trial motions, lengthy jury selections, and expense for expert witnesses are all likely to add to the costs in death penalty cases. The irreversibility of the death sentence requires courts to follow heightened due process in the preparation and course of the trial. The separate sentencing phase of the trial can take even longer than the guilt or innocence phase of the trial. And defendants are much more likely to insist on a trial when they are facing a possible death sentence. After conviction, there are constitutionally mandated appeals which involve both prosecution and defense costs.

Most of these costs occur in every case for which capital punishment is sought, regardless of the outcome. Thus, the true cost of the death penalty includes all the added expenses of the "unsuccessful" trials in which the death penalty is sought but not achieved. Moreover, if a defendant is convicted but not given the death sentence, the

state will still incur the costs of life imprisonment, in addition to the increased trial expenses.

For the states which employ the death penalty, this luxury comes at a high price. In Texas, a death penalty case costs taxpayers an average of \$2.3 million, about three times the cost of imprisoning someone in a single cell at the highest security level for 40 years.³ In Florida, each execution is costing the state \$3.2 million.⁴ In financially strapped California, one report estimated that the state could save \$90 million each year by abolishing capital punishment.⁵ The New York Department of Correctional Services estimated that implementing the death penalty would cost the state about \$118 million annually.⁶

The Recession and the Death Penalty

The effects of the present financial crisis on the criminal justice system vary widely, but the common thread has been cutbacks in critical areas. In a report released in August of this year, the American Bar Association found that *"the justice system in many parts of the United States is on the verge of collapse due to inadequate funding and unbalanced funding."* The report went on to state that *"the very notion of justice in the United States is threatened by a lack of adequate resources to operate the very system which has protected our rights for more than two centuries."*⁷

"The very notion of justice in the United States is threatened by a lack of adequate resources to operate the very system which has protected our rights for more than two centuries."

-American Bar Association

proposition that the death penalty is a needed addition to our arsenal of weapons lacks credibility and is, as a sheer matter of equity, morally irresponsible. If this is really the best we can do, then our public value system is bankrupt and we have truly lost our way."²⁰

While state and national politicians promote the death penalty, the county government is typically responsible for the costs of prosecution and the costs of the criminal trial. In some cases, the county is also responsible for the costs of defending the indigent. Georgia, Alabama and Arkansas, for example, provide little or no funding for indigent defense from the state treasury.²¹ In Lincoln County, Georgia, citizens have had to face repeated tax increases just to fund one capital case.

Even where the state provides some of the money for the counties to pursue the death penalty, the burden on the county can be crushing. California, for example, was spending \$10 million a year reimbursing counties for expert witnesses, investigators and other death-penalty defense costs, plus \$2 million more to help pay for the overall cost of murder trials in smaller counties. (Now, even that reimbursement is being cut.) But many financially strapped smaller counties still could not afford to prosecute the complicated death-penalty cases. Some small counties have only one prosecutor with little or no

experience in death-penalty cases, no investigators, and only a single Superior Court judge.²²

In Sierra County, California authorities had to cut police services in 1988 to pick up the tab of pursuing death penalty prosecutions. The County's District Attorney, James Reichle, complained, "If we didn't have to pay \$500,000 a pop for Sacramento's murders, I'd have an investigator and the sheriff would have a couple of extra deputies and we could do some lasting good for Sierra County law enforcement. The sewage system at the courthouse is failing, a bridge collapsed, there's no county library, no county park, and we have volunteer fire and volunteer search and rescue." The county's auditor, Don Hemphill, said that if death penalty expenses kept piling up, the county would soon be broke.²³ Just recently, Mr. Hemphill indicated that another death penalty case would likely require the county to lay off 10 percent of its police and sheriff force.²⁴

In Imperial County, California, the county supervisors refused to pay the bill for the defense of a man facing the death penalty because the case would bankrupt the county. The county budget officer spent three days in jail for refusing to pay the bill. A judge reviewing the case took away the county's right to seek the death penalty, thus costing the county the partial reimbursement which the state provided for capital cases. The County took the challenge all the way to the California Supreme Court and

life . . . I think maybe we have to be satisfied with that as opposed to spending \$1 million to try and get them executed. . . . I think we could use (the money) better for additional penitentiary space, rehabilitation efforts, drug rehabilitation, education, (and) especially devote a lot of attention to juveniles."³¹

Vincent Perini of the Texas Bar Association, calls the death penalty a "luxury": "There's some things that a modern American city and state have got to have. You have to have police and fire and public safety protection. You have to have a criminal justice system. You do not have to have a death penalty. The death penalty in criminal justice is kind of a luxury item. It's an add-on; it's an optional item when you buy your criminal justice vehicle."³²

Chief Criminal Judge, James Ellis, came to a similar conclusion in Oregon: "Whether you're for it or against it, I think the fact is that Oregon simply can't afford it."³³ James Exum, Chief Justice of the North Carolina Supreme Court, agrees: "I think those of us involved in prosecuting these (death penalty) cases have this uneasy notion that . . . these cases are very time-consuming and very troublesome and take a lot of resources that might be better spent on other kinds of crimes. . . ."

Efforts are under way in both Congress and the Supreme Court to reduce the avenues of appeal available to death row inmates. But most of the costs

associated with the death penalty occur at the trial level.³⁴

Whatever effect cutting back on the writ of habeas corpus may have on the time from trial to execution, it is not clear that the changes will make the death penalty any less expensive, and they may result in the execution of innocent people. With the number of people on death row growing each year, the overall costs of the death penalty are likely to increase.

Some state appeals courts are overwhelmed with death penalty cases. The California Supreme Court, for example, spends more than half its time reviewing death cases.³⁵ The Florida Supreme Court also spends about half its time on death penalty cases.³⁶ Many governors spend a significant percentage of their time reviewing clemency petitions and more will face this task as executions spread. As John Dixon, Chief Justice (Retired) of the Louisiana Supreme Court, said: "The people have a constitutional right to the death penalty and we'll do our best to make it work rationally. But you can see what it's doing. Capital punishment is destroying the system."³⁷

Alternatives for Reducing Crime

New York does not have the death penalty. In the early 1980s, the N.Y. State Defenders Association conducted a study to estimate how much the death penalty would cost if it were to be implemented in New York. The estimates were that each case

punishment partially on the grounds that it is a waste of money better spent on other areas of law enforcement and incarceration.⁴⁶ Attorney General Scott Harshbarger agreed: "We need major criminal justice and court reform now to address the crisis in our criminal justice system. The death penalty, however, has no place in this reform effort. It is a simplistic, arbitrary, misguided, ineffective and costly response, cloaked in the guise of a remedy to the brutalizing violence that angers and frustrates us all."⁴⁷

Compared to community policing and other successful programs, the death penalty, for all its cost, appears to have no effect on crime. A New York Times editorial noted recently that the number of executions in this country "constituted less than .001 percent of all murderers . . . and were only .000004 percent of all violent criminals. Even if U.S. executions were multiplied by a factor of 10 they would still constitute an infinitesimal element of criminal justice." The public seems to agree: only 13 percent of those who support capital punishment believe it deters crime.⁴⁸

New York and Massachusetts can be contrasted with Texas which is the nation's leader in the use of the death penalty. Texas has the largest

death row and has executed almost twice as many people as the next leading state. Houston alone accounts for 10% of all people executed in the United States since 1976.⁴⁹ Yet, the murder rates in three of Texas' major cities rank among the nation's top 25 cities. In all three, Houston, Dallas and Fort Worth, the number of murders increased significantly last year.⁵⁰

Wherever the death penalty is in place, it siphons off resources which could be going to the front line in the war against crime: to police, to correctional systems, and to neighborhood programs which have proven effective. Instead, these essential services are repeatedly cut while the death penalty continues to expand. Politicians could address this crisis, but, for the most part, they either endorse executions or remain silent.

"Even if U.S. executions were multiplied by a factor of 10 they would still constitute an infinitesimal element of criminal justice."

—New York Times
editorial, 1992



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centerpiece was an expansion of the federal death penalty to over 40 new crimes. Not to be outdone, the Democrats endorsed a bill allowing the death penalty in over 50 new crimes. Despite two years of debate and attempts to expand the death penalty even further, the bill remains in political gridlock. While the bill's death penalty provisions and restrictions on federal habeas corpus appeals have received the most notice, proposals for law enforcement, prison construction, boot camps

and other crime fighting provisions have received little attention.

Just prior to the last presidential election in 1988, the death penalty was also promoted as a way of appearing tough on drug crime. Legislation was passed imposing the death penalty in drug-related murders but that law has resulted in only seven prosecutions and one death sentence in almost four years. Bush's bill is designed to have a much broader application. However, some parts of the

"What they mean when they say they're 'getting tough' is simply that they are talking tough."

—Franklin Zimring,
Earl Warren Legal
Institute

The Death Penalty In State Politics

The death penalty is almost the exclusive function of the states rather than the federal government. It is not surprising, then, that some of the most blatant attempts at political manipulation of the death penalty have occurred on the level of state politics.

Florida and Texas are two states with the largest death rows and most active execution chambers. They were also the scene of recent gubernatorial races featuring candidates boasting of their ability to secure more executions than their opponent. In 1990, Florida's Governor Bob Martinez campaigned with background shots of smirking serial killer Ted Bundy, while reminding the voters how many death warrants he had signed. Martinez was defeated by Democrat Lawton Chiles who also favors the death penalty.

The Texas Campaign: "Who Can Kill the Most Texans?"

The governor's race in Texas presented a variety of candidates vying to demonstrate their greater support of the death penalty. As populist Democrat Jim Hightower put it, the race boiled down to one issue: "Who can kill the most Texans?"⁵⁹

Former governor Mark White portrayed his toughness by walking through a display of large photos of the people executed during his term. Attorney General Jim Mattox

insisted that he was the one who should be given credit for the 32 executions carried out under his watch. Meanwhile, the Republican candidate, Clayton Williams showed pictures of a simulated kidnapping of young children from a school yard and then touted his backing of a separate law to impose the death penalty for killing children. His ad ended with the slogan: "That's the way to make Texas great again."⁶⁰

In the end, the campaigns succeeded only in gaining embarrassing notoriety for Texas as Democrat Ann Richards became the eventual winner. Richards has continued Texas' leadership in carrying out the most executions of any state. However, while Texas is spending hundreds of millions of dollars on the death penalty, it is having to release other prisoners early to avoid overcrowding. Inmates serve only an average of one-fifth of their sentences. In Harris County (Houston), arguably the death penalty capital of the country, 67 percent of those arrested are recidivists and crime is the people's number one concern.⁶¹

California Politics: A Case of Neglect

California's 1990 gubernatorial race also involved jockeying for the position of "death penalty candidate." Dianne Feinstein was the most outspoken, describing herself in commercials as "the only Democratic candidate for governor in favor of the death

repeatedly Cuomo's 1990 Republican opponent, Pierre Rinfret, built a campaign around the death penalty but failed to win voter support. Even fellow Republican and death penalty supporter Jack Kemp rejected such blatant manipulation:

"He's running on the death penalty for drug pushers. I mean, goodness gracious, if . . . that's what politics has descended into in the 1990s—who can get to the far right on the death penalty—it is a sad day. . . . I don't want to be in the Republican Party of New York if that's all they can talk about, the death penalty. I am for the death penalty, but that pales in significance to the need for a healthy economic and opportunity-oriented state, whether it is New York or the state of the economy nationally."⁶⁸

The New York legislature has often come close to overriding Cuomo's veto. Lately, however, that movement has been losing steam. The controversy demonstrates that switching one's allegiance on the death penalty issue to join the mainstream is not always a ticket to electoral success. In the 1990 elections, three Assemblymen who once opposed the death penalty, but who had lately switched their votes, were all defeated.⁶⁹ As a result, the vote to override Cuomo's veto lost by a larger margin in the next session.

The New York Daily News, long a supporter of the death penalty with such subtle

headlines as FRY HIM!, has apparently become frustrated with the political games-playing surrounding the issue and now rejects the death penalty. In an editorial earlier this year, the News took particular aim at those pro-death penalty politicians who vote against the alternative sentence of life-without-parole because it would make their own death penalty bill harder to pass: "Why won't the Legislature adopt the obvious alternative—life without parole? Because pols would rather grandstand on the death penalty. It is cheap political expedience, not wise public policy."⁷⁰

The death penalty's chief proponent in the New York Assembly, Vincent Graber from Buffalo, acknowledged the kind of manipulation the News criticized. Graber admitted that the life-without-parole bill was rejected because it interfered with the quest for capital punishment: "This being an election year," Graber said in 1990, "I don't think the Senate is in the mood to go with mandatory life, no parole. The death penalty would become less of a campaign issue and I don't think they want to do that."⁷¹

Politics in Other Places

Politicians are quick to capitalize on an opportunity to promote the death penalty. Massachusetts does not have the death penalty, but when Carol Stuart, a young white, pregnant woman, was brutally murdered in 1989, the city of Boston reacted in angry shock. The media and

"I don't want to be in the Republican Party of New York if that's all they can talk about, the death penalty. I am for the death penalty, but that pales in significance to the need for a healthy economic and opportunity-oriented state, whether it is New York or the state of the economy nationally."

—Jack Kemp,
Secretary of HUD

seek the death penalty. However, he later allowed the defendant to plead guilty in exchange for a life sentence after the defense proffered three expert witnesses to testify that his ethical violations should disqualify him from retrying the case. Briley's frustration at having to take the plea was summed up in his comment to one of the defense attorneys: "You've probably made me unelectable."⁷⁶

In Kentucky, Commonwealth Attorney Ernest Jasmin made a name for himself by obtaining a death sentence against the killer of two teenagers from Trinity High School. He then campaigned as the Trinity Prosecutor, taking ads in the high school newspaper and campaigning with one of the victims' parents frequently at his side.⁷⁷

In Nebraska, attorney general Don Stenberg took the unusual step of attaching a personal letter to his Supreme Court brief urging the execution of Harold Otey, whom he described as a "vicious killer" who "still smirks at the family of the victim...."⁷⁸ While pushing publicly for Otey's death, Stenberg also sat as one of three decision makers at Otey's clemency hearing and two of his staff presented gruesome details of the murder.

In sum, there has been a steady stream of politicians attempting to capitalize on the death penalty issue in recent years. Real solutions to crime get overshadowed in the tough

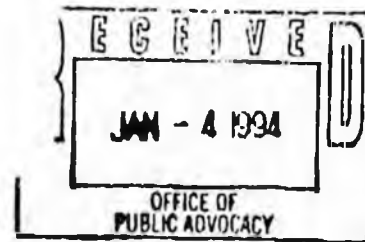
talk of capital punishment. When some of these politicians are successful, the death penalty gets implemented or expanded and the people begin to pay the high costs. Somewhere down the road there may be an execution, but the crime rate continues to increase. Politicians do the people a disservice by avoiding the hard economic choices that have to be made between the death penalty and more credible methods of reducing violence.

Conclusion

The death penalty is parading through the streets of America as if it were clothed in the finest robes of criminal justice. Most politicians applaud its finery; others stare in silence, too timid to proclaim that the emperor has no clothes. Instead of confronting the twin crises of the economy and violence, politicians offer the death penalty as if it were a meaningful solution to crime. At the same time, more effective and vital services to the community are being sacrificed. Voters should be told the truth about the death penalty. They should understand that there are programs that do work in reducing crime, but the resources to pay for such programs are being diverted into show executions. Being sensible about crime is not being soft on crime. Too much is at stake to allow political manipulation to silence the truth about the death penalty in America.

- 29 *Maxwell Murder Trial May Up Kemper Taxes*, The Meridian Star (Mississippi), July 21, 1992; phone conversation with Michael Luke, September 11, 1992.
- 30 *Public Defender System Needed*, The Yazoo Herald, July 6, 1991.
- 31 Hoppe, The Dallas Morning News, see note 3.
- 32 *Id.*
- 33 J. Painter, *Death Penalty Seen as Too Costly for Oregon's Pocketbook*, The Oregonian (Portland), July 27, 1987.
- 34 Kansas, for example, estimated that the annual cost for implementing the death penalty would be \$11.4 million, of which \$9.2 million would be for trial costs. Kansas Legislative Research Dept. Memorandum, Feb. 11, 1987. New York estimated a cost of \$1.8 million per case, through the first level of appeals, of which \$1.5 million would be trial costs. *Capital Losses: The Price of The Death Penalty for New York State*, NY State Defenders Association, Albany, 1982.
- 35 Magagnini, see note 1.
- 36 M. Hansen, *Politics and the Death Penalty*, The Palm Beach Review's Florida Supreme Court Report, Feb. 25, 1991, at 10B, 26B.
- 37 D. Kaplan, *Death Mill, USA*, The National Law Journal, May 9, 1989, at 40.
- 38 See *Capital Losses*, note 34.
- 39 U.S. Dept. of Justice, Uniform Crime Report, preliminary annual release, April 26, 1992; see also Richmond-Times Dispatch, April 27, 1992 for chart of 25 cities based on the Uniform Crime Report.
- 40 G. James, *In Every Category, Crime Reports Fell Last Year in New York City*, The New York Times, March 26, 1992, at A1.
- 41 The New York Times, Aug. 4, 1992, chart at B2.
- 42 C. Wolff, *Brown Legacy: Community Policing*, The New York Times, Aug. 4, 1992, at B2.
- 43 E. Meyer, *Policing With People in Mind*, The Washington Post, June 15, 1992, at A1, 8.
- 44 T. Squitieri, *Murder Rate is Up in Usually Slow First Quarter*, USA Today, April 3, 1992, at 8A.
- 45 National Association of Chiefs of Police, 4th National Poll, 1991.
- 46 K. Cullen, *Death Penalty Criticized by County Prosecutors*, The Boston Globe, Jan. 26, 1992.
- 47 S. Harshbarger, see note 20.
- 48 *Death, Life and the Presidency*, The New York Times, January 25, 1992.
- 49 J. Kennedy, *Why Houston Leads in Death Row Cases*, The Los Angeles Times, July 2, 1992 (Washington edition).
- 50 See note 39.
- 51 *Republican Leaders Praise Atwater After Memo Flap*, The Courier-Journal (Louisville, KY), June 17, 1989.
- 52 M. Wines, *Bad Economic News Forces Bush to Refocus Re-election Strategy*, The New York Times, July 4, 1992, at A1.
- 53 D. Von Drehle, *A Broader Federal Death Penalty: Prelude to Bloodbath or Paper Tiger?*, The Washington Post, November 29, 1991, at A29, quoting Franklin Zimring, director of the Earl Warren Legal Institute.
- 54 Letter from Robert D. Reischauer, Director of the Congressional Budget Office to Charles E. Schumer, Chairman of the House Subcommittee on Crime and Criminal Justice, September 20, 1991.

ADVANCED POLICY ANALYSIS



CAPITAL PUNISHMENT AT WHAT PRICE: AN ANALYSIS OF THE
COST ISSUE IN A STRATEGY TO ABOLISH THE DEATH PENALTY

Prepared for Death Penalty Focus of California

by David Erickson

Spring 1993

The author conducted this study as part of the program of professional education at the Graduate School of Public Policy, University of California at Berkeley. This paper is submitted in partial fulfillment of the course requirements for the Master of Public Policy degree. The judgements and conclusions are solely those of the author, and are not necessarily endorsed by the Graduate School of Public Policy, by the University of California or by any other agency.

EXECUTIVE SUMMARY

Regardless of how one views capital punishment philosophically, the real world application of a policy where the state poisons human beings is too problematic, and ultimately too costly to California taxpayers. This fact is evident from a study limited to only the trial level application and does not consider any aspect of the appeals process. Of course, even at the trial level there are ways to make the death penalty cheaper, but looking at other states (particularly in the South), the cost savings from employing substandard indigent defenders, for example, saves little and creates a sentencing practice that routinely makes hideous mistakes.

The death penalty is a complex public policy. To make sure it works in a socially acceptable manner—that is, administered fairly with special safeguards to protect the innocent—is time consuming, complicated and ultimately more expensive to the tax payer than life in prison without the possibility of parole. This high price might be justified if it actually made California communities safer from the threat of violent crime, but there is virtually no evidence to support this claim. After decades of extensive inquiry, most studies either determine that there is no added deterrent effect to the death penalty over life in prison without parole, or the statistical models are too crude to answer the question.

Even with cumbersome, burdensome and expensive safeguards mandated by the U.S. Supreme Court, the application of the death penalty is administered unfairly. Today, however, local government cannot pay for even inadequate safeguards. While the Supreme Court mandated procedural protections against bias in sentencing, it did not mandate the budget surpluses with which to administer them. Statistical evidence suggests that revenue-poor counties are charging the death penalty less frequently than revenue-rich counties, presumably to avoid paying for the high cost of the safeguards. Additionally, the high cost of the death penalty is putting an undue strain on counties already cutting back on essential services such as fire and police protection.

Based on a study of data from the Los Angeles County Auditor-Controller, Los Angeles County Superior Court, Los Angeles prosecuting and defense attorneys, the Los Angeles County Jail and the Judicial Council, this study concludes that the enhanced cost of a death penalty case is *at least* \$1.2 million more than a comparable murder trial pursuing the alternative of life in prison without parole. These savings are entirely at the trial level and do not even consider the cost to county taxpayers as they pay for the mandatory state supreme court appeals and potential federal appeals. At this cost, the county of Los Angeles could write a check to the state department of corrections for the cost of 40 years of confinement in a maximum security prison, pay for a full murder trial with special circumstances and still save nearly \$1 million in scarce public resources by not pursuing a single death penalty trial.

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This study is in two parts. Part I is a general overview of the issue of cost in administering the death penalty, focusing primarily on the local county level. It also arrives at a per case cost figure based on data from Los Angeles County. Part II contains recommendations on how to use the information in Part I in Death Penalty Focus' ongoing campaign to abolish capital punishment in California.

PART I

When all is said and done, there can be no doubt that it costs more to execute a man than keep him in prison for life.

—Justice Thurgood Marshall¹

SECTION I: INTRODUCTION

Philosophical maxims, moral absolutes and politically-charged rhetoric characterize the debate over the death penalty. Talking a human life is ominous and perilous and requires this level of discussion. But while these arguments are cast back and forth in the great halls of policy making, the squeaky wheels of an under-funded and overburdened county-level bureaucracy churn out death sentences unfairly.

Whether or not capital defendants live or die has more to do with their race and status, the race and status of the victim and increasingly, whether or not they commit a crime in a revenue-rich county. The death penalty is a complex and costly sentence; so costly in fact that other essential services are often sacrificed to pursue it. Consider the following examples:

- "If we didn't have to pay \$500,000 a pop for Sacramento's murders," Sierra County's District Attorney said, "I'd have an investigator and the Sheriff would have a couple of extra deputies and we could do some lasting good for Sierra County law enforcement." After a murder wave struck this area in 1988, Sierra County spent millions of dollars on several lengthy death-penalty trials. This overburdening cost forced them to leave unfilled a vacancy in the already understaffed Sheriff's Department during a time when the county's crime rate was on the rise.²

¹ *Furman v. Georgia* 408 U.S. 238, (1972), p. 357-8.

² Magagnini, Stephen. "Sierra County robs police to pay lawyers." *Sacramento Bee*. Monday March 28, 1988

- Yolo County is struggling to keep its courts open because of the financial strain created by death penalty cases.³
- A prosecutor in Polk County, Florida finds it must make a choice between pursuing a modern fire engine or prosecuting a death penalty case. The County Commission won out. The County got a new fire engine and the DA charged the murder defendant with life in prison.⁴

To make sure it works in a socially acceptable manner—that is, administered fairly with special safeguards to protect the innocent—is time consuming, complicated and ultimately more expensive to the tax payer than life in prison without the possibility of parole. Like so many other things, approving of the popular *idea* of capital punishment is much different from understanding the multitude of problems with actually gassing and poisoning human beings on behalf of the state.⁵ With significant experience in administering the death penalty, retired Chief Justice of the Louisiana Supreme Court, John Dixon, clearly identifies the dichotomy between its theory and practice: "The people have a right to the death penalty and we'll do our best to make it work rationally. But you can see what it's doing. Capital punishment is destroying the system."⁶

SECTION II: COUNTIES ON THE BREAKING POINT, CAN THEY AFFORD THE DEATH PENALTY?

Beginning with the fiscal year July 1, 1993 California's 58 counties will suffer a \$2.6 billion reduction in their share of property-tax revenue. Only last year, the counties took a \$1.3 billion cut in these revenues.⁷ Cuts of this magnitude are affecting county programs in health, welfare and public protection. Lassen County offers a good example of how the

³ "Yolo Scrambles to Cope with Strained Courts," *Sacramento Bee*, November 22, 1989.

⁴ Interview with Michael Radalet, University of Florida professor and co-author of *In Spite of Innocence* (April 30, 1993).

⁵ Support for capital punishment in California is seemingly high. Nearly 80 percent of respondents to a Field poll approved of the death penalty. Field Poll cited in Leary, Mary Ellen, "The LWOP Alternative, Public Favors Life in Prison as the Ultimate Sanction," *Los Angeles Daily Journal*, April 24, 1992, p. 3.

⁶ Kaplan, D., "Death Mill, USA," *The National Law Journal*, May 9, 1989, p. 40.

⁷ *The 1993-94 Budget: Perspectives and Issues*, "Making Government Make Sense," (Sacramento, CA: Legislative Analysts Office, 1993).

state is becoming a less safe place due to severe and now chronic budget shortfalls. Sheriff Ron Jarrel talks about how he has lost four deputy sheriffs that once helped patrol the county's 1,800 miles of road. People demand to know why it takes so long for law enforcement to reach a crime scene and "I refer them to our emaciated public service delivery system," he said. "I think the safety of the community has been diminished over the last few years because of the inability of government to fund law enforcement at a level I would consider appropriate," Jarrel said.⁸

The lack of revenue from property taxes, cost shifting from the state to counties, the rising cost of county-funded but state-mandated programs are creating a fiscal crisis for counties. On this front, the near future holds no promise. "What we're going to do to the counties is horrible," said Ann Maitland, a consultant with the California Senate Revenue and Tax Committee. "Its only a question of how horrible."⁹

In a survey of county administrators and city officials, a *San Francisco Chronicle* article summarized their common response with the conclusion that any further cuts to an already bare bones operation "will crush services that people want and damage the state's well being."¹⁰ A similar response can be found by local government in Southern California. "What is going on in Sacramento amounts to guerrilla warfare," said San Diego County Supervisor Susan Golding. "They have pitted counties against cities, against schools against special districts in a battle to see whose ox will be gored more deeply."¹¹ This kind of budget meltdown has many casualties, but maybe none more tragic than the future victims of violent crime. The *Los Angeles Times* reports that the on-going cuts will vary from county to county, "but the officials from Ventura to San Diego are predicting layoffs of deputy sheriffs and deputy district attorneys, jail closures, fewer operating hours for courts, longer response times to crimes and fewer prosecutions." Riverside County

⁸ Sward, Susan, *San Francisco Chronicle*, March 15, 1993, p. 1.

⁹ Ann Maitland, presentation at the Graduate School of Public Policy, Spring Conference. April 17, 1993.

¹⁰ Sward, Susan, "Counties Learn True Meaning of 'Dire': Impact of Prop. 13 finally hits home-and there's no help in sight," *San Francisco Chronicle*, March 15, 1993, p. 2.

¹¹ Miller, Joanna, "Counties Brace for Cuts in Police and Other Services," *Los Angeles Times*, September 1, 1992, Washington Edition, B 4.

District Attorney Grover Trask said, "The public doesn't seem to have a heightened sense of urgency about this yet, and I don't think they ever will—until they become victims themselves."¹²

Revenue constraints imposed by Proposition 13 and the difficulties in getting voter and state approval to raise taxes leave the counties two options: 1) to the extent possible, reduce demand on state-mandated programs (such as the death penalty), and 2) reduce or eliminate services. Support for the death penalty is no longer just a philosophical question; the real questions facing Californians today are: 1) are we, or are our courts, willing to allow a death penalty that is not administered uniformly?, and 2) if we do agree with the death penalty, what services are we willing to forego to pay for it?

Whether or not to have a death penalty is a decision for the state, but the cost of implementation falls largely on the counties where the cases are tried. Counties are responsible for the prosecution, the indigent defense¹³, court and incarceration costs.¹⁴ As a compromise between pro and anti-death penalty factions when the capital punishment was reintroduced to California in 1977, the state agreed to defray some of the cost of the death cases by paying for expert witnesses and investigators for indigent defenders. The state abandoned this \$19 million-a-year commitment, however, in 1990.¹⁵

Some might argue that the money saved by not using of the death penalty is small when compared to the budget for the entire criminal justice system. But even this relatively small

¹² *Ibid.*

¹³ Approximately 98 percent of capital defendants are indigents according to the Legal Tracking Project of Death Penalty Focus. The Legal Tracking Project monitors capital cases statewide.

¹⁴ The high cost of one capital case prompted the Imperial County Board of Supervisors to refuse payment of defense costs. The county budget officer spent three days in jail for refusing to pay the bill. He claimed it would bankrupt the County. (*Corenevsky v. Superior Court of Imperial County*, 682,2d 360 (CA 1984), Marquis, Joshua, "Lawyers, County Battle Over Funds For El Centro Trial," *Los Angeles Daily Journal*, Thursday January 13, 1983.

¹⁵ The cost of this relatively small program totaled \$70 million over its 13-year existence (source: Office of the State Controller, see exhibit 3). Several counties are contesting the state's actions (By a 3-2 vote, the Commission on State Mandates refused Los Angeles County's appeal to have its expert and investigator costs reimbursed by the state. Los Angeles County is now litigating the issue in Superior Court (Interview with Dr. Leonard Kaye, the SB90 coordinator in the Los Angeles County Auditor-Controller Office. Orange County is also suing the state over the same funds, and Marin County has refused to pay the state \$100,000 it was given for capital cases. (Lichtblau, Eric, "County to Sue for Defending Capital Cases." *Los Angeles Times*, OC edition, March 13, 1993.)

amount is having a major impact on decisions being made at the county level. Increasingly decisions are made on the margin, frequently forcing the counties to choose between laying off a deputy sheriff or forgoing a reliable fire engine, and pursuing costly capital trials.

A 1990 American Bar Association report on this subject concluded: "the justice system in many parts of the United States is on the verge of collapse due to inadequate funding and unbalanced funding.... the very notion of justice in the United States is threatened by a lack of adequate resources to operate the system which has protected our rights for more than two centuries."¹⁶ Without adequate funding, the current legal and philosophical justifications for the death penalty are moot.¹⁷

FISCAL CRISIS FOR THE FORESEEABLE FUTURE

In an era of growing revenues, Californians might have thought they had the luxury of spending money on programs that were not cost-effective but that provided some emotional or symbolic satisfaction. But this is not an era of growing revenues. The continuing recession in California, combined with increasing costs for non-discretionary programs, is creating a growing deficit between governmental revenues and expenditures. A Legislative Analyst's Office *Policy Brief* reports that

...the annual operating shortfall becomes progressively larger after 1992-93. This projection is based on an extrapolation of our baseline spending estimates and our estimate of the revenues that would be generated by sustained moderate economic growth through 1995-96. The particularly rapid widening of the annual shortfall in 1992-93 and 1993-94 has two causes. First, several major revenue enhancements adopted to resolve the 1991-92 budget gap are either

¹⁶ *Funding the Justice System: A Call to Action*, A Report by the American Bar Association, August 1992, at ii, p. 3.

¹⁷ "Supreme Court Justice Blackmun was among the dissenters when the Court struck down state death penalty laws in *Furman v. Georgia* twenty years ago. In *Sawyer v. Whitley*, Justice Blackmun suggested that this position

has always rested on an understanding that certain procedural safeguards, chief among them the federal judiciary's power to reach and correct claims of constitutional error on federal habeas review, would ensure that death sentences are fairly imposed."

"Today," he said, "I wonder what is left of that premise underlying my acceptance of the death penalty." He concluded, "The more the Court constrains the federal courts' power to reach the constitutional claims of those sentenced to death, the more the Court undermines the very legitimacy of capital punishment itself." (Quoted from "Death, Politics, and the Supreme Courts," a speech by Gerald Uelman, Dean, Santa Clara University School of Law).

one-time or temporary in nature.... The second reason for the rapidly growing shortfall is that baseline spending increases sharply in 1993-94.

After 1993-94, the operating shortfall continues to widen, but not as rapidly as before. This is due to the ongoing disparity between the rate of annual baseline spending growth and the rate of revenue growth (about 9 percent for spending, versus our estimated 7 percent growth rate.) Our revenue projections anticipate that economic and revenue growth in the 1990s will be somewhat slower than in the 1980s. Spending, however, grows more rapidly than revenues....[But] even with some spending restraint, the budget problem still persists.¹⁸

Most of the baseline spending increases mentioned in this report are non-discretionary spending in areas such as health, welfare, education and the criminal justice system.

In addition to the structural problems outlined above, California faces further poor revenue prospects in terms of its changing economy and demographic trends. Current job growth in California is primarily in low pay industries and positions. Consequently, the California Office of State Finance predicts that per capita income in the state will slide relative to the nation.¹⁹ This fact negatively impacts both the state's revenue generating capacity and demands on public services. Compounding this trend is the changing profile of the state's citizenry. The California Department of Finance predicts that a relatively high birth rate and net immigration into the state will significantly reduce the number of "taxpayers, mainly those in the 18 to 64 age group" in relation to "tax receivers, the majority of whom are younger or older."²⁰ Supporting this hypothesis, a California Commission on State Finance report predicts that "caseloads in K-12 education, health and welfare...will continue to grow faster than the state's general population."²¹

This revenue shortfall is particularly harsh on the counties. Counties cannot increase property taxes and must have voter approval to increase other taxes. Even when voters approve of a tax increase, they are not sure whether or not they can implement it. Counties

¹⁸ Rabovsky, Dan, "The State's Fiscal Problem," (Sacramento, CA: Legislative Analysts Office, 1991), pp 5-6.

¹⁹ 1991 Annual Long Term General Fund Forecast, (Sacramento, CA: California Commission on State Finance, 1991), p. 10.

²⁰ California Department of Finance, *Long Term Outlook*, as quoted by John Hudzik, "Financing and Managing the Finances of the California Court System: Alternative Futures," 2020 Project. Made available by the Administrative Office of the Courts.

²¹ 1991 Annual Long Term General Fund Forecast, p. 29.

must go through the difficult process of gaining legislature approval to collect any new tax.²² The Legislative Analyst's Office reports that struggling to meet state-mandated programs is a wider phenomenon than popularly understood:

Contrary to widespread belief, low fiscal capacity is not confined to the small rural counties; a number of large counties are also characterized by low or declining fiscal capacity. While the specific contributing factors vary from county to county, low capacity counties generally experience some combination of limited revenue, low growth in revenue, and/or high or increasing cost for state-required programs (italics added).²³

Statewide, the cost of state-required programs grew from approximately 50 percent of the general purpose revenues in 1984-85 to 55 percent by 1987-88. In this period, the costs of state-required programs increased 40 percent, while revenue grew only at 26 percent.²⁴

Sagging revenues and rising costs of state-mandated programs leave the counties few alternatives other than to cut programs and budgets in police and sheriff departments, fire, safety, infrastructure, welfare and education. While these cuts may be unavoidable in any case, less cutting will certainly be necessary if local prosecutors stop pursuing the death penalty in place of the alternative of life in prison without parole.

Ironically, many Americans consider the death sentence to be a cost saving measure. In a U.S. Department of Justice survey, nearly one out of ten respondents favored the death penalty because it would save taxpayers money.²⁵ Contrary to this popularly held opinion, this study demonstrates that a local district attorney's decision to pursue the death penalty quadruples²⁶ the cost of the trial to county taxpayers. Depending on the number of capital cases in a county, the savings of pursuing Life in Prison rather than death can be dramatic. Based on an analysis of data from the Los Angeles County Auditor-Controller, Los Angeles County Superior Court, Los Angeles prosecuting and defense attorneys, the Los

²² Ann Maitland.

²³ *Major Issues Facing the Legislature*, "Variations in County Fiscal Capacity," (Sacramento, CA: Legislative Analysts Office, 1991), p. 332.

²⁴ *Major Issues*, p 326.

²⁵ U.S. Department of Justice, *Sourcebook of Criminal Justice Statistics* (1984), p. 278.

²⁶ See Appendix B for a more complete explanation of this figure.

Angeles County Jail and the Judicial Council, this study concludes that the enhanced cost of a death penalty case is *at least* \$1.25 million more than comparable murder case with a sentence of life in prison without parole.²⁷ These savings are entirely at the trial level and do not even count in the cost to county taxpayers as they share the burden with other California citizens for the mandatory state supreme court appeals and potential federal appeals.)

It is unfortunate that something as serious as taking a person's life should be relegated to a debate over dollars and cents. However, the economics underlay much of the death penalty controversy. If the state chooses to execute, there must be a financial commitment to guarantee that the penalty is administered fairly. Moreover, California counties are making the same life and death calculations when they cut the budgets of their emergency response services. Cities and counties are abandoning a preventative stance toward future victims of violent crime by limiting police forces and gutting crime prevention programs. "As a general rule, when [local law enforcement] agencies have to cut back, crime prevention is the first to go," said Nancy Lions in the Attorney General's Crime Prevention Office.²⁸ In an era of dwindling resources, choosing to support the death penalty necessarily means either to not fund, or under-fund other potentially life saving programs.

SECTION III: WHAT DO WE GET FOR WHAT WE PAY?

"Death is different" according to the U.S. Supreme Court. Since the punishment is unique in its "severity" and its "irrevocability," the Court insists on substantial safeguards to prevent executing innocents, and imposing the penalty in a "capricious" and "freakish" manner.²⁹ Capital punishment requires much more time from lawyers and judges. This

²⁷ Appendix B.

²⁸ Interview with Nancy Lions. \$97 million was cut from the budgets of local law enforcement in last year's State Budget (Interview with Debbie Vinning, Director of the California State Department of Justice, Community Crime Resistance Program.

²⁹ The quoted phrases come from two cases: *Gardner v. Florida* 430 U.S. 349 (1977) and *Furman vs. Georgia*, 408 U.S. 238 (1972). In *Gardner* the Justices wrote:

high price might be justified if it actually made California communities safer from violent crime, but there is virtually no evidence to support this claim.³⁰ After decades of extensive inquiry, most studies fall into two groups. The overwhelming majority of studies indicate that there is no discernible difference in the deterrent effect of the death penalty and life in prison.³¹ The second group of studies concludes that statistical models are inadequate to determine any effect whatever. For example, Isaac Ehrlich's study was the first to use ordinary least-squares analysis of cross-section data to determine that the death penalty actually deterred murderers. Using precisely the same statistical techniques as Ehrlich, Peter Passell published a study six months later that concluded with this statement: "We know of no reasonable way of interpreting the cross-section data that would lend support to the deterrence hypothesis."³²

A long tradition of social scientist and criminologist studies³³ buttressed with reams of anecdotal evidence from prison wardens, chaplains, psychiatrists and convicted murderers convinced most social scientists to agree with what Thorsten Sellin has called the "inevitable" conclusion that capital punishment does not deter murder.³⁴ The Sellin studies conducted in the United States in 1962, 1967, and 1980 determined that the death penalty has no deterrent effect.³⁵ In the 1970s, however, more complex econometric studies

"...[F]ive Members of the Court have now expressly recognized that death is a different kind of punishment from any other which may be imposed in this country. From the point of view of the defendant, it is different in both its severity and its finality. From the point of view of society, the action of the sovereign in taking the life of one of its citizens also differs dramatically from any other legitimate state action. It is of vital importance to the defendant and to the community that any decision to impose the death sentence be, and appear to be, based on reason rather than caprice or emotion. (Gardner, p. 357).

³⁰ Peterson and Bailey, "Murder and Capital Punishment in the United States," *Criminal Law in Action* 435 (ed. Chamblis) (2nd ed., 1984) and; Lempert, "The Effects of Executions on Homicides: A New Look on an Old Light", 29 *Crime and Delinquency* 88 (1983).

³¹ Fox and Radalet, "Persistent Flaws in Econometric Studies of the Deterrent Effect of the Death Penalty," 21 *Loyola Law Review* 29 (1989).

³² Forst, Brian, "Capital Punishment And Deterrence: Conflicting Evidence?" 74 *The Journal of Criminal Law & Criminology* 928 (1983)

³³ No simple criminology textbook published in this century up to the 1970s challenged the claim that the death penalty was not a deterrent. (Bailey, William, "Disaggregation in Deterrence and Death Penalty Research: The Case of Murder in Chicago," *The Journal of Criminal Law & Criminology*, vol. 74, No. 3, 1983, p. 828)

³⁴ Bailey, p. 827.

³⁵ Sellin, Thorsten, *The Penalty of Death*, (Beverly Hills, CA: Sage Publications, 1980), pp. 75-86

focused on the deterrence questions using the tools of multiple regression analysis. Of the 20 studies of this type (from 1975 - 1980),³⁶ only two widely discredited studies, concluded that the death penalty was a deterrent (see note below).³⁷

Some evidence even suggests that executions *increase* the number of homicides. One study showed that within one month of every execution in New York since 1930 there were 2-3 *more* murders than the murder rate predicted, possibly due to a "brutalizing effect" state sponsored killing encourages.³⁸ Perhaps George Bernard Shaw was right

³⁶ Baily cites: [Cross-sectional examinations of state execution and murder rates for selected years] Baily, "A Multivariate Cross-Sectional Analysis of the Deterrent Effect of the Death Penalty, 69 *Sociology and Sociology Research* 183 (1980); Bailey, "Imprisonment v. The Death Penalty as a Deterrent to Murder, 1 *Law and Human Behavior* 239 (1977); Black and Orsagh, "New Evidence on the Efficacy of Sanctions as Deterrent to Homicide," 58 *Social Science Quarterly* 616 (1978); Ehrlich, "Capital Punishment and Deterrence: Some Further Thoughts and Additional Evidence," 85 *Journal of Political Economics* 741 (1977); Forst, "The Deterrent Effect of Capital Punishment: A Cross-State Analysis of the 1960s," 61 *Minnesota Law Review* 743 (1977); Klock, "Capital Punishment, Gun Ownership, and Homicide," 84 *American Journal of Sociology* 882 (1979); Passell, "The Deterrent Effect of the Death Penalty: A Statistical Test," 28 *Stanford Law Review* 61 (1975).

[Time Series analyses of the relationship between execution and murder rates at either the national or state level], Bailey, "The Deterrent Effect of the Death Penalty: An Extended Time-Series Analysis, 10 *Omega* 235 (1979-1980); Bailey, "The Deterrent Effect of the Death Penalty for Murder in Ohio: A Time Series Analysis," 28 *Cleveland State Law Review* 51 (1979); Bailey, "Deterrent Effect of the Death Penalty for Murder in California," 52 *Southern California Law Review* 743 (1979); Bailey, "Deterrence and the Death Penalty for Murder in Oregon," 16 *Willamette Law Review* 51 (1979); Bailey, "An Analysis of the Deterrent Effect of the Death Penalty in North Carolina," 10 *North Carolina Cent. Law Journal* 29 (1978); Bailey, "Deterrence and the Death Penalty for Murder in Utah: A Time Series Analysis, 5 *Journal of Contemporary Law* 1 (1978); Bowers and Pierce, "Deterrence of Brutalization: What Is the Effect of Executions?", 26 *Crime and Delinquency* 453 (1980); Bowers and Pierce, "The Illusion of Deterrence in Isaac Ehrlich's Research on Capital Punishment," 85 *Yale Law Journal* 187 (1975); King, "The Brutalizing Effect: Executions Publicity and the Incidence of Homicide in South Carolina," 57 *Social Forces* 683 (1978); Klein, Forst and Filatov, "The Deterrent Effect of Capital Punishment: An Assessment of the Estimates," *Deterrence and Incapacitation: Estimating the Effects of Criminal Sanctions on Crime Rates* (A. Blumstein, J. Cohen and D. Nagin eds. 1978); Passell and Taylor, "The Deterrent Effect of Capital Punishment: Another View," 67 *American Economics Review* 445 (1977); W. Bowers and G. Pierce, "Deterrence, Brutalization or Nonsense?" (1975) (unpublished manuscript); Yunker, "Is the Death Penalty a Deterrent to Homicide? Some Time Series Evidence," 5 *Journal of Behavioral Economics* 45 (1976).

³⁷ Forst, Brian, "Capital Punishment and Deterrence: Conflicting Evidence?" *The Journal of Criminal Law & Criminology*, vol. 74, No. 3, 1983, p. 927. Critiques include: Bowers and Pierce, "The Illusion of Deterrence in Isaac Ehrlich's Research on Capital Punishment," 85 *Yale Law Journal* 187 (1975); Friedman, "The Use of Multiple Regression Analysis to Test for a Deterrent Effect of Capital Punishment Prospects and Problems, 1 *Criminology Review Yearbook* 61 (S. Messinger and E. Bittner eds. 1979); Glaser, "Capital Punishment—Deterrent or Stimulus to Murder? Our Unexamined Deaths and Penalties, 10 *U. Tol. Law Review* 317 (1978); Klein, Forst and Filatov, "The Deterrent Effect of Capital Punishment: An Assessment of the Estimates," *Deterrence and Incapacitation: Estimating the Effects of Criminal Sanctions on Crime Rates* (A. Blumstein, J. Cohen and D. Nagin eds. 1978); Passell and Taylor, "The Deterrent Effect of Capital Punishment: Another View," 67 *American Economics Review* 445 (1977)

³⁸ William J. Bowers, with G.R. Pierce and J.F. McDevitt, *Legal Homicide: Death as Punishment in America, 1864-1982* (1984) pp 271-335 and W.J. Bowers, "The Effect of Executions is Brutalization, not Deterrence," in K.C. Haas and J.A. Inciardi (eds.), *Adjudicating Death* (1989), pp. 49-89

when he wrote: "It is the deed that teaches, not the name we give it. Murder and Capital Punishment are not opposites that cancel each other, but similars that breed their kind."³⁹

Evidence of the death penalty's lack of deterrence played prominently in the debate, and ultimate abolition of the death penalty in many countries. The British Royal Commission on Capital Punishment analyzed statistics from seven European and three non-European countries, reporting that no evidence linked abolition of the death penalty to increased homicide rates.⁴⁰ The 1988 Report to the United Nations Committee on Crime Prevention and Control, a detailed international study, found that all of its documented research "has failed to provide scientific proof that executions have a greater deterrent effect than life imprisonment."⁴¹ In 1986, ten years after the abolition of the death penalty, the homicide rate in Canada was lower than it had been at any time in the previous fifteen years. The sharp decline in the murder rate was a potent argument used by the Canadian Prime Minister to defeat the movement to re institute capital punishment there.⁴²

SECTION IV: WHY IT COSTS TO EXECUTE

THE MAKING OF THE MODERN DEATH PENALTY

The number of recorded executions in California peaked during the 1935-39 period with 57 executions. Executions fluctuated in a downward trend until Aaron Mitchel, the last Californian to be executed before recent times, was put to death in 1967. By the late 1960s, public opinion was evenly split on the efficacy of the death penalty and it had gone unused as a sentence from 1967 until 1972 when the Supreme Court in the *Furman vs.*

³⁹ Barr, Alan, *Victorian Stage Pulpit: Bernard Shaw's Crusade*, (Athens, GA: University of GA Press, 1974), p. 36.

⁴⁰ "Report on Capital Punishment," The British Royal Commission on Capital Punishment, (London: Home Office Printing Division, 1953), introduction.

⁴¹ Human Rights and the United Nations Committee on Crime Prevention and Control," *Annals of the American Academy of Political Science*, 1989, volume 506, p. 68-84

⁴² Roger Hood, *The Death Penalty: A World Wide Perspective : A Report to the United Nations Committee on Crime Prevention and Control* (Oxford: Clarendon Press, 1989), p. 125.

Georgia decision virtually eliminated capital punishment as it was then administered.⁴³ The decline in executions, which began in the 1940s, and the hiatus in executions from 1967 to 1976 was the result of a number of social forces. There were the growing doubts about the morality of capital punishment; much of Western Europe had set an example by abandoning the death penalty; empirical evidence undermined the belief that capital punishment was effective as a deterrent; and empirical evidence revealed the racially discriminatory imposition of the death penalty.⁴⁴

In the face of this trend, a backlash of increasing support for capital punishment exploded in the late 1960s and early 1970s. Again a number of factors have been attributed to this turnaround. Among the explanations is the frustration over the dramatic increase in violent crime. The murder rate in the U.S. doubled from 1962 to 1972.⁴⁵ From 1960 to 1966, when the population grew by less than 10 percent, the number of total crimes grew by more than 60 percent; from 1966 to 1971, the number of crimes grew again by 83 percent.⁴⁶ In addition, American society was undergoing tumultuous social change. In the late 1960s, many majority white Americans resisted this advance on what they viewed as the status quo and began supporting "tough on crime" conservatives in public office. Liberalism in politics and the courts came to connote, for key voters, the favoring of blacks over whites and permissiveness towards drug abuse, illegitimacy, welfare fraud, street crime, gay rights, perceived anti-Americanism, and open rebellion among the nation's youth.⁴⁷ Against this backdrop, the Supreme Court outlawed the death penalty as it was then administered. The ban was not complete, however, and ultimately gave way to a

⁴³ Dedau, Hugo Adam, editor, *The Death Penalty in America*, 3rd ed. (New York: Oxford University Press, 1982) p 23 and 63.

⁴⁴ Dedau, pp. 24-25

⁴⁵ Holding, Reynolds, "Death Penalty Returns to U.S., But Other Counties Spurn It" *San Francisco Chronicle*, April 13, 1992.

⁴⁶ Thomas Byrne Edsall with Mary D. Edsall, *Chain Reaction: The Impact of Race, Rights, and Taxes on American Politics* (New York: W. W. Norton & Company, 1991), p 51.

⁴⁷ Edsall and Edsall, p 9

rising chorus for harsher criminal punishments. Opinion polls show that by 1973, support for capital punishment grew to 60 percent while opposition shrank to 35 percent⁴⁸

The hiatus of executions was not the result of a complete ban on capital punishment by the Supreme Court. As stated in the discussion on *Furman*, the Court held that the arbitrary and capricious application of the death penalty was in violation of the Constitutional protection against cruel and unusual punishment.⁴⁹ Justice Stewart explained:

These death sentences are cruel and unusual in the same way that being struck by lightning is cruel and unusual. For, of all the people convicted of rapes and murder in 1967 and 1968, many just as reprehensible as these, the petitioners are among a capriciously selected random handful upon whom the sentence of death has been imposed.⁵⁰

It was not the act of state executions that troubled the Justices. It was how those executions were carried out. In the post-*Furman* world, the death penalty was not illegal, just the arbitrary application of it. If the death penalty could be administered fairly it would not violate the Constitutional protection against "cruel and unusual punishment."⁵¹

The "tough on crime" conservatives seized on this loop hole and four years later proposed a guided sentencing scheme that could meet the rigors of the Super Due Process requirements laid down in *Furman*. In 1976, the *Gregg vs. Georgia* decision set the groundwork for how the death penalty might be reinstated without violating the Eighth or 14th Amendments. Again, the following guidelines were intended to guard against wrongful and biased sentencing practices.

- Juries must be given clear guidelines on sentencing, which result in explicit provisions for what constitutes aggravating and mitigating circumstances.
- Defendants must have a dual trial—one to establish guilt or innocence and if guilty a second trial to determine whether or not they would get the death penalty.

⁴⁸ Poll conducted by the National Opinion Research Center, cited in Bedau, p. 86

⁴⁹ *Furman vs. Georgia*, 408 U.S. 238 (1972).

⁵⁰ *Furman vs. Georgia*, 408 U.S. 238 (1972).

⁵¹ Eighth Amendment to the Federal Constitution.

- Defendants sentenced to death are granted oversight protection in an automatic appeal to the state supreme court.⁵²

By following these guidelines, any state could re-impose the death penalty without violating a defendant's federally-protected rights.

In 1977, the California Legislature enacted a discretionary death penalty statute.⁵³ The new law expanded the factors which must be considered by the trier of fact in determining if the death penalty was appropriate. The 1977 law, however, ushered in the era of "guided discretionary" procedures as outlined in the *Gregg* case. California, following the federal lead, enacted a death sentencing system with the following characteristics. The jury is to be guided by a "narrowed" number of special circumstances that allow for the death sentence. As called for in *Gregg*, the trial is bifurcated, with the same jury considering the question of guilt in the first phase and penalty in the second. During the penalty phase, the defendant introduces to the jury any evidence that might mitigate his or her penalty. The prosecution then can challenge this mitigating evidence and introduce aggravating evidence, such as the impact of the crime on the victim's family or community. A trial judge reviews the verdict independently to determine if it is supported by the evidence. The State Supreme Court also reviews all death penalty decisions to determine whether or not death is the appropriate sentence. Publicly-funded counsel is provided to virtually all capital defendants because so few can provide this exorbitantly expensive service for themselves.⁵⁴

SECTION V: WHAT ARE WE PROTECTING AGAINST, ISSUES OF BIAS AND INNOCENCE

Ability to pay influences every issue that makes the death penalty profoundly unfair in its application. Today there are many people who oppose the death penalty because

⁵² *Gregg vs. Georgia*, 428 U.S. 206-7 (1976)

⁵³ Chapter 316, Statutes of 1977

⁵⁴ These precautions are explained in *County of Los Angeles, Test Claim for Defense of Indigents Charged in Capital Cases Under Section 987.9 of the California Penal Code*, June 17, 1992.

innocent people are killed. Others oppose it because it discriminates against racial minorities. Still others object because the wealthy, with access to the best legal talent, are rarely executed. And while these are problems today, as indicated in the previous discussion on guided sentencing, death-sentencing states have taken steps to alleviate them. Even proponents of capital punishment (outside the South, at least) would not want to return to the days of careless and poorly investigated capital cases; a time in the South when the death penalty was almost exclusively reserved for black defendants who killed white victims; or a time when indigents are forced to defend themselves in an alien courtroom.

Nevertheless, the expensive safeguards are not working as promised: biased sentencing persists. The Government Accounting Office reviewed all the recent studies on how race influenced sentencing and came to this conclusion: "Our synthesis of the 28 studies shows a pattern of evidence indicating racial disparities in the charging, sentencing, and imposition of the death penalty after the (1976) *Furman* decision." The Center for Applied Social Research at Northeastern University research shows that even with *Gregg* safeguards, race, location within a state, and other personal, situation and social influences undoubtedly affect the ultimate sentence. This finding is "replicated in different kinds of studies using different kinds of data."⁵⁵ About the failed safeguards the report says:

Greater guidance in sentencing and stricter separation between the guilt and punishment decisions have failed not only as a solution to the problem of arbitrary sentencing of convicted offenders, but also, contrary to Justice White's hopes, as a statutory guide to the exercise of prosecutorial discretion. The data show that neither prosecutorial decisions made before or after trial nor the judgment of guilt itself is free from recurrent biases...⁵⁶

A capital trial is the result of so many complicated factors, from the moment the prosecutor decides to pursue the death sentence until the final judgment is made in the penalty trial, that the safeguards in *Gregg* at best guard against some biased sentencing practices, not biased outcomes. It is particularly defeating to note that the "the vast difference in the use of the

⁵⁵ Bowers, William, "The Pervasiveness of Arbitrariness and Discrimination Under Post-Furman Capital Statutes," *The Journal of Criminal Law & Criminology*, vol. 74, No. 3, 1983, p. 1098

⁵⁶ Bowers, p. 1099

death penalty by location within states observed since *Furman* appears to have been a pattern consistent with the pre-*Furman* era."⁵⁷ One does not need use a multiple regression analysis to realize that this aspect of the criminal justice system continues to cripple the legitimacy of the institution. "The unfortunate result is that it has become a well known fact—or certainly a well-known perception—that when it comes to African-Americans, those proper procedures are either forgotten by many judges and magistrates or just simply ignored," according to Dennis Schatzman, a former judge, testifying before a Judicial Council of California panel on racism.⁵⁸

Guarding against the possibility of executing an innocent person is both a moral imperative and costly. The need for rigorous protections are real. Since 1900, 400 innocent people have been sentenced to death according to the study *In Spite of Innocence*.⁵⁹ As many as 24 innocent people were executed. Since the 1970s, 34 people have been released as innocent after many years on Death Row—often as a result of accidental discovery of exculpating evidence.

In Spite of Innocence recounts the recurring behavior that so often produce "miscarriages of justice." The two most frequent are perjury by prosecution witnesses and mistaken eye witness testimony. Failures in police investigation and overzealous prosecutors also contribute to this frightening phenomenon. In several cases, the authors found evidenced of police harassment of suspects, coerced confessions, suppression of evidence, tampering with evidence, and simply incompetent criminal investigations.

To illustrate, consider the case of Benny Powell and Clarence Chance. They were released from prison in 1992 after serving 17 years for a murder they did not commit.⁶⁰ Deliberate misconduct by Los Angeles law enforcement agents secured murder convictions

⁵⁷ Bowers, p. 1099.

⁵⁸ Blau, Lauren, "Courts Harder on Blacks. Panel is Told, Ex-Judge Says Bail, Warrants Are Slanted Against Minorities," *Los Angeles Daily Journal*, Friday June 5, 1992, p. 1.

⁵⁹ Hugo Bedau, Michael Radalet, Constance Putnam, *In Spite of Innocence*, (Boston: Northeastern University Press, 1992)

⁶⁰ Ford, Andrea, "Outcry Grows in Freed Men's Case," *Los Angeles Times*, Saturday, March 8, 1992, Metro Section, p. 8.

for Chance and Powell. Fortunately, Chance and Powell were sentenced in 1975, a year when the death penalty was not used in California. Had they been charged with the same crime today, they would have been eligible for the death penalty.

When defense costs for just one defendant climb into the hundreds of thousands of dollars, nearly all of us are brothers as indigent defendants. Californians, though, have made the commitment to fund indigent defense. In a 1972, the ballot measure to reorganize the use of the death penalty in California, explicitly provided that: "Our criminal legal system, with its overriding concern for the rights of the accused, includes a fair trial to every person charged with murder regardless of his wealth, education or race. The public provides competent defense counsel, and *all incidents of defense free of charge to those who cannot afford them.* (italics added)"⁶¹

The promise of an adequate defense was made real in 1977 when California's new guided discretion sentencing system was put in place. At that time, a fund was set up for the sole purpose of providing reimbursements to counties for their costs in pursuing adequate investigation and expert testimony for indigent capital defendants. In 1977 this program amounted to \$1 million a year. By the time it was entirely eliminated by Governor Dukemajian in 1990, the program had grown to \$19 million and played a small but important part in defraying the cost of the death penalty to the counties. In fact, over the 13 years of the program, the state reimbursed \$77 million dollars to the counties.⁶²

The loss of this program is considered to be so dire that several counties are challenging the state's abdication of this responsibility. Los Angeles County is suing the state to recover millions in past due reimbursements; Orange County also recently decided to sue the state, and Marin County is openly challenging Sacramento by refusing to pay an

⁶¹ In the ballot pamphlet, *Proposed Amendments to Constitution, of the General Election, Tuesday, November 17, 1972.*

⁶² California State Controller Office, Survey of PC 987.9 costs made available to Leonard Kaye in the Los Angeles County Auditor-Controller Office.

unrelated \$100,000 debt until the state reimburses \$100,000 the county spent on investigators and expert witnesses in capital trials.⁶³

Some states do not pay as much for indigent defense, but their standards are outrageously low. The following examples illustrate the trade-off between a bargain defense and justice.

- In 1993, an Alabama man was freed after six years on death row. Walter McMillan's death conviction was the result of perjured testimony and evidence withheld from his lawyers.⁶⁴ His survival was only guaranteed by the diligent and free legal work of Brian Stevenson and the Alabama Capital Representation Resource Center. "The fortunate thing about Mr. McMillan's case is his innocence was demonstrable," Stevenson said. "It's clear he had nothing to do with this crime." He added, "There are other folks in prison who don't have the money or the resources or the good fortune to have folks come in and help them."⁶⁵
- In a Louisiana case, the defense attorney for Freddie Kirkpatrick had not noticed until the trial was underway that the murder victim was an old friend. The attorney missed this obvious conflict of interest earlier because he failed to do the appropriate pre-trial preparation. Obligated to finish, the defense attorney told jurors they would be "justified" in sentencing the defendant to death. They did. Kirkpatrick's co-defendant, represented by a different lawyer, received a life sentence for the same crime.⁶⁶
- For 15 years, Alabama resident Judy Haney and her children were repeatedly abused by her husband, at times requiring hospitalization. To end the abuse, Haney hired someone to kill her husband. When the time came in her trial to consider any mitigating evidence that might spare her from lethal injection, the defense attorney failed to bring any evidence of abuse, even though local hospital records could have told the jury the macabre story of years of physical and psychological punishment. Without any such knowledge, the Alabama jury sentenced her to death.⁶⁷
- In 1988, Texas inmate Robert Streetman was executed six days after he was finally assigned an attorney. "By then it was too late for the attorney to do anything," said University of Texas Law Professor Scott Powe.⁶⁸

⁶³ Dresslar, Tom, "Loss of Defense Funds Threatens Death Cases," *The Los Angeles Daily Journal*, April 17, 1992; and Lichtblau, Eric, "County to Sue for Defending Capital Cases," *Los Angeles Times*, OC edition, March 13, 1993.

⁶⁴ Applebome, Peter, "Alabama Releases Man Held on Death Row for Six Years," *The New York Times*, March 3, 1993, A-1 and B-11.

⁶⁵ Applebome, B-11.

⁶⁶ *General Information on the Death Penalty*, (Oakland, CA: A publication by Death Penalty Focus, 1992), p 22.

⁶⁷ Lacayo, Richard, "You Don't Always Get Perry Mason," *Time Magazine*, June 1, 1992, p. 38.

⁶⁸ Magagnini, A1.

Despite such low standards, no states have been able to show that the cost of the death penalty trial is even close to a Life in Prison without Parole (LWOP) trial. Studies nationwide range, but all of them conclude that the death penalty is significantly more expensive than life in prison and very expensive to taxpayers.

The *Dallas Morning News* conducted a review of the death penalties cost, including six years of appeals, and estimated that each capital case in Texas costs taxpayers \$2.3 million. According to the study, based largely on interviews, the average death penalty case required 7.5 years to prosecute. Imprisoning someone in a single cell at Texas' highest security prison for 40 years costs about \$750,000.⁶⁹

A *Miami Herald*'s study divided the total dollar amount Florida taxpayers spent on the death penalty since 1973 by the number of executions. The resulting figure is \$3.2 million, but the article warns that even this number "is based on the most conservative figures available. The real cost could easily be twice that or more."⁷⁰

Perhaps the most in-depth study to date is the New York State Public Defender's *Capital Losses: The Price of the Death Penalty for New York State* (1982). The New York report identified 144 aspects of the trial as "cost centers." In reviewing 48 of the cost centers, the study projected the cost for the first three levels of review to be \$1,821,000. Forty years in a maximum security prison in New York at that time cost the state \$602,000

SECTION VI: THE ANATOMY OF A DEATH CASE, THE COSTLY DISTINCTIONS

Data in this study come from Los Angeles County. The data are from a variety of sources including the Los Angeles County Auditor-Controller, Los Angeles County Superior Court, Los Angeles prosecuting and defense attorneys, the Los Angeles County Jail and the Judicial Council of California.

⁶⁹ Hoppe, Christy. "Executions cost Texas millions". *The Dallas Morning News*, Sunday, March 8, 1992, p. 1

⁷⁰ Von Drehle, Dave. "Bottom Line: Life in prison one-sixth as expensive." *The Miami Herald*, July 10, 1988, p. 12A

The reason for such a focus is that only a few counties have enough death cases and attorneys dealing with the issue to allow for an in-depth analysis of cost. (38 percent of all death sentences in California last year came from Los Angeles County.)⁷¹ Any wider attempt to study the death penalty would have required embracing an analysis of the entire state, which exceeded the time and resource constraints of this project. (For a detailed discussion of how the data for this section was gathered, see Appendix B.)

Plea Bargaining. Plea bargaining allows for some concession to the defendant, such as a reduced sentence, in return for an admission of guilt. This practice has been a potent tool in reducing the number of trials in an overburdened criminal justice system. Yet this approach is not effective in capital cases. If a prosecutor offers a lesser charge, the case becomes non-capital.⁷² Pleading guilty to a death charge will almost never happen since the most likely consequence is a speeding-up of the execution process. "In economic terms, therefore, the immediate effect of the prosecutor's decision to seek the death penalty is that capital cases become jury trials."⁷³ And again, these will not be the average jury trials, they will be a double trial and far more complex in terms of issues and procedure than a non-death murder trial. For nearly all the cases that are not resolved by plea bargaining, costs grow exponentially as the case progresses through successive stages.

This part of the study compares two groups of cases. The groups are similar since they both are comprised of cases where the defendant is being tried for first degree murder with special circumstances. This makes the defendant eligible for either life in prison without possibility of parole or death (a special circumstance is some act committed in the course of a murder that aggravates the defendant's culpability, such as murder in the course of a

⁷¹ *Criminal Justice Profiles, 1991*. (Sacramento, California: Bureau of Criminal Statistics, Department of Justice, 1991).

⁷² Garey, Margot, "The Cost of Taking a Life: Dollars and Sense of the Death Penalty," 18 *University of California, Davis Law Review* 1221, (1985), p. 1247. Garey cites the following as an example of how inflexibility on the death charge can bleed a county financially: "In a 1982-83 California death penalty case, the defendant was found guilty. However, in the penalty phase, the jury deadlocked at 11-1 for death. Although it was acknowledged that a retrial would hurt the already financially strapped county, the prosecutor declined a plea offer and pursued a retrial. The county auditor estimated that the retrial would be more expensive than the first trial," in note 112, page 1247.

⁷³ Garey, 1247.

robbery). Where the two groups differ, however, is that in one group the prosecuting attorney pursued a death sentence throughout the entire trial and the other group had the death penalty dropped before or during the trial. All of the cases in this sample ended in an LWOP sentence.

For convenience, I will refer to the two groups as *Charged* and *Dropped* respectively. While the analogy is not perfect, the *Charged* group is intended to illustrate the cost of pursuing the death penalty adhering to all the Constitutionally-mandated safeguards, while the *Dropped* group is intended to model the costs of prosecuting the most serious murder cases when the death penalty is not an option.

The initial selection of cases for this study were assembled from a larger pool of "perfected" cases.⁷⁴ Perfected cases have no further action pending. That pool was narrowed further by the availability of the case records. Many cases were either in use or missing. To counter the potential bias in such a random selection process, I asked former Los Angeles District Attorney Kurt Livesay to go over an annotated case list and edit out the cases they thought were too far removed from what he considered to be the "typical, well defended case." Mr. Livesay was the sole person responsible for making the decision to pursue death penalty cases in Los Angeles for 17 years. There is no one in Los Angeles who has more experience with the prosecuting side of the death penalty. All the cases were completed between 1989 to 1992.

In looking at the cases for this study, I distinguished a number of indices that I thought might be instructive as to the cost and complexity of a case (see Appendixes C and D for the

⁷⁴ One problem with this sample is that only "perfected cases," those requiring no further activity, are available. For this reason I was only able to look at cases where death was sought, but the jury chose LWOP, since all death cases are currently on appeal. Consequently, the *Charged* sample probably underestimates the cost and complexity of Death cases. Similarly, the *Dropped* sample over estimates the cost of LWOP cases. Cases in the *Dropped* sample had the death penalty charged initially, but dropped sometime during the trial. Generally the DA makes this decision early in the trial but several weeks can go by where the case is treated as a full blown capital trial. One respondent to the Investigator's fee survey suggested that this process alone was the major wasted cost of the death penalty in Los Angeles since it required such a massive commitment of resources in the beginning of virtually every murder trial even though many are likely to be reduced to an LWOP trial.

chart with the indices and values). For example, I compared the two groups on the numbers of trial days, motions and exhibits.

Motions. Once it is established that a death penalty case will not be resolved and is going to a jury trial, there is a striking distinction in the increased number of motions that must be filed. Earlier studies have documented the greater number and increased complexity of the motions filed in a capital as opposed to non-capital case. A study by the Southern Poverty Law Center concluded that the number of trial motions for a non-capital case vary between five and seven. In the capital case, however, the comparable number of motions typically was between 15 and 25.⁷⁵ From my survey of Los Angeles cases, the difference in the number of motions was even more remarkable. Capital cases produced an average of 23.8 motions, while non-capital cases averaged only 6.6.⁷⁶ The New York State Public Defenders' Association asserts that even ordinary motions "take on different meaning in death penalty cases; routine motions are generally longer, more complicated, and more heavily litigated."⁷⁷

In terms of complexity and length of time required, the comparisons between the two groups on other aspects of the trial are equally dramatic.

TRIAL DATA ⁷⁸	Trial Motions ⁷⁹	Avg. Number of Attorneys per defendant	Days to Select Jury	Full Court Days ⁸⁰
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⁷⁵ *Motions for Capital Cases*, Southern Poverty Law Center (1981), p. 2.

⁷⁶ See Appendices C and D.

⁷⁷ *Capital Losses: The Price of the Death Penalty for New York State*, A study prepared for the Legislature and Governor by the New York State Public Defenders' Association, (1982), p. 13.

⁷⁸ These statistics, along with the defense cost data, were collected at the Los Angeles Superior Court, Central Division (see the complete samples in Appendices C and D). Kurt Livesay edited the original sample, leaving only the cases that could meet the description of a "typical, well defended case." This data, along with other survey data in this report, is on file as an Advanced Policy Analysis project at the University of California, Graduate School of Public Policy.

⁷⁹ For this study, simple scheduling motions, including motions for continuance, were not included.

⁸⁰ Full Court Days is an average number of days where the trial took up all of the court's time. These averages do not include the numerous days where the court had to deal with some aspect of the case while not in full session. The times the court had to rule on some aspect of the case (e.g. ruling on a motion for continuance) are recorded as Court Days in Appendices C and D. A conservative estimate would estimate 20 minutes for each one of these occurrences. This could add 5 days to the average number of Full Court Days for the Charged group and 1.2 more days to the average for the Dropped group. Since it is a goal of

penalty cost study, however, has been able to make an accurate estimate of prosecuting attorney costs. This study adopts the New York State Public Defenders approach, borrowing their ratio formula and applying it to the defense costs. The Public Defender's Office developed this ratio by an analysis of statewide disparities between prosecution and defense expenditures.⁸² While this disparity ranged as high as 10 to 1, this study uses the more conservative 2 to 1 ratio for prosecution to defense costs.

Investigators and expert testimony. Both prosecutors and defense attorneys hire highly paid investigators and expert witnesses to help in their litigation. In terms of death penalty versus non-death cases, the use of these services differs dramatically. As discussed, the death penalty trial has one phase to determine guilt or innocence and a second phase to determine the penalty. The penalty phase is unique in that its sole purpose is to gain enough insight into someone's life so that a jury can justifiably give that person the death sentence unless there is enough mitigating evidence to convince them otherwise. As one might imagine, this process requires extensive foot work and research into the defendant's past life history. It also requires the services of psychiatrists and physicians as the defense attorneys attempt to find some mental or physical malady that may have contributed to the defendant's actions. The prosecutor must also hire investigators and experts to deal with this evidence and attempt to counter what evidence the defense investigators and witnesses use. Furthermore, prosecutors have recently been given the legal authority to use what is called victim impact evidence. This evidence is designed to convey to the jury the full impact of the loss suffered by the victim's family, dependents and community because of the victim's death, and is admitted during the penalty phase in order to sway the jury to the harsher punishment.

Analysis of the defense cost for such services are based on a survey of public defenders and court appointed defense attorneys. Presented with a list of litigation and investigation costs generated by the Los Angeles Auditor-Controller's Office, the attorneys were asked

⁸² *Capital Losses: The Price of the Death Penalty For New York State*, New York State Public Defenders' Association, (1982).

to those which case costs were in the "middle range" of cases. If the payment to investigators and expert witnesses appeared too high or low, it was dropped from the list. (All the studies on cost indicate that prosecutors spend more money on these services, especially when their use of police investigator and forensic services is factored in. However, I was unable to get hard data from the Los Angeles District Attorney's Office on this point.)⁸³ Based on several interviews with defense and prosecuting attorneys, this study assumes the prosecution costs are at least equal to the defense cost for these services. For that reason, I applied the cost findings for the defense to the prosecution.

Incarceration. The time value of money is central to any discussion of expenses over several years, such as incarceration costs. Before exploring the particular dollar amounts associated with incarceration cost in my analysis, I need to explain the principle of *discounting* I applied.

There is a distinct difference between funding projects that require a lump sum of money up front and those projects where the costs are spread out over time. Money that is not used for a project is not money that would simply stand idle.⁸⁴ If the lump sum was not spent, it would be used in some wealth-generating capacity and increase the value of the original sum. For example, if you put \$100 in the bank today, at an interest rate of six percent, you would earn six dollars and have \$106 next year. Similarly, if you needed to pay a debt of \$100 next year, one could put a little more than \$94 in the bank today and have \$100 next year. In other words, if I had a \$100 debt due today and decided to pay it today with the \$100 I have in the bank, I would break even. But, if I had the option of paying that \$100 bill over ten years, I could pay \$10 this year and keep \$90 in some investment, such as a savings account. After ten years' time, I would not only have paid the debt with my \$10 installments, but I would also have \$37 left over from the interest paid on the money left in my dwindling bank account (assuming a six percent interest rate).

⁸³ *Capital Losses*, p. 10.

⁸⁴ Stokey, Edith and Zeckhauser, Richard, *A Primer for Policy Analysis* (New York: W.W. Norton, 1978), p. 170

Virtually all large public and private projects must undergo some type of analysis that includes considerations of costs over time. The discount rate, like the bank's interest rate, is the rate used to calculate the present value of some future expense. The Internal Revenue Service currently uses 6.5 percent to determine the net present value of a future stream of payments.⁸⁵ For the purposes of this study, the net present value of the money necessary to support a prisoner over time (9 years on death row, 40 years for LWOP inmates) is computed with a same discount rate of 6.5 percent.

The national average of time a capital defendant spends on Death Row is nine years, eight months.⁸⁶ There are many bottlenecks along the road to an execution that do not appear to be changing in the near future. Even the most draconian measures limiting *habeas corpus* by the Supreme Court will not eliminate the crunch for court time, the dearth of qualified lawyers to argue death cases and the other avenues to appeal. Increased court time for capital trials at the trial level results largely from the lack of plea bargained cases, greater complexity of the trial, and the dual trial format. In Los Angeles County this delay typically requires 2.5 years just to get to the appellate levels as opposed to the average of one year for LWOP cases.⁸⁷ Once the death sentence has been secured and the defendant is moved to San Quentin's Death Row, there again are bottlenecks in both the limited time the State Supreme Court has to look over these cases and in the scarcity of qualified lawyers who are willing to argue the appeal.⁸⁸ In an attempt to get at the enhanced cost of the death penalty, one must put the cost of 9 and 2/3 years in prison on death row against the 40-year average life expectancy of a prisoner sentenced to life in prison.⁸⁹ There are no

⁸⁵ Internal Revenue Service Advance Revenue Ruling 93-92 applicable federal rates for May 1993 (Issued April 19, 1993, cited in BNA Taxation, Budget and Accounting Text, p. L-1).

⁸⁶ A press release from the U.S. Department of Justice: "BJS a Department of Justice component in the Office of Justice Programs, reported that those executed during 1991 had spent an average of nine years and eight months awaiting execution, about one year and nine months longer on the average than the 23 people executed during 1990." (October, 23, 1992).

⁸⁷ Interview with Kerry Fuse, Los Angeles County Superior Court, Budget Division, April 7, 1993.

⁸⁸ "Death Penalty Backlog," California Lawyer, June 1992, p. 36.

⁸⁹ The 40-year figure comes from Stephen Magagnini's article "Closing death row would save the state \$90 million a year," *Sacramento Bee*, Monday, March 28, 1988, A1. Every cost study I have seen also uses the 40-years as the life expectancy in prison, see notes 70, 71, 71 and 74.

figures available for the per inmate cost of a prisoner on death row. Consequently, I am using only the average cost to house an inmate at San Quentin, although Christine May, an Information Officer at the California Department of Corrections, points out that the death row inmates in that prison are the most expensive. San Quentin's average prisoner cost is \$21,440 a year.⁹⁰ The cost to house one prisoner in the state's maximum security prison in Folsom is \$21,067.⁹¹ Thus, housing a defendant the nine years on death row will cost the state \$189,603 in static dollars. Housing the LWOP defendant for 40 years will cost the state \$821,613 (again in nominal dollars only). But if we discount these costs to adjust for the extra cost of using money now instead of later, we get these figures: \$140,224 for an average death row stay, and \$301,553 for the life sentence.

INCARCERATION	Years	Yearly Cost	Nominal Cost	Discounted Cost ⁹²
<i>Charged</i>	9	\$21,440	\$150,080	\$140,224
<i>Dropped</i>	40	\$21,067	\$821,613	\$301,553

When all the quantifiable factors are added up, the total cost of a *Charged* case is \$1,898,323 compared to a *Dropped* case cost of \$627,322.

TRIAL ⁹³	Defense Attorney(s)	Defense Investigation	Prosecution Attorney(s)	Prosecution Investigation	Court ⁹⁴	LA Jail ⁹⁵	Total Cost to LA County
<i>Charged</i>	\$385,998	\$48,523	\$771,996	\$48,523	\$506,408	\$136,875	\$1,898,323
<i>Dropped</i>	\$160,058	\$5,105	\$320,116	\$5,105	\$82,188	\$54,750	\$627,322

⁹⁰ Interview with Christine May, Information Officer, California Department of Corrections.

⁹¹ Christine May.

⁹² The discounted costs in these cells represent the net present value of the stream of payments necessary to house a prisoner on death row for nine years and a Life In Prison inmate for 40 years. The rate used, 6.5 percent, is the "applicable federal rate for determining the present value of an annuity, an interest for life or a term of years, or a remainder or reversionary interest," according to the Internal Revenue Service Advance Revenue Ruling 93-92 applicable federal rates for May 1993 (Issued April 19, 1993, cited in BNA Taxation, Budget and Accounting Text, p. L-1).

⁹³ See Appendix B for a more in-depth explanation of this table.

⁹⁴ I multiplied the \$3,589/day Court cost given to me by the Judicial Council of California (*supra* note 79), by the sum of the Full Court Days and Days to Select a Jury.

⁹⁵ According to a Los Angeles County Jails Public Information Officer, the cost of housing a defendant bound for state prison is \$150 a day, or \$54,750 a year. Kerry Fuse at the Superior Court estimates that the average death penalty case takes 2.5 years to prosecute compared with 1 year for an LWOP case.

What the Trial table shows is that the county of Los Angeles could write a check to the state department of corrections for the cost of 40 years of confinement in a maximum security prison (\$301,553), pay for a full murder trial (\$627,322) and still save nearly one million dollars (\$969,448) in scarce public resources by not pursuing a single death penalty trial. Depending on how the automatic death penalty appeal to the State Supreme Court and subsequent appeals proceed, this could be just the beginning of a massive long-term drain on public resources.

Opportunity Cost. The economic definition of opportunity cost is the cost to society for using one resource for one use rather than another potentially more productive one. While opportunity cost should be a major consideration when looking at the death penalty's strain on the judicial system, it is difficult to quantify. The longer jury selection procedures results in lost work days. Hundreds of individuals are kept away from their jobs for weeks longer than an LWOP trial would require. Another opportunity cost at the state level involves tying up so many Department of Justice attorneys with death penalty appeals that other state agencies are forced to hire out legal service at a premium. A 1991 report by Attorney General Dan Lungren estimated that 136 state agencies had 160 contracts for outside legal services. The estimated cost to the state was \$30 million.⁹⁶ State agencies cited the "overworked" Department of Justice as a reason for looking for outside legal help.⁹⁷

Among these and other opportunity cost considerations, however, the most important is the tremendous drain on the State Supreme Court. There is a zero-sum character to the court's time: If the justices must review more death penalty cases, it necessarily must review fewer non-capital cases. For example, in one term of the state's high court, the overloaded justices refused to hear a case on whether or not the state legislature had the

⁹⁶ Lucas, Greg. "Private Lawyers Cost State Millions: Attorney General favors state attorneys," *San Francisco Chronicle*, November 20, 1991, A1.

⁹⁷ Lucas, A1.

obligation to fund abortions for the poor; skipped a case on whether tobacco companies could be sued for smoking related deaths; avoided ruling on whether school districts could impose taxes on real estate developers; refused to decide whether or not mental patients have the right to refuse anti-psychotic drugs; and ignored the question of whether hospitals have the authority to test new mothers for drug abuse and report the findings to child protection authorities.⁹⁸

California State Supreme Court Chief Justice Malcolm Lucas appointed a 10-member commission of judges and lawyers to study the court's backlog of cases and recommend ways to reduce it. One commissioner, State Court of Appeals Justice Harry Low, said, "Five years from now. 10 years from now, will anyone want to subject themselves to that huge volume of work all the time? Some new methods have to be looked at.... If you spend all your energy on death cases, civil cases have to be neglected." The ratio of death penalty verdicts to overall cases rose sharply after the ousting of former Chief Justice Rose Bird, according to a study by Santa Clara Law School Dean Gerald Uelman. In Bird's final year, 50 percent of the court's opinions were on civil cases. In the following two years, under Chief Justice Lucas, that percentage dropped to 33 and 29 respectively.⁹⁹ It is difficult to put a price tag on the missed opportunities to clarify existing law and set precedents in important emerging fields of law, but it is not difficult to demonstrate that the back-logged court and the evolution of state law are suffering from an avalanche of death penalty cases.

SECTION VII: WHEN RICH COUNTIES EXECUTE, EQUAL PROTECTION?

Counties poised on the edge of solvency cannot help but consider reducing the number of death cases to ease the strain on their budgets. Since the lion's share of the death penalty

⁹⁸ Hager, Philip, "'Unsexy' Cases Passed Over by Strapped High Court: Legal experts say holdups in resolving civil issues are causing confusion in the state's lower courts," *Los Angeles Times*, Sunday, March 18, 1990 section A, p. 3.

⁹⁹ Uelman, Gerald, "Lucas Court: First Year Report; the crushing load of death penalty appeals means the court no longer has the time to function as the architect of California case law," *California Lawyer* June 1988, p. 30.

cost rests on the counties, what happens when some counties can afford it and others cannot? In the years from 1985 to 1990, a pattern already has emerged that suggests that counties with falling revenue charge the death penalty less often. This phenomenon is likely to become more apparent in studies of sentencing data after 1990, since these years are characterized by both a much deeper recession and the discontinuation by the state of partial reimbursement for death penalty trials. If rich counties are able to continue to pursue death sentences while poor counties are not, this may bring credible claims of a violation of the Constitutional provision requiring equal protection under the law.

Cost "has to be a factor" in deciding to pursue the death penalty, according to an attorney in the Sacramento District Attorney's Office, adding, however, that "no one is going to tell you that."¹⁰⁰ Bill Hess, an attorney in the San Bernardino District Attorney's Office said cost is definitely a factor when considering to pursue the death penalty, just not the only factor. "If you decided on cost, you'd never file a death penalty case." Mr. Hess just finished prosecuting a successful death penalty case but it took five and a half months. A non-death murder trial would take four weeks, he said.

The decision is not easy for a DA presiding over an office with shrinking resources and no similar reduction in workload. In San Bernardino, 26 of the office's 120 lawyers will be cut due to budget scale backs which necessarily will reduce the number of cases the office can process. Since the more serious cases must be handled, the office responds by dropping the less serious offenses. "They [petty offenders] realize their chances [of being prosecuted] are low," said Hess. The policy implication is that law enforcement is "declaring open season on K-Mart."

Riverside County District Attorney Richard Zellerbach denies that cost plays any role in his decision to pursue the death penalty. He admits that a death case "necessitates a greater expense of resources," but that it is not a factor in his decision as supervisor of the homicide division. "If we run out of money, we run out of money," he said. He did point

¹⁰⁰ Interview, Sacramento's District Attorney's Office, April 23, 1993.

out, though, that defense attorneys increasingly are using the cost issue in their arguments against pursuing a case.

With defenders increasingly calling the death penalty into question because of its high cost, combined with the perception that some district attorneys are using the death penalty as a spring board for their political careers, the edges of legitimacy for this sentence are fraying. In San Francisco, there is a recurring accusation that the district attorney is pursuing the death penalty to further his own political career. *The San Francisco Examiner* reports that, "Hall of Justice insiders...are speculating aloud that [District Attorney Arlo] Smith's hard line has more to do with his anticipated run for State Attorney General than a desire to make [murder defendant Charles] Cohen pay for his crime."¹⁰¹ Georgia State Senator Gary Parker had more to say on this phenomenon to the House Judiciary Subcommittee on Civil and Constitutional Rights: "Concentration of resources on a few high-profile capital cases helps a prosecutor, attorney general or governor get reelected or advance to higher office, but it hurts the fight against crime by diverting resources from hundreds of other cases...."¹⁰²

Fiscal limitations inevitably lead to a rethinking of what the criminal justice system should and should not do. A RAND study on the reduced funding of the criminal justice system had this to say:

Agencies generally respond to reduced budgets (in real dollars) by shedding demand: They stop performing certain kinds of activities that they previously would have undertaken on their own initiative or at the request of a citizen or another criminal justice agency. District attorneys reduce the categories of offenses they will prosecute and cut back on investigations into matters such as official corruption and consumer fraud. Police departments screen out reported crimes that are unlikely to be solved, concentrating investigative resources on the remaining crimes. Probation agencies pay less attention to supervising persons under their charge and focus more on functions that are required by

¹⁰¹ Ganahl, Jane and Taylor, Barbara, "D.A.'s \$1 million death trial," *San Francisco Examiner*, Wednesday, March 17, 1993, A-2.

¹⁰² House Judiciary Subcommittee on Civil and Constitutional Rights May 1990 cited in *General Information*, p. 5.

other parts of the system: providing presentence reports for judges, operating bail-release programs, and the like.¹⁰³

This shift in emphasis is apparent in the State Attorney General's Office. In August 1991, Attorney General Dan Lungren completely eliminated the prosecution units dedicated to fighting white-collar crime and fraud. The 15 lawyers were transferred to the 168-lawyer criminal-law section because of budget cuts and to help with the "overwhelming" death penalty caseload. "How many death penalty cases do you *not* want me to do because someone is going to criticize me for not doing a fraud case?" said Lungren.¹⁰⁴

STATISTICAL EVIDENCE OF FEWER DEATH SENTENCES IN REVENUE-POOR COUNTIES

This section uses the techniques of multiple regression analysis to determine what factors or circumstances might predict the variation of the number of death sentences by county. Multiple regression is a statistical process that takes into account how the variations in certain independent variables (such as the number of homicides) predict the behavior of a dependent variable (e.g. death penalty dispositions). In this case I wanted to see how the variations in the following independent variables: 1) number of willful homicides, 2) whether or not the county is rural (under 100,000 population), and 3) whether or not the county experienced a 15 percent or more decrease in local purpose revenue, could predict the variations in the dependent variable, the number of death penalties disposed by county.¹⁰⁵ (Local purpose revenue "LPR" is the revenue available to counties after they meet the costs of state-mandated programs.) The variables in the model below explain 91 percent of the variation by county of death sentence dispositions. As

¹⁰³ Chaiken, Jan M., Walker, Warren E., Jiga, Anthony P., Polin, Sandra S., "The Impacts of Fiscal Limitation on California's Criminal Justice System," A RAND publication prepared for the National Institute of Justice, U.S. Department of Justice (1981).

¹⁰⁴ Richardson, James, "White-crime, fraud units cut out by Lungren," *Sacramento Bee*, August 23, 1991, p. 1.

¹⁰⁵ The data for this model is based on the Criminal Justice Profile, an annual publication of the Bureau of Criminal Statistics and Special Services, California Department of Justice. Population figures are from the 1990 census, and local purpose revenue statistics are from a California State Legislative Analyst Office report *Major Issues Facing the Legislature*, "Variations in County Fiscal Capacity," (Sacramento, CA Legislative Analysts Office, 1991), p. 332. See Appendix A for a more in depth discussion of this model

indicated by the coefficient values, an increase in the number of willful homicides increases the likelihood of a death sentence. If a county is rural or experienced a decline in local purpose revenue, it is less likely to give a death sentence.

DEF VAR: DEATH PENALTY DISPOSED N: 58 MULTIPLE R: 0.954 SQUARED MULTIPLE R: 0.910						
ADJUSTED SQUARED MULTIPLE R: 0.905 STANDARD ERROR OF ESTIMATE: 2.111						
VARIABLE	COEFFICIENT	STD ERROR	STD COEF	TOLERANCE	T	P(2 TAIL)
CONSTANT	2.578	0.438	0.000	.	5.888	0.000
WILLFUL HOMICIDES	0.005	0.000	0.897	0.940	21.312	0.000
UNDER 100,000 POP	-2.160	0.581	-0.157	0.927	-3.716	0.000
15% DECLINE IN LPR	-1.616	0.674	-0.099	0.973	-2.397	0.020

My hypothesis was that poorer counties would be less likely to charge the death sentence because of an inability to pay for it. This model shows that declining revenue is almost assuredly a factor, albeit a small one. The Homicide variable predicts that every additional homicide in a county increases the number of death sentences by .005. Since the numbers of homicides are so large (1,039 for Alameda County for the five year period) this coefficient has great predictive value. In fact, it is the homicide variable that is largely responsible for the high r^2 value. While the variables, Poor and Rural are less responsible for such a high r^2 figure, they are powerfully significant evidenced by their very low P-values. According to the model, there is only a 2 percent chance that Poor is not a significant variable in predicting the variation in death sentencing among counties. For the Rural variable, the P-value is so low as to not even register in the thousandths. In addition, an F-test, designed to further scrutinize the appropriateness of the Poor and Rural variables finds these variables to be significant to the model. The F-test compares a constrained model, in this case a simple regression on how death sentences are predicted by Willful Homicide alone, and the unconstrained model with the Poor and Rural variables added in. In comparing the two models, the F-score is 8.6, well above the 3.15 needed to reject the null hypothesis that Poor and Rural have nothing to do with explaining this phenomenon.

A better multiple regression model would have the incidence of death sentences charged rather than disposed as the dependent variable. But these charging statistics are not kept on

the state or the local level. My attempt to collect this data by county met with resistance by some district attorneys and simply poor record keeping by others.

To the extent that a death disposition represents a "success" for the district attorney, it is a function of how often he or she charge it. Currently, one in eight death charges ends as a death disposition (*supra note 4*). Therefore, the death disposition, while not a perfect predictor of death charges, is a sufficient proxy for the prosecuting attorney's charging behavior.

PART II: RECOMMENDATIONS ON HOW TO USE THE COST ARGUMENT

While it is the cost of the death penalty you have asked me to examine, it may be instructive to note that cost did not play a major role in the abolition of the death penalty in other industrial democracies. In the case of France and Britain specifically, public opinion, to the extent it was swayed at all, was swayed by the lack of apparent deterrent value and highly publicized executions that were either absolute or possible mistakes. There tended to be high profile abolitionist such as Queen Elizabeth II and the Earl of Harwood in England and former President d'Estaing and Prime Minister Raymond Barre in France.¹⁰⁶ Finally, there was effective political leadership. In France this was supplied by the Socialist and Communist Parties, and in England by a 29-year veteran of the House of Commons, Samuel Sydney Silverman. Political leadership and public opinion went hand in hand. While there was not a majority opinion in favor of abolition, that there was an active, articulate minority ensured that a politician or party did not risk political oblivion by supporting this cause.

In Britain, the findings of the Royal Commission which challenged the notion of the death penalty's deterrence value, combined with a substantial reduction in the number of executions with no subsequent increase in the homicide rate in the late 1950s, undermined support for capital punishment.¹⁰⁷ Yet support remained, especially for executing terrorists. In the wake of an assassination of Alrey Neavy, the Conservative Party spokesman for Northern Ireland, the London *Daily Mail* found that 53 percent of the British public favored capital punishment for all types of homicide, and 84 percent approved the death penalty for murder committed by terrorists.¹⁰⁸

¹⁰⁶ Block, Eugene, *When Men Play God: The Fallacy of Capital Punishment*, (Cragmont Publications: San Francisco, 1983), pp. 144 and 176.

¹⁰⁷ Christoph, James, *Capital Punishment and British Politics: The British Movement to Abolish the Death Penalty 1945-1957* (University of Chicago Press: London, 1962), p. 164-190

¹⁰⁸ Block, p. 145

Capital punishment was used sparingly since World War II in France, and was abolished in 1981. As in Britain, this took place in the face of popular support for the death penalty, according to an opinion poll conducted by the newspaper *Le Figaro*.¹⁰⁹ The Communists and Socialists parties were opposed to the death penalty. Despite their publicly stated opposition, however, French voters found other reasons to increase the number of Socialists and Communists in the National Assembly. It was the strengthening of these parties that led to the government's move to abolition. In their analysis of all the countries that have abolished the death penalty, Frank Zimring and Gordon Hawkins conclude that periods of declining use of the death penalty—as in Britain after the 1950s and France since 1945—are necessary before the death penalty can be abolished. "Long-established institutions or practices that reflect and satisfy fundamental intentions, beliefs, and needs defy instant dissolution by administrative fiat."¹¹⁰

Zimring and Hawkins suggest that support for the death penalty has more to do with "such mental states as are connoted by terms like 'faith,' 'belief' or 'conviction,' or even such affective conditions as 'allegiance' or 'loyalty.'" To that extent, "support for the death penalty is generally not a matter of cognition (that is, knowing something), or of evaluation (that is, determining the worth, value, or utility of something)."¹¹¹ That there are few examples where ideas—such as the cost-effectiveness of the death penalty—turned the tide of public opinion can discourage someone using the findings of this study. As Zimring and Hawkins' findings suggest, the cost issue will not be an effective argument to sway the majority public opinion which seems to respond to more sub rational impulses on this policy.

Where there does seem to be some promise, however, is the extent to which successful abolition strategies abroad linked the abolition of capital punishment to general civil liberties. I have tried to make the argument that the twin assurances of our civil liberties in

¹⁰⁹ Block, p. 182

¹¹⁰ Zimring, Franklin and Hawkins, Gordon, *Capital Punishment and the American Agenda* (Cambridge University Press: New York, 1986), p. 11.

¹¹¹ Zimring and Hawkins, p. 19

terms of capital punishment rest on Supreme Court edict and the ability of government to pay for the edict's safeguards. I have also discussed how other aspects of the justice system also require funds to maintain their integrity (e.g. reasonable response times for law enforcement or pursuit of petty offenders). We are always caught in a battle over how to spend limited public resources but this battle is particularly fierce today. A possible approach would join Death Penalty Focus with other civil rights groups over the issue of the eroding financial underpinnings of other civil rights. The right to a low cost education, the right to a job, or the right for a community oriented policing system are costly. Abolition of the death penalty could be woven into other arguments. For example, protesting students would demand as a partial solution to skyrocketing fees that resources from the death penalty system be used for public education. This may attach death penalty abolition to a larger, and politically more palatable, civil liberties agenda.

ORGANIZING AT THE TRIAL LEVEL

The treatment of the state's fiscal crisis in this paper suggests that tight county budgets will be the norm through the decade. I think the most effective use of this information is not to convince voters that *California* should not have the death penalty, but rather *Alameda County* should not pursue it. I recommend using the information in this study to organize localities around pending capital cases. In other words, this approach would emphasize opposing the death penalty at the county level. Rather than a strategy characterized by protests outside the gates of San Quentin, the symbol for this strategy is protesters at the steps of Superior Court houses statewide. While at first, this approach will not dramatically stem the number of executions, it will provide some concrete successes in a struggle that has had few lately. Perhaps the greater accomplishment, however, will be in grass roots organizing. Generating a group of people to oppose a specific execution in their community will hopefully leave an ongoing organized anti-death penalty group. In

this way, Death Penalty Focus will build its network of opposition to the death penalty county by county.

The strategy of weaving the abolitionist cause with other causes is also applicable at the county level. For example, in Los Angeles, the incidence of violent crime has risen steadily since 1976 despite hundreds of death penalty sentences. In addition, the "LA 2000" study warns that the 15-29 year-old age group will increase by 15 percent by the year 2000, which will likely result in increased violent crime.¹¹² Much of the increase is drug and gang related "Drugs and drug related activities may account for as much as 50 percent of the crime occurring today, and 20 percent of the city's homicides have been attributed to drug-related violence."¹¹³ Programs aimed at reducing gang violence and drug use would have dramatic impact on the rate of violent crime in Los Angeles. When the abolitionist message is framed not as just "abolish the death penalty because it is morally wrong," but rather, "abolish the death penalty because it is costly and diverts resources away from valuable anti-gang and drug programs," then the message might resonate more successfully.

In Los Angeles and other communities where crime and police brutality are an issue, an approach might emphasize how the money spent on the death penalty could be better spent on a more humane and effective policing programs such as community policing. Community policing is effective but it requires funding. In Prince George's County, Maryland, police Captain Terry Evans said their community policing program is "the only thing I've seen in 23 years of law enforcement that's had an impact, actually turned it around." Prince George's County Policing Program costs \$10 million a year to implement.¹¹⁴ To the extent possible, Death Penalty Focus should research a community

¹¹² LA 2000 a report to the mayor by LA 2000 Committee, Law and Justice Task Force (1988).

¹¹³ LA 2000, p. 25.

¹¹⁴ *Millions Misspent: What Politicians Don't Say About the High Costs of the Death Penalty*, A Report by The Death Penalty Information Center (1992), p. 8, citing E. Meyer, "Policing With People in Mind," *The Washington Post*, June 15, 1992, section A, p. 8.

to find programs that are under funded and connect them to the problem of a high-cost, low-result death penalty.

WHERE TO FOCUS LIMITED RESOURCES

Because of fiscal ill-health and recently completed or current capital trials, I recommend the following counties as examples of where the cost strategy should be most effective.

Revenue-Poor Counties	Death Penalty Trials just completed or underway ¹¹⁵	Potential Savings to the County by not pursuing the death penalty ¹¹⁶
Butte	6	\$7,500,000
Fresno	15	\$18,750,000
Glenn	2	\$2,500,000
Kern	1	\$1,250,000
Mariposa	6	\$7,500,000
Merced	5	\$6,250,000
Plumas	5	\$6,250,000
San Bernardino	7	\$8,750,000
Santa Clara	14	\$17,500,000
Solano	9	\$11,250,000
Sonoma	3	\$3,750,000
Tulare	7	\$8,750,000
Yolo	8	\$10,000,000

If the citizens of a county are choosing between a fire engine and a death trial, using the cost issue at the local level is powerful. Unfortunately, there is a built-in limit to this strategy. Some counties are not financially strapped and as the list above indicates, many of the counties that are do not comprise a large percentage of the state's voting population. Therefore, the county-level strategy is limited in its overall effectiveness.

Ultimately, a weak economy should not be the linchpin of an abolition strategy. Economies, presumably, improve. A longer term view might put more emphasis on the

¹¹⁵ Based on information from the Legal Tracking Project.

¹¹⁶ According to the Trial Table on page 29, Los Angeles County spends \$1,255,193 more for every death penalty trial. I have multiplied the Death Penalty Trials in column two by \$1,250,000 to arrive at the possible savings for each county.

equal protection issue raised in this study. The venue for this battle, however, will be the court of public opinion *and* state and federal courts. Unfortunately for the California citizens, there appears to be several more years of tight budgets at the county level. I recommend updating the findings of this study in the near future, with more data, to see if the uneven sentencing trends are holding. Perhaps this issue could be used in future legal attacks on the validity of capital punishment in California. If rich counties continue to charge the death penalty more often, there cannot be any question that the death penalty is being applied arbitrarily; not on account of race—although that may also be true—but based on the “freakish” condition of a county’s fiscal health.

Appendix A

DEP VAR: DEATH N: 58 MULTIPLE R: 0.954 SQUARED MULTIPLE R: 0.910
 ADJUSTED SQUARED MULTIPLE R: 0.905 STANDARD ERROR OF ESTIMATE:
 2.111

VARIABLE	COEFFICIENT	STD ERROR	STD COEF	TOLERANCE	T	P(2 TAIL)
CONSTANT	2.578	0.438	0.000	.	5.888	0.000
HOMICIDE	0.005	0.000	0.897	0.940	21.312	0.000
RURAL	-2.160	0.581	-0.157	0.927	-3.716	0.000
POOR	-1.616	0.674	-0.099	0.973	-2.397	0.020

ANALYSIS OF VARIANCE

SOURCE	SUM-OF-SQUARES	DF	MEAN-SQUARE	F-RATIO	P
REGRESSION	2436.294	3	812.098	182.304	0.000
RESIDUAL	240.551	54	4.45		

TIDE VARIABLES:

POOR: A Legislative Analysts Office study on county finance differentiated general purpose revenue from what they call local purpose revenue. Essentially, local purpose revenue indicates the funds available after expenditures on state-mandated programs. This model predicts whether or not the counties are responding to falling revenue by shedding demand for expensive programs such as the death penalty. Since it is the counties discretionary budget that will most likely drive this decision making, I have chosen LPR rather and GPR as the variable for POOR. Poor is a dummy variable differentiating between counties that experienced a 15 percent or more reduction in LPR from 1984-1988. The counties in this category are: Fresno, Kern, Sonoma, San Bernardino, Santa Clara, San Joaquin, Butte, Merced, Santa Cruz, Tulare, Yolo, Solano, Mariposa, Sutter, Mono, Plumas, Lassen, Sierra, Glenn, Colusa, Lake. *Source: Major Issues Facing the Legislature, "Variations in County Fiscal Capacity." (Legislative Analyst Office, Sacramento, California, 1992).*

RURAL: This is another dummy variable differentiating between counties above and below 100,000 in population. *Source: 1990 Census cited in California Statistical Abstract, 1992, (Sacramento, California, 1992).*

HOMICIDE: This is a continuous variable of the total number of willful homicides per county between 1985 and 1991. *Source: Criminal Justice Profiles, 1986 through 1991, (Bureau of Criminal Statistics, Department of Justice: Sacramento, California).*

DEATH: The dependent variable is the actual number of death sentences disposed by county. Again, I aggregated the data but with a one-year lag from the HOMICIDE data. Cases that are disposed in one year have been ongoing and wouldn't be causally related to the homicides occurring at the time of trial. The years used for this variable are 1986 to 1990. *Source: Criminal Justice Profiles, 1985 through 1990, (Bureau of Criminal Statistics, Department of Justice: Sacramento, California).*

This model explains 91 percent of the variation in death sentences disposed among California's 58 counties. My hypothesis was that poorer counties would be less likely to charge the death sentence because of an inability to pay for it. This model shows that declining revenue is almost assuredly a factor, albeit a small one. The Homicide variable predicts that every additional homicide in a county increases the likely number of death sentences by .005. Since the numbers of homicides are so large (1,039 for Alameda County for the five year period) this coefficient has great predictive value. In fact, it is the homicide variable that is largely responsible for the high r^2 value. While the variables, Poor and Rural claim only a small percentage of the high r^2 figure, they are powerfully significant as evidenced by their very low P-values. According to the model, there is only a two percent chance that Poor is not a significant variable in predicting the variation in death sentencing among counties. For the Rural variable the P-value is so low, it does not

even register in the thousandths. In addition, an F-test, designed to further scrutinize the appropriateness of the Poor and Rural variables finds them to be significant to the model. The F-test compares a constrained model, in this case a simple regression on how death sentences are predicted by the number of willful homicide alone, and the unconstrained model with the Poor and Rural variables added in. In comparing the two models, the F-test yields a score of 8.6, well above the 3.15 needed to reject the null hypothesis that Poor and Rural have nothing to do with the model.

A better multiple regression model would have the incidence of death sentences charged rather than disposed as the dependent variable. But these charging statistics are not kept on the state or the local level. My attempt to collect this data by county met with resistance by some district attorneys and simply poor record keeping by others.

To the extent that a death disposition represents a "success" for the district attorney, it is a function of how often she charges it. Currently one in eight death charges ends as a death disposition (*supra note 4*). Therefore, the death disposition, while not a perfect predictor of death charges, is a sufficient proxy for the prosecuting attorney's charging behavior.

Appendix B

TRIAL DATA ¹	Motions ²	Avg. Number of Attorneys	Days to Select Jury	Full Court Days ³
<i>Charged</i>	40.9	1.9	18.3	98.3
<i>Dropped</i>	6.0	1.4	2.3	17.6

INCARCERATION COSTS	Years ⁴	Yearly Cost ⁵	Nominal Cost	Discounted Cost ⁶
<i>Death Row</i>	9	\$21,440	\$189,603	\$140,224
<i>Life in Prison</i>	40	\$21,067	\$821,613	\$301,553

TRIAL	Defense Attorney(s)	Defense Investigation	Prosecution Attorney(s)	Prosecution Investigation	Court ⁷	LA Jail ⁸	Total Cost to LA County
<i>Charged</i>	\$385,998	\$48,523	\$771,996	\$48,523	\$506,408	\$136,875	\$1,898,323
<i>Dropped</i>	\$160,058	\$5,105	\$320,116	\$5,105	\$82,188	\$54,750	\$627,322

¹ These statistics, along with the defense cost data, were collected from actual case files at the Los Angeles Superior Court, Central Division (see the complete samples in Appendices C and D). Kurt Livesay edited the original sample, leaving only the cases that could be considered a "typical, well defended case." Mr. Livesay was the sole person responsible for making the decision to pursue death penalty cases in Los Angeles for 17 years. This data, along with other survey data in this report, are on file as an Advanced Policy Analysis project at the University of California, Graduate School of Public Policy.

² For this study, simple scheduling motions, including motions for continuance, were not included.

³ Full Court Days is the average number of days where the trial took up all of the court's time. These averages do not include the numerous days where the court had to deal with some aspect of the case while not in full session. The times the court had to rule on some aspect of the case (e.g. ruling on a motion for continuance) are recorded as Court Days in Appendices C and D. A conservative estimate would estimate 20 minutes for each one of these instances. This could add 6.3 days to the average number of Full Court Days for the *Charged* group and 1.3 more days to the average for the *Dropped* group. To avoid confusion, I left these additions out of the model.

⁴ The nine-year figure comes from a press release from the U.S. Department of Justice (October, 23, 1992). The 40-year figure comes from Stephen Magagnini's article "Closing death row would save the state \$90 million a year," *Sacramento Bee*, Monday, March 28, 1988, A1. Every cost study I have seen also uses the 40-years as the life expectancy in prison, see notes 70, 71, 71 and 74.

⁵ Interview with Christine May, Information Officer, California Department of Corrections.

⁶ The discounted costs in these cells represent the net present value of the stream of payments necessary to house a prisoner on death row for nine years and a Life In Prison inmate for 40 years. The rate used, 6.5 percent, is the "applicable federal rate for determining the present value of an annuity, an interest for life or a term of years, or a remainder or revisionary interest," according to the Internal Revenue Service Advance Revenue Ruling '93-'92 applicable federal rates for May 1993 (Issued April 19, 1993, cited in BNA Taxation, Budget and Accounting Text, p. L-1).

⁷ I multiplied the \$3,589/day Court cost given to me by the Judicial Council of California (*supra* note 83), by the sum of the Full Court Days and Days to Select a Jury.

⁸ According to a Los Angeles County Jails Public Information Officer, the cost of housing a defendant bound for state prison is \$150 a day, or \$54,750 a year. Kerry Fuse at the Superior Court estimates that the average death penalty case takes 2.5 years to prosecute compared with 1 year for an LWOP case.

Appendix C

Case No.	Status	Name	1	2	187a	1	1	4	18	10	8	2	8	
1022086	DROPPED	Phetas	1	1	187a 211	1	1	4	18	10	8	2	8	
1008821	DROPPED	Bask, Suk Young	1	1	187(a) 884-211 211	2 2 1	2	3	21	23	31	2	2	
180782	DROPPED	Turner, Robert	1	1	187a 498 211	1 1 1	1	3	13	18	40	19	2	
173059	DROPPED	Anderson, Charles Kenneth	1	1	187a 281(2) 288(c)	1 1 1	1	3	27	12	24	0*	4	
188418	DROPPED	Phetas, Keith Maurice	1	1	187a 884-211	1 1	1	4	40	13	17	0	12	
188248	DROPPED	Dennis, Gustie Armanda, Beeno	2	2	187a 208b 207a 211 207a 207a	1 aa 1 aa 1 aa 1aa 1aa 1aa	1 murder 1 kidnap	2	38	15	14	3	4	\$228,411.42
287887	DROPPED	Pettaway, Ursula	4	2	187a 188.1	1 1	1	8	45	22	38	8	17	\$87,272.87
420010	DROPPED	Pardus, Andrew	8	2	187a 211	2 2	2	18 (dual h/tee)	81	32	30	21	7	\$153,480.21
averages				1.4			1.1	3.4	31.6	18.8	28.8	8.9	8.8	\$180,958

App E--987.9 Costs

Appendix E			
Death Penalty Investigator and Expert Witness Cost Survey			
Cases where the death penalty was available and charged			
	Defense Attorney Cost	987.9 Cost	Total
1	\$93,747.87	\$14,386.55	\$108,134.42
2	\$101,175.00	\$16,875.00	\$118,050.00
3	\$470,600.96	\$165,083.99	\$635,684.95
4	\$386,548.42	\$65,551.78	\$452,080.20
5	\$374,770.00	\$44,250.00	\$419,020.00
6	\$94,247.40	\$3,149.90	\$97,397.30
7	\$173,537.61	\$30,381.46	\$203,919.07
total	\$1,694,627.26	\$339,658.68	\$2,034,285.94
avg.	\$242,089.61	\$48,522.67	\$290,612.28
Cases where the death penalty was available but not charged			
	Defense Attorney Cost	987.9 Cost	Total
1	\$409,602.88	\$15,673.50	\$425,276.38
2	\$8,461.41	\$550.00	\$9,011.41
3	\$50,321.33	\$0.00	\$50,321.33
4	\$71,750.00	\$0.00	\$71,750.00
5	\$46,548.93	\$10,844.98	\$57,393.91
6	\$45,886.10	\$2,888.50	\$48,774.60
7	\$79,705.09	\$20,393.02	\$100,098.11
8	\$30,596.24	\$0.00	\$30,596.24
9	\$10,250.00	\$11,822.00	\$22,072.00
total	\$335,057.69	\$45,948.50	\$382,506.19
avg.	\$37,228.63	\$5,105.39	\$42,500.69
<p>Source: These cases and cost figures initially were generated by the Superior Court's Budget Office for the Auditor-Controller's Office. I then sent the entire list of death cases charged and death cases not charged to Los Angeles public defenders and court appointed attorneys with the instruction to only select the cases on the list that were "middle range" in terms of cost among the cases with which they were familiar. Seventeen attorneys responded.</p>			

Appendix C

Case Number	Status	Name	Count	Charge	Year	Days	Partial Conv.	Full Conv.	People's Defenses	Number of Months	Cham/Att-Int				
9448	DROPPED	Thompson, Rodney Whittenburg, Randy	1	187a 664-211 211	1 ea 1 ea 1 ea	1	8 (duel juries)	19	14	14	10	8	\$44,180.00		
8348	DROPPED	Davel, Gurule Amanda, Buena	2	187a 209b 207a 211 207a 207a	1 ea 1 ea 1 ea 1 ea 1 ea 1 ea	1	1 murder 1 kidnap	2	38	15	14	3	4	\$229,411.42	
38241	DROPPED	Washington, Frank James	3	187a 211	1 1	1	1	22	6	10	1	2	\$28,607.50		
7897	DROPPED	Perlaway, Unhice	4	187a 182.1	1 1	1	8	48	32	39	8	17	\$87,272.87		
9018	DROPPED	Pardeus, Andrew	5	187a 211	2 2	2	18 (duel juries)	41	22	30	21	7	\$183,490.21		
127897	DROPPED	Soto, Mark	1	187a 211 664-211 664-187a	1 2 1 1	1	3	18	10	68	18	5	\$100,824.06		
329724	DROPPED	Morales, Otman	1	187a 664-187a	2 1	2	1	25	18	48	4	6	\$50,320.68		
30783	DROPPED	Turner, Robert	1	187a 450 211	1 1 1	1	3	13	18	40	18	2			
73088	DROPPED	Anderson, Charlie Kenneth	1	187a 201(2) 288(c)	1 1 1	1	3	27	12	24	0*	4			
Averages						1.4		1.1	7.3	28.7	17.6	30.8	9.8	8.0	\$78,273.00

as is criminal count numbers: 182 = conspiracy, 187a = 1st dg murder, 207 = attempted kidnap, 208 = kidnap for ransom, 211 = robbery, 244 = assault w/ deadly weapon, 248 = assault, 281 = rape, 394 = forcible rape,
9 = 1st dg burglary, 447 = grand theft, 864-X=attempted X

MAY - 3-96 FRI 20:33 ANCHORAGE L10 FAX NO. 9072581261 P. 49

FISCAL NOTE

STATE OF ALASKA
1996 LEGISLATIVE SESSION

No. 4
Bill Version: CSSSSB 52 (JUD)
(H) Publish Date: 4/29/96

Revision Date: _____
Title: "An Act authorizing capital punishment."
Sponsor: Senator Taylor
Requestor: (S) JUD

Department Affected: Administration
BRU: Public Defender Agency
Component: Public Defender Agency
COMPONENT SERIAL NO. 1631

EXPENDITURES/REVENUES:

(Thousands of Dollars)

OPERATING EXPENDITURES	FY 97	FY 98	FY 99	FY 00	FY 01	FY 02
PERSONAL SERVICES		770.4	1032.0	1638.7	1638.7	2456.3
TRAVEL		50.0	150.0	250.0	350.0	450.0
CONTRACTUAL		184.8	468.2	396.6	1256.6	1639.5
SUPPLIES		25.0	24.0	33.0	33.0	48.0
EQUIPMENT		54.0	18.0	40.5	-0-	40.5
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0.0	1084.2	1692.2	2858.8	3278.3	4734.4

CAPITAL EXPENDITURES						
----------------------	--	--	--	--	--	--

CHANGE IN REVENUES ()						
------------------------	--	--	--	--	--	--

FUND SOURCE:

(Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF		1084.2	1692.2	2858.8	3278.3	4734.4
1005 GF/Program Receipts						
1037 GF/Mental Health						
OTHER						
TOTAL	0.0	1084.2	1692.2	2858.8	3278.3	4734.4

Estimate of any current year (FY 96) cost: \$ -0-

POSITIONS:

FULL-TIME		12.0	16.0	25.0	25.0	33.0
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary.)

See attached.

Prepared by: John B. Salemi, Director
Division: Public Defender Agency

Phone: (907) 264-4412
Date: _____

Approved by Commissioner: Mark Boyer
Agency: Department of Administration

Date: 2-17/96

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FISCAL NOTE

STATE OF ALASKA
1996 LEGISLATIVE SESSION

BILL NO. SSSB 52

ANALYSIS (continued)

Introduction

This bill authorizes capital punishment for the crime of Murder in the First Degree if certain attendant aggravating factors are found to exist and are established by competent evidence. Prosecution is given discretion whether to seek the death penalty in a given case.

The capital caseload of the Public Defender Agency will be a direct function of the number of murder cases prosecuted in the state combined with prosecutorial decisions to seek the death penalty. As such the Public Defender Agency's fiscal analysis is premised on projections made by the Department of Law in its fiscal analysis of HB 45. The Department of Law indicated it prosecuted 17 murder cases in 1994 where the death penalty could have been sought in that the requisite statutory aggravators were present. Of those 17, ten would likely result in death penalty trials. The Department of Law concluded that they would gain nine convictions from which the death penalty would be imposed in six cases.

Of the ten cases which are projected to go to trial as capital cases, the Public Defender anticipates being assigned to seven, with the other three either involving private lawyers or attorneys secured through the Office of Public Advocacy (where the PD is unable to undertake representation because of legal conflict of interest).

Because the number of murders can vary significantly from year to year, predicting actual numbers of cases is difficult. It is not difficult, however, to predict a profound fiscal impact for the PD once the death penalty becomes law. The concept of "super due process", established by the U.S. Supreme Court as the required standard of practice for defending death penalty cases, necessitates that highly capable lawyers and support staff (in sufficient numbers) be in place to handle any and all cases of this nature.

Fiscal Impact

Passage of this death penalty legislation will have an undeniably significant impact on the entire criminal justice system, including the courts, corrections, prosecution, public counsel services, and other related entities. Death penalty cases require greater due process safeguards than do non-capital cases. This is obviously a consequence of the severity and finality of a death sentence as well as the potential for killing an innocent person by mistake. It must be understood that the criminal justice system is an imperfect process based on the combination of law and human judgment. Some percentage of error is a consequence of the American jury system. In non-death cases the system stands ready to correct those mistakes when and where they become known. An execution following a death penalty case can never be corrected. It is for these reasons so much care must be taken to defend individuals accused in capital cases. Providing "super due process" translates into adequate attorney resources, support resources, expert and consultation monies, funds for appealing death penalty convictions and other attendant expenses. A commonly accepted estimate for expert witness fees alone in a death penalty case is \$60,000.

It is not unusual for a death penalty case to remain in the court system, litigated by the parties, for a period of up to ten years. This is a result of the extensive appellate work which is routinely done in each death penalty case following conviction. Following are the procedures which are typically utilized after a trial and sentencing:

1. Motion to modify the death sentence/reconsider before state trial judge;
2. Mandatory appeal of conviction and sentence to Alaska Supreme Court;
3. Writ of certiorari to the United States Supreme Court;
4. Post-conviction relief proceedings in state court;

FISCAL NOTE

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BILL NO. SSSB 52

5. Appeal of unsuccessful post-conviction relief proceedings to the Court of Appeals;
6. Petition for hearing of post-conviction relief proceeding denial to the Alaska Supreme Court;
7. Petition for writ of habeas corpus in Federal District Court.
8. Appeal to the United States Court of Appeals if writ unsuccessful;
9. Rehearing in the United States Court of Appeals;
10. Writ of certiorari to the United States Court of Appeals;
11. Request for clemency/commutation to Executive Branch of government;
12. Emergency stays to the United States Supreme Court prior to execution.

Breakdown of Fiscal Impact

1. Personal Services Given the complexity and intensity of effort involved in each death penalty trial and penalty hearing, many states require by statute that a minimum of two defense attorneys take up representation of the accused in death penalty matters. Both the state District Attorney and the Office of Public Advocacy contemplate such a policy for their respective agencies. The Public Defender will follow this prudent course, whether established by statute or internal policy.

Assuming that the Public Defender Agency handles six to seven capital cases per year, death penalty units will be established in its two largest offices: Anchorage and Fairbanks. A trial team in each of these offices will be established the first year. The second year an appellate team will be placed in Anchorage. (Please note that unlike the Department of Law, the Public Defender Agency has no equivalent to the Office of Special Prosecutions and Appeals.) The appellate team will not be needed until the second year following enactment of the death penalty because it is not expected that an appeal would be "ripe" until that time. Obviously adequate support staff, to include legal interns (designated as "Associate Attorneys" under state personnel classification) paralegals, investigators and secretaries, will be necessary. A second appellate team will be established in Fairbanks in the third year following enactment of capital punishment.

2. Travel and Contractual Travel expenses will be necessarily high in that a team approach is being taken by this agency. These teams will have to travel to locations where the crime occurred and where trial is being held. Travel expenses are higher in Alaska because of the geography of the state, the lack of surface roads, and the high cost of air travel and lodging. Costs will be even higher for the considerable out-of-state travel associated with these cases. Once an individual is convicted of a capital offense, preparation begins for the penalty phase (sentencing hearing). Defense investigators will travel to locations where the defendant lived, went to school, etc., to interview people and develop facts for the purpose of mitigating a sentence of execution. If favorable witnesses are located, they will then have to be subpoenaed for travel to Alaska for the hearing.

Contractual expenditures for expert witnesses will be significant. As the Department of Law pointed out in a 1993 fiscal note related to a death penalty proposal, "recent cost studies of capital trials in other states indicate that expert witnesses for both the trial and sentencing proceedings cost about \$60,000, on the average". This estimate is consistent with the research by the Public Defender Agency on this issue. In addition there will be expert witness costs for the appellate work done following trial, conviction and sentence to death. These costs can be as high as the expert witness fees incurred during trial.

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1996 LEGISLATIVE SESSION

BILL NO. SSSB 52

3. Supplies and Equipment. These expenses naturally accrue when additional staff are required. Estimates which follow are conservative projections without consideration of inflationary factors.

4. Training. Training for lawyers engaged in death penalty work is a critical component for any death penalty defense unit. Both the prosecution and the defense will avail themselves of national training programs which are conducted on a yearly basis related to these kinds of cases.

Conclusion

Due to the accrual of cases from year to year, once implementation of the death penalty occurs expenses could greatly exceed that anticipated in this fiscal analysis. This agency has no control over the trend of homicide crimes nor the discretion which will be exercised by the prosecution in seeking the death penalty. There is the real likelihood that additional staff will have to be added to this agency beyond the third year of implementation of the capital crime law. Simply stated, this cost estimate very well might understate staff/contractual needs. Only several years of experience with the death penalty will permit adjustment of projections and fiscal analysis.

Fiscal Impact--FY 98

Personal Services (100 Line) *

Anchorage - Trial Team

Attorney V	
Salary & Benefits	\$ 88.9
Attorney IV	
Salary & Benefits	93.6
Associate Attorney I	
Salary & Benefits	53.8
Paralegal Assistant II	
Salary & Benefits	52.1
Investigator II	
Salary & Benefits	52.1
Legal Secretary I	
Salary & Benefits	37.0

Fairbanks - Trial Team

Attorney V	
Salary & Benefits	100.9
Attorney IV	
Salary & Benefits	94.7
Associate Attorney I	
Salary & Benefits	61.2
Paralegal Assistant II	
Salary & Benefits	53.9
Investigator II	
Salary & Benefits	\$ 53.9
Legal Secretary I	
Salary & Benefits	<u>38.3</u>

SUBTOTAL

\$ 770.4

* Using FY 96 salary schedule with no increases factored in

FISCAL NOTE

STATE OF ALASKA
1996 LEGISLATIVE SESSION

BILL NO. SSSB 52

Travel (300 Line)

Death penalty teams will travel to appropriate venue for all relevant hearings. Travel includes that of staff, witnesses, expert witnesses, etc. This includes both in-state and out-of-state travel.

SUBTOTAL \$ 50.0

Contractual (300 Line)

Expert witness fees	\$120.0
Additional office space for death penalty staff in Anchorage and Fairbanks P.D. offices	30.8
Communications	15.0
Printing	4.0
Depositions	10.0
Westlaw	<u>5.0</u>

SUBTOTAL \$ 184.8

Supplies (400 Line)

Office consumables	\$ 5.0
Law library	10.0
New position supplies (one time)	<u>10.0</u>

SUBTOTAL \$ 25.0

Equipment (500 Line)

Office furniture and equipment, pc/word processing, etc. (one time)	<u>\$ 54.0</u>
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TOTAL FY 95 \$1084.2

Fiscal Impact--FY 99

(These costs are in addition to FY 98 costs which will be carried over from year to year.)

Personal Services (100 Line)

Anchorage - Appellate Team

Attorney V	
Salary & Benefits	\$ 88.9
Attorney IV	
Salary & Benefits	\$3.6
Paralegal Assistant II	
Salary & Benefits	\$ 52.1
Legal Secretary I	
Salary & Benefits	<u>37.0</u>

SUBTOTAL \$261.6

FISCAL NOTE

STATE OF ALASKA
1996 LEGISLATIVE SESSION

BILL NO. SSSB 52

Travel (200 Line)

Staff travel, expert travel
and per diem.

SUBTOTAL \$100.0

Contractual (300 Line)

Expert witness fees (based on accrual of FY 98 and 99 cases)	\$240.0
Office space for Anchorage appellate team	11.4
Training for Death Penalty Appellate Team	4.0
Communications	10.0
Depositions	5.0
Document production	5.0
Westlaw	<u>9.0</u>

SUBTOTAL \$ 283.4

Supplies (400 Line)

Office consumables	\$ 3.0
Law library	2.0
New position supplies (one time)	<u>4.0</u>

SUBTOTAL \$ 9.0

Equipment (500 Line)

New position equipment (one time) SUBTOTAL \$ 18.0

SUBTOTAL FY 99 \$ 672.0

FY 99 CONTINUING COSTS \$1020.2

TOTAL FY 99 EXPENDITURES \$1692.2

Fiscal Impact-FY 00

(These costs are in addition to FY 98-99 costs which will be carried over from year to year.)

Personal Services (100 Line)

Anchorage

Attorney V (Additional death penalty trial attorney)	
Salary & Benefits	\$ 88.9
Associate Attorney I	
Salary & Benefits	53.8
Legal Secretary I	
Salary & Benefits	37.0

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BILL NO. SSSB 52

Fairbanks

Attorney V (Additional death penalty trial attorney)	
Salary & Benefits	\$ 100.9
Legal Secretary I (Trial support)	
Salary & Benefits	38.3

Appellate Team (Fairbanks)

Attorney V (Additional lawyer for death penalty appellate work)	
Salary & Benefits	100.9
Attorney IV (Additional lawyer for death penalty appellate work)	
Salary & Benefits	94.7
Paralegal Assistant II	
Salary & Benefits	53.9
Legal Secretary I (Appellate support)	
Salary & Benefits	<u>39.3</u>

SUBTOTAL \$606.7

Travel (200 Line)

Staff travel, expert travel and per diem.	
SUBTOTAL	\$100.0

Contractual (300 Line)

Expert witness fees based on trial and appellate cases for FY 00	\$ 360.0
Additional office space for new staff	25.4
Communications	20.0
Depositions	10.0
Document production	5.0
Westlaw	<u>3.0</u>

SUBTOTAL \$ 428.4

Supplies (400 Line)

Office consumables	\$ 5.0
New position supplies (one time)	<u>8.0</u>

SUBTOTAL \$ 13.0

Equipment (500 Line)

New position equipment (one time)	SUBTOTAL	\$ <u>40.5</u>
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SUBTOTAL FY 00 \$1138.6

FY 99 CONTINUING COSTS \$1670.2

TOTAL FY 00 EXPENDITURES \$2858.8

FISCAL NOTE

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1996 LEGISLATIVE SESSION

BILL NO. SSSB 52

Fiscal Impact--FY 01

(These costs are in addition to FY 98-99-00 costs which will be carried over from year to year.)

<u>Personal Services (100 Line)</u>	SUBTOTAL	.0
<u>Travel (200 Line)</u>		
Death penalty teams will travel to appropriate venue for all relevant hearings. Travel includes that of staff, witnesses, expert witnesses, etc.		
	SUBTOTAL	\$100.0
<u>Contractual (300 Line)</u>		
Expert witness fees, office space, communications, Westlaw, etc.		
	SUBTOTAL	360.0
<u>Supplies (400 Line)</u>		
Office, law library		
	SUBTOTAL	<u>3.0</u>
	SUBTOTAL FY 01	\$ 468.0
	FY 00 CONTINUING COSTS	<u>\$2810.3</u>
	TOTAL FY 01 EXPENDITURES	\$3278.3

Fiscal Impact--FY 02

(These costs are in addition to FY 98-99 costs which will be carried over from year to year.)

Personal Services (100 Line)

Anchorage - Trial Team

Attorney V		
Salary & Benefits		\$ 88.9
Attorney IV		
Salary & Benefits		83.6
Associate Attorney I		
Salary & Benefits		53.8
Paralegal Assistant II		
Salary & Benefits		52.1
Investigator III		
Salary & Benefits		59.2
Legal Secretary II		
Salary & Benefits		39.1

FISCAL NOTE

STATE OF ALASKA
1996 LEGISLATIVE SESSION

BILL NO. SSSB 52

Fairbanks

Attorney V (Additional death penalty trial attorney)	
Salary & Benefits	100.9
Investigator II	
Salary & Benefits	53.9
Legal Secretary I (Trial support)	
Salary & Benefits	38.3
Attorney V (Additional lawyer for death penalty appellate work)	
Salary & Benefits	100.9
Attorney IV (Additional lawyer for death penalty appellate work)	
Salary & Benefits	94.7
Paralegal Assistant II	
Salary & Benefits	53.9
Legal Secretary I (Appellate support)	
Salary & Benefits	<u>\$ 38.3</u>

SUBTOTAL \$ 857.6

Travel (200 Line)

Staff travel, expert travel
and per diem.

SUBTOTAL \$ 100.0

Contractual (300 Line)

Expert witness fees based on trial and appellate cases for FY 00	360.0
Additional office space for new staff	30.0
Training for staff	10.0
Communications	20.0
Depositions	10.0
Document production	5.0
Westlaw/CD Rom	<u>5.0</u>

SUBTOTAL \$ 443.0

Supplies (400 Line)

Office consumables	\$ 5.0
New position supplies (one time)	<u>10.0</u>

SUBTOTAL \$ 15.0

Equipment (500 Line)

New position equipment (one time)

SUBTOTAL \$ 40.5

SUBTOTAL FY 02 \$1456.1

FY 01 CONTINUING COSTS \$3278.3

TOTAL FY 02 EXPENDITURES \$4734.4

FISCAL NOTE

STATE OF ALASKA
1996 LEGISLATIVE SESSION

BILL NO. SSSB 52

BUDGET BACKGROUND

TRAVEL EXPENDITURES

Round trip fares between the following locations are used as the basis for computing estimated travel by attorneys, support staff, witnesses and experts: (per diem expenses additional)

Anchorage -	Dillingham	\$ 466	Fairbanks -	Fort Yukon	\$156
	Unalaska	1014		Barrow	650
	St. Paul	1106		Galena	216
	Kodiak	386		Wainwright	530
	Cordova	224		Pt. Hope	600
	Valdez	200			
	Bethel	694			
	Nome	580			
	Kotzebue	550			
	Fairbanks	406			
	Juneau	444			
	Sitka	470			
	Ketchikan	599			
	Seattle	986			
	Washington, DC	1673			
	Kenai	130			

OFFICE SPACE FOR ADDITIONAL EMPLOYEES:

Attorney V	175 sq. ft.	⊗ \$1.75	= \$306/mo. x 12	= \$3672/yr.
Attorney IV	175 sq. ft.	⊗ \$1.75	= \$306/mo. x 12	= \$3672/yr.
Assoc. Attorney I	122 sq. ft.	⊗ \$1.75	= \$213/mo. x 12	= \$2,556/yr.
Paralegal II	98 sq. ft.	@ \$1.75	= \$171/mo. x 12	= \$2052/yr.
Investigator II	63 sq. ft.	⊗ \$1.75	= \$119/mo. x 12	= \$1428/yr.
Legal Secretary I	98 sq. ft.	@ \$1.75	= \$171/mo. x 12	= \$2052/yr.

OFFICE EQUIPMENT FOR ADDITIONAL EMPLOYEES: (one time)

Desk, chairs, table, bookshelves, PC/word processing - \$4500 each.

FISCAL NOTE

No. 1

Bill Version: SSSSR 52(TUD)

(S) Publish Date: 3/12/96

STATE OF ALASKA
1996 LEGISLATIVE SESSION

Revision Date: 3/7/96 Dept. Affected: Office of the Governor
 Title: An Act authorizing capital punishment BRU: Elective Operations
 authorizing an advisory vote on instituting capital punishment Component: General and Primary Elections
 Sponsor: Senator Taylor
 Requester: Senate Judiciary COMPONENT SERIAL NO. 22

Expenditures/Revenues (Thousands of Dollars)

OPERATING EXPENDITURES	FY 97	FY 98	FY 99	FY 100	FY 01	FY 02
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL	2.2					
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	2.2	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES						
-----------------------------	--	--	--	--	--	--

CHANGE IN REVENUES ()						
-------------------------------	--	--	--	--	--	--

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF	2.2					
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other						
TOTAL	2.2	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY96) cost: \$ 0.0

POSITIONS

FULL-TIME	0					
PART-TIME	0					
TEMPORARY	0					

ANALYSIS: (Attach a separate page if necessary)

This figure includes the cost of providing information about this issue in the Official Election Pamphlet as required by AS 15.58, and the programming costs for counting votes cast on the question. However, only four measures can be printed on a single ballot card. If this measure requires an additional ballot card, the costs will increase by \$53.4.

Prepared by: Dana LaTour Phone: 465-5347
 Division: Division of Elections Date: 3/7/96
 Approved by: _____ Date: 3/7/96
 Commissioner: Lt. Governor Fran Ulmer
 Agency: Office of the Lt. Governor

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FISCAL NOTE

STATE OF ALASKA
1996 LEGISLATIVE SESSION

No. 2
 B| Bill Version: CS SSSB52(JWD)
 (S) Publish Date: 3/28/96

Revision Date: March 18, 1996 Dept. Affected: Public Safety
 Title: Capital Punishment for Murder BRU: Alaska State Troopers
 Sponsor: Senator Taylor Component: Detachments
 Requestor: S Finance COMPONENT SERIAL NO. 0799

EXPENDITURES/REVENUES: (Thousands of Dollars) (inflation not included)

OPERATING	FY 97	FY 98	FY 99	FY 00	FY 01	FY 02
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPTITAL EXPENDITURES						
------------------------------	--	--	--	--	--	--

CHANGE IN REVENUES ()						
Revenue Code						

FUNDING: (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF Program Receipts						
1006 GF MHTIA						
Other						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of current year (FY 96) impact: \$ _____

POSITIONS:

FULL - TIME						
PART - TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary.)

This bill will not have a fiscal impact on the Division of State Troopers. The impact of this bill on the division is the possibility of troopers having to attend court proceedings that they do not currently have to attend.

Prepared By: Lt. Dan Lowden Phone: 465-5505
 Division: Alaska State Troopers Date: March 18, 1996
 Approved by Commissioner: *Ronald L. Otte* Date: 3/19/96
 Agency: Ronald L. Otte, Department of Public Safety

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FISCAL NOTE

No. 3

Bill Version: CS SS SB 52 (JUD)

(S) Publish Date: 3/28/96

STATE OF ALASKA
1996 LEGISLATIVE SESSION

Revision Date: 03/25/96 Dept. Affected: Alaska Court System
 Title: Capital Punishment for Murder BRU: Trial Courts
 Sponsor: Sens. Taylor, Pearco Component: _____
 Requestor: Senate Judiciary COMPONENT SERIAL NO. 768

Expenditures/Revenues	(Thousands of Dollars)					
	FY 97	FY 98	FY 99	FY 00	FY 01	FY 02
OPERATING EXPENDITURES						
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS & CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0
CAPITAL EXPENDITURES						
CHANGE IN REVENUES ()						

Fund Source	(Thousands of Dollars)					
1002 Federal Receipts						
1003 GF Match						
1004 GF		0.0	0.0	0.0	0.0	0.0
1005 GF: Program Receipts						
1007 GF: Mental Health						
Other						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY 96) cost: \$ None

Positions					
Full-Time					
Part-Time					
Temporary					

ANALYSIS: (Attach a separate page if necessary)

No fiscal impact.

Prepared by: C. S. Christensen III, Staff Counsel Phone: 264-8228
 Agency: Alaska Court System Date: 03/25/96

Approved by: Arthur H. Snowden, II, Administrative Director Date: 03/25/96
 Agency: Alaska Court System

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FISCAL NOTE

No. 5
 Bill Version: CSSSSB 52 (JUD)
 (H) Publish Date: 4/29/96

**STATE OF ALASKA
 1996 LEGISLATIVE SESSION**

Revision Date: _____ Dept. Affected: Corrections
 Title: "An Act authorizing capital punishment, classifying BAU: Statewide Programs
murder in the first degree as a capital felony, and establishing...." Component: Spring Creek CC
 Sponsor: Senator Taylor
 Requester: _____ COMPONENT SERIAL NO. 0772

Expenditures/Revenues (Thousands of Dollars)

OPERATING EXPENDITURES	FY 97	FY 98	FY 99	FY 00	FY 01	FY 02
PERSONAL SERVICES		87.1	69.4			
TRAVEL		3.0				
CONTRACTUAL		1,665.0				
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS			350.0	2,343.0	2,343.0	2,343.0
TOTAL OPERATING	0.0	1,735.1	419.4	2,343.0	2,343.0	2,343.0

CAPITAL EXPENDITURES	9,135.0
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CHANGE IN REVENUES ()	
------------------------	--

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF		1,735.1	9,554.4	2,343.0	2,343.0	2,343.0
1005 GF/Program Receipts						
1006 GF/MHTIA						
Other						
TOTAL	0.0	1,735.1	9,554.4	2,343.0	2,343.0	2,343.0

Estimate of any current year (FY96) cost: \$ 0.0

POSITIONS

FULL-TIME	0	1	26	25	25	25
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary)

This fiscal note assumes that the proposed advisory vote succeeds and leads to reinstating capital punishment. It also assumes that the capital punishment bill proposed will be similar to SS SB 52 version C. If the advisory vote fails there will be no fiscal impact on the Department of Corrections.

The Dept. of Law estimates six individuals per year would be prosecuted and sentenced to death under this bill. Experience in states with a death penalty statute indicate that an individual remains on death row for slightly less than ten years before execution. Using these estimates, the Department of Corrections must plan for a death row facility capable of holding 60 inmates. Additionally the new facility would need to contain suitable structure for the execution itself. This bill requires death by intravenous injection administered by a licensed physician. CONTINUED ON PAGE TWO:

Prepared by: Jerry Shriner Phone: 465-4652
 Division: Office of the Commissioner Date: 4/18/96
 Approved by Commissioner: Margaret Pugh Date: 4/18/96
 Agency: Department of Corrections

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ORIGINAL

CS SS SB 52 (JUD)

Fiscal Note

4/18/96

Page 2 of 3

The average age of Alaskan male inmates sentenced for murder in the first degree is 31 years. It is assumed that each inmate sentenced to death will live until the day of execution or until age 73 years old; whichever ever comes first. Thus, it is assumed that each person sentenced to death will remain in the new death row facility for the rest of their life and no allowances are made for appeals, commutations, sentence modifications or other means of sentence reductions.

The death row facility would have to be built to the highest security standards. The cost of construction of a maximum security bed is \$180,000.00 to \$200,000.00. The lower figure is based on the assumption that the facility would be built adjacent to the Spring Creek Correctional Center and some infrastructure construction cost savings could be realized. Construction would need to begin immediately and engineering (E) and design (D) funds have been included in the contractual line item for FY 98 with construction to begin in FY 99. (It is expected that these funds would be transferred by RSA to DOT & PF.) E & D costs are estimated at 15% of the total construction costs.

The Department would be required to construct special facilities in which to administer the penalty. Special technology and hardware would be required for this portion of the construction. The cost of this facility would be in excess of \$300,000.00 assuming that it would be built in conjunction with the death row facility.

CONSTRUCTION COSTS

(60 bed facility X \$180,000 per bed) + 300,000.00 = \$11,100,000.

.15 E & D X \$11,100,000. + \$1,665,000. in FY 98

\$10,800,000. - \$1,665,000. + \$9,135,000. in FY 99

The Department of Corrections does not expect to be required to house prisoners sentenced to the death penalty until FY 00. The only staff necessary in FY 99 would be a facilities manager to deal with DOC's responsibilities in the planning and design phase. The position is carried on until completion of the project which is expected to be at the end of FY 99. Actual operation of the facility would come on line in FY 00, with staff hiring and training to begin in Mid FY 99. This cost is estimated to be \$350,000. CONTINUED ON PAGE THREE:

CS SS SB 52 (JUD)

Fiscal Note

4/18/96

Page 3 of 3

Staffing of the facility would require eighteen to twenty correctional officers, and five administrative and support staff. The average daily cost rate of \$107.00 has been used and is shown in the miscellaneous line simply because the final design will determine the line item cost break down. Also, no inflation factor has been used, so the further out in time one goes the less accurate the estimates become. The facility will need to be fully staffed from the date of opening even though it will not be filled with inmates sentenced to death. If overcrowding exists at that time, as it now does; other high security inmates could be housed there to mitigate the costs.

OPERATING COSTS

60 beds x \$107.00 per day X 365 days = \$2,343,000.00 in FY 01 and beyond

FISCAL NOTE

No. 6
 Bill Version: CSSSSB 52 (JUD)
 (H) Publish Date: 4/29/96

**STATE OF ALASKA
 1996 LEGISLATIVE SESSION**

Revision Date: _____
 Title: Capital Punishment for Murder
 Sponsor: Sens. Taylor, Pearce
 Requestor: _____

Dept. Affected: Alaska Court System
 BRU: Trial Courts
 Component: _____
 COMPONENT SERIAL NO. 768

Expenditures/Revenues (Thousands of Dollars)

OPERATING EXPENDITURES	FY 97	FY 98	FY 99	FY 00	FY 01	FY 02
PERSONAL SERVICES		375.9	375.9	375.9	375.9	375.9
TRAVEL		142.2	142.2	142.2	142.2	142.2
CONTRACTUAL		511.8	511.8	511.8	511.8	511.8
SUPPLIES		7.0	7.0	7.0	7.0	7.0
EQUIPMENT		31.7				
LAND & STRUCTURES						
GRANTS & CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0.0	1,068.6	1,036.9	1,036.9	1,036.9	1,036.9

CAPITAL EXPENDITURES						
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CHANGE IN REVENUES ()						
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Fund Source (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF		1,068.6	1,036.9	1,036.9	1,036.9	1,036.9
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other						
TOTAL		1,068.6	1,036.9	1,036.9	1,036.9	1,036.9

Estimate of any current year (FY 96) cost: \$ None

Positions

Full-Time	4.0	4.0	4.0	4.0	4.0
Part-Time	3.0	3.0	3.0	3.0	3.0
Temporary	1.0	1.0	1.0	1.0	1.0

ANALYSIS: (Attach a separate page if necessary)

See attached analysis.

Prepared by: C. S. Christensen III, Staff Counsel
 Agency: Alaska Court System

Approved by: Arthur H. Snowden, II, Administrative Director
 Agency: Alaska Court System

Phone: 254-8228
 Date: 02/05/96

Date: 02/05/96

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Alaska Court System

Fiscal Analysis

SSSB 52

Personal Services

<u>Position</u>	<u>Salary</u>	<u>Benefits</u>	<u>Total</u>
Pro Tem Judge, Anchorage Trial Courts, 50% vested, PPT, 12 months	\$48,300	\$29,779	\$78,079
Pro Tem Judge, Anchorage Trial Courts, 50% vested, PPT, 12 months	48,300	29,779	78,079
Pro Tem Judge, Fairbanks Trial Courts, 50% vested, PPT, 6 months	24,501	14,933	39,434
Law Clerk I, Anchorage Trial Courts, range 13D, PFT, 12 months	31,824	13,549	45,373
Law Clerk I, Anchorage Trial Courts, range 13D, PFT, 12 months	31,824	13,549	45,373
Law Clerk I, Fairbanks Trial Courts, range 13D, PFT, 12 months	36,672	14,835	51,507
Law Clerk I, Anchorage Appellate Courts, range 15D, PFT, 12 months	36,672	14,835	51,507
Bailiff, Statewide, range 6A, NPP, 24 months	38,184	3,647	41,831
			<u>431,183</u>

Offset cost of existing caseload -

Currently, first degree murder cases experience a 50% trial rate and last approximately one month. Using this experience, the court could expect five trials and to incur approximately 5 months of trial. The proposed legislation will result in approximately 39 months of trial activity (see jury fees in the contractual section below). Therefore, the cost offset is computed at 5/39 of the expected personnel costs.

Net personal services (55,300)
375,883

Based on the fiscal note submitted by the Department of Law, the court system anticipates needing additional judicial staff to carry the workload of active judges assigned to capital offense cases. The court will use 50% vested pro tem judges, which are among the least-costly judicial positions available. Additional law clerks are required for extensive legal research of motions and other legal questions. Funding is requested for two non-permanent bailiffs, which will serve in the designated trial site.

Travel

Jury sequestration costs - transportation, meals and lodging 126,300
10 innocence/guilt trials with 18 jurors, 7 days in deliberation each, @ \$100 a day

Offset cost of existing caseload -

See offset note in personal services.

Net travel (16,200)
142,200

Death penalty cases are often subject to intense media exposure, which may initiate changes in venue. High jury sequestration costs are anticipated due to lengthy deliberations.

Contractual

Jury fees - 10 innocence/guilt trial @ 66 days each (3 months), 18 jurors @ \$25 a day 386,100
and 9 sentencing trials @ 22 day each (1 month), 18 jurors @ \$25 a day

Contractual security guard to staff metal detectors 10,000

Transcription fees - 19 transcripts, 5,000 pages each at \$2.00 a page 190,000

Freight for high security equipment kit 1,000

Total contractual service 587,100

Offset cost of existing caseload -

See offset note in personal services.

Net contractual services (75,300)
511,800

See additional note on contractual costs on the next page.

Alaska Court System
Fiscal Analysis (continued)
SSSB 52

The Department of Law expects to prosecute 10 capital offences each year. Capital offense trials will be split into 2 separate trials with each lasting 2 to 6 months. The court anticipates extraordinary jury costs from calling additional jurors, extended juror selection questioning, the need for alternate jurors and lengthy trials. The court anticipates high transcription costs resulting from preparation of the voluminous record for capital offense trials.

Supplies

Office and courtroom supplies for new positions and trials. 7,000

Equipment (one-time cost)

Standard office equipment and reference materials for law clerks 6,720

Portable high security equipment kit, consisting of a walk-through metal detector, temporary building card key system and video monitoring system. Will be shipped to trial site. 25,000

31,720

Total estimated costs \$1,068,603

FISCAL NOTE

No. 7

Bill Version: CSSSSB 52 (JUD)

(H) Publish Date: 4/29/96

**STATE OF ALASKA
1996 LEGISLATIVE SESSION**

Revision Date: 4/18/96 Dept. Affected: Department of Law
 Title: "An Act providing for an advisory vote on the BRU: Criminal Division
issue of capital punishment." Component: Criminal Division
 Sponsor: Senator Taylor
 Requester: House Judiciary Committee COMPONENT SERIAL NO. 2085

Expenditures/Revenues (Thousands of Dollars)

OPERATING EXPENDITURES	FY 97	FY 98	FY 99	FY 00	FY 01	FY 02
PERSONAL SERVICES		481.0	1,005.5	1,482.9	1,482.9	1,462.9
TRAVEL		243.5	480.5	805.5	605.5	605.5
CONTRACTUAL		430.8	1,089.7	1,529.7	1,464.7	1,464.7
SUPPLIES		32.4	55.5	72.8	80.6	60.8
EQUIPMENT		58.0	84.5	58.0	0.0	0.0
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0.0	1,243.7	2,695.7	3,728.7	3,593.7	3,593.7

CAPITAL EXPENDITURES						
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CHANGE IN REVENUES ()						
------------------------	--	--	--	--	--	--

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF		1,243.7	2,695.7	3,728.7	3,593.7	3,593.7
1005 GF/Program Receipts						
1006 GF/MHTIA						
Other						
TOTAL	0.0	1,243.7	2,695.7	3,728.7	3,593.7	3,593.7

Estimate of any current year (FY96) cost: \$ 0.0

POSITIONS

FULL-TIME		8.0	17.0	25.0	25.0	25.0
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary)

The Senate Judiciary Committee substitute for SSSB 52 would place an advisory vote before the voters at the next general election asking whether the legislature should enact a law providing for capital punishment for murder in the first degree. In the event that the voters respond in the affirmative, and the legislature enacts capital punishment legislation, there will be significant costs for the Department of Law. These costs have been noted before in the department's previous analysis of SB 52, when the bill provided for a statutory mechanism that authorized capital punishment.

A subsequent legislative bill would authorize capital punishment, classify murder in the first degree as a capital felony, and establish sentencing procedures for capital felonies. The death sentence would not be imposed unless at least one of several specified aggravating factors was found to exist and the aggravating factor, or factors, was not outweighed by mitigating factors.

Prepared by: Richard I. Pegues, Director Phone: 465-3672
 Division: Administrative Services Division Date: 4/18/96
 Approved by Commissioner: Bruce M. Botelho, Attorney General Date: 4/18/96
 Agency: Department of Law

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FISCAL NOTE

STATE OF ALASKA
1998 LEGISLATIVE SESSION

BILL NO. C555B 52 (JUD)

ANALYSIS CONTINUATION:

In 1994, the department's criminal division had 17 first degree murder cases (that could have been accepted for prosecution at this level) where aggravating factors were present that would justify the death penalty, had the bill already been the law. The number of murders committed in Alaska varies somewhat from year-to-year and, therefore, the assumptions made in this fiscal note are as conservative as possible.

Overview

Capital felony trials would be bifurcated, or held in two parts. The first part would determine innocence or guilt; the second part would determine whether aggravating factors exist sufficient to justify the death penalty; whether mitigating factors exist that outweigh the aggravating factors; and whether the defendant should be sentenced to a term of imprisonment or to death. Based on 1994's data, where 17 murders having death penalty aggravators occurred, the department would probably seek the death penalty in ten cases. In the remaining seven cases, prosecutors would elect to try the cases as noncapital first degree murders for discretionary reasons, primarily due to the difficulty of obtaining a conviction if the death penalty was included. As a result of this preliminary screening, between capital and noncapital charging, the department expects that nine capital offense convictions will occur each year. Of this latter number, we believe that the death penalty will be imposed six times each year.

Thus, the department must be prepared to prosecute capital felonies on ten occasions each year, and it must also be prepared to handle a multi-year appellate review process that will grow at an accumulating rate of six cases per year. The experience in other states is that capital trials require far more in the way of prosecution and investigative resources than first degree murder cases that do not include the death penalty.

In its several reviews of capital penalty laws, the United States Supreme Court has repeatedly stated, "death is different." Consequently, the Supreme Court has required that states accord capital defendants procedural and substantive protections that go far beyond those required for noncapital defendants. The Court has, in effect, mandated that capital defendants be accorded "super" due process. The federal courts have consistently held that capital cases demand special consideration, both at trial and on appellate review, because of the exceptional and irrevocable nature of the penalty involved.

In order to meet this heightened level of due process, it will be necessary for the state to employ far greater prosecution resources. Many of the thirty-seven states having a death penalty, for instance, provide two defense attorneys to capital defendants to insure that the due process safeguards required by the courts are met. Likewise, the state's prosecution case must also be properly represented. During and prior to the trial phase, crime scene evidence will have to be examined and presented by highly qualified forensic experts. Psychiatric experts will also be required during the trial phase, during sentencing proceedings, and during the appellate review, to rebut and overcome competency and psychiatric defenses to both the substantive-charge and the capital sentence. Recent cost studies of capital trials in other states indicate that expert witness expenses for both the trial and sentencing proceedings cost about \$60,000, on the average. A lesser, but still significant cost for experts is also required for appellate reviews.

A sentencing proceeding, or the penalty phase of a capital trial, is categorically different in character, procedure, and magnitude from any counter part in a noncapital trial, and it accounts for a large part of the increase in costs. The heightened due process requirements, and the right to effective assistance of counsel, apply equally to the sentencing phase as they do to the trial phase. At this stage of the proceeding, the defense may be expected to use many of the socio-psychiatric witnesses employed during the trial phase. Additionally, the defense may also use the defendant's family, friends, neighbors, co-workers, school personnel, and social workers as witnesses. The defense's sentencing phase investigations will involve a complete retrospective analysis of every positive aspect of the defendant's life from the day of birth to the date of sentence

FISCAL NOTE

STATE OF ALASKA
1996 LEGISLATIVE SESSION

BILL NO. C5558 52 (JUD)

ANALYSIS CONTINUATION:

The prosecution, on the other hand, must interview each of the defendant's witnesses to rebut mitigation evidence, and present its own witnesses to prove its aggravating factors. For example, in a California case, 240 persons were investigated and interviewed as potential witnesses and 120 were eventually called as witnesses in a single sentencing proceeding. In view of the foregoing, it appears likely that the same level of state resources, needed for the state's most expensive criminal trials, will also be needed for many of the capital murder trials. For example, a five-fold increase in pretrial motion practice, often involving a state's supreme court, has occurred in other states between capital and noncapital first degree murder cases.

Last, post-conviction appellate reviews of death sentences will also require a substantial expenditure of state resources. Initially, challenges to the law itself can be expected to be taken to the Alaska Supreme Court on the basis of both state and federal constitutional due process, equal protection, and cruel and unusual punishment doctrines. Such challenges should be expected during the first two or three years after the provisions of the bill go into effect. Otherwise, the bill provides for a straightforward appeals process to the Alaska Supreme Court, but death sentences will nonetheless result in lengthy and complicated appellate litigation. This is because of the substantial appellate avenues available to capital defendants in the federal court system, primarily on claims of due process, competency, and newly discovered evidence. Typically, these cases move up and down throughout the state and federal court systems, and involve the state superior and supreme courts, the U.S. Supreme Court, and the U.S. Circuit Court of Appeals, and the U.S. District Court. As a result, as has been the experience in every other capital punishment state, it should be expected that many years will pass before a death sentence can be carried out. Current information indicates that nationally an average of 9.6 years elapses from the time a death penalty sentence is imposed and the time the sentence is carried out.

Implementation

The Department of Law anticipates that the time from when an offense is committed until a capital felony trial takes place will be between one and two years after the bill takes effect, although one bifurcated trials may begin during the first year. Likewise, the post-conviction appellate review process will not commence until sometime during the second year. For these reasons, the department has developed a multi-year implementation plan for this fiscal note.

During the first year, it will be necessary to add three attorneys, three paraprofessionals, and two legal secretaries to handle capital felony prosecutions. Although only four bifurcated trials may actually get underway during the first year, substantial time will be required preparing for trial. This includes advising police investigators, examining evidence, interviewing witnesses, consulting with psychiatric and forensic experts, and initiating, responding to, and arguing pretrial motions. Also, preparation work on all 17 capital felonies expected to occur during the first year must begin as soon as possible after an offense is committed.

The "super" due process required by the courts in death penalty cases, and the requirement for a separate sentencing proceeding, will more than triple the work of the department's staff who handle these cases, compared with noncapital first degree murder cases. Extraordinary amounts of attorney and paraprofessional time will be needed to satisfy these minimum, mandatory requirements. As a consequence, capital felony prosecutions could not readily be undertaken in any of the department's offices, except for Anchorage and Fairbanks, without providing special prosecution staff on a case-by-case basis. And, even for Anchorage and Fairbanks, the existing staff would have to be substantially augmented each time a capital

FISCAL NOTE

STATE OF ALASKA
1996 LEGISLATIVE SESSION

BILL NO. CSSSSB 52 (JUD)

ANALYSIS CONTINUATION:

felony is handled. All of the positions to be added to handle capital trials and post-conviction death sentence appeals would be located in the department's Office of Special Prosecutions and Appeals, in Anchorage.

During the second year, eight or more additional capital felonies are expected to go to trial, and 17 new capital felony offenses will occur. At this point, it will be necessary to add two attorneys, two paraprofessionals, and two legal secretaries to help handle the increasing capital felony trial caseload and to help with the first capital felony appeal. It will be necessary to establish a capital felony appeals staff during the second year, when appeals from the first four trials are expected to be in the appellate review process. Initially, one attorney, one paraprofessional, and one legal secretary will be needed to handle capital felony appeals.

During the third year, the number of bifurcated trials (10) should equal the number of new capital offenses (after screening), although some compression and overlapping of the caseload will likely occur. Consequently, it will be necessary to increase the trial staff during the third year, in order to handle the total annual workload, and to insure against speedy trial problems. Post-conviction capital felony appeals will have reached eight by year three, and they will continue to increase at the rate of six new cases each year, thereafter. It will, therefore, be necessary to increase the appeals staff in the third year.

It is not possible to accurately predict the eventual annual costs of a capital felony law beyond its first three or four years. There are simply too many unknowns. However, the costs that have been predicted are conservative. The following factors have been considered in arriving at these costs.

- 1) Capital felony due process and bifurcated trial requirements will more than triple the cost and time spent in prosecuting three first degree murder offenses, at a minimum.
- 2) The time required for a bifurcated trial will probably vary between two months and six months, although time lines are completely uncertain, and extremes will most likely be the rule. Serious overlapping and scheduling conflicts between investigations, trials, and available staff time will undoubtedly occur.
- 3) Pretrial motion practice will increase dramatically, resulting in additional scheduling problems.
- 4) Logistics problems will occur at most locations, except Anchorage and Fairbanks, and these problems will become more severe the smaller and more remote the location.
- 5) Witness travel and subsistence will be expensive because of the large number of witnesses that will be required for both the trial and the sentencing phases of capital felony prosecutions, and in many cases this includes out-of-state travel.
- 6) Staff travel and per diem will likewise be expensive for trials held outside of Anchorage. Extensive staff travel expense will also be necessary, for trials held at all locations, to interview both prosecution and defense witnesses who will appear at sentencing proceedings.
- 7) One of the most complex murder prosecutions ever held in Alaska was the John Kenneth Peel trial. Because this case involved extraordinary evidence problems, it probably represents costs that are outside the norm. Due to this and other complications, Peel case costs included two grand jury proceedings and two trials. But there can be no question that the state will have to provide a nearly comparable effort if it is to prevail in death penalty cases. By comparison, capital felony trials will be held in two parts, necessitate

FISCAL NOTE

STATE OF ALASKA
1996 LEGISLATIVE SESSION

BILL NO. C5558 52 (JUD)

ANALYSIS CONTINUATION:

considerable expert testimony and depositions, involve two separate sets of witnesses, and require extensive staff travel. For this reason, the average prosecution costs of a bifurcated capital felony case has been projected to be nearly \$266,000 or less than one-half of the \$597,000 cost for the *first Peel* trial.

8) The cost for appeals is shown only through the fourth year; however, this cost will ultimately grow enormously. The average length of time between a death sentence conviction and an execution in the United States is nearly ten years. Consequently, the state will have to provide enough resources to respond to the appeals of 10 or more capital felony defendants annually, within 10 years. The eventual costs for this extended timeframe are not within the scope of this fiscal note analysis.

9) Therefore, the following per trial expense estimates have been used to calculate the costs of this fiscal note.

Capital Felony Trials

- Witness travel and subsistence, \$50,000 per case.
- Staff travel and per diem, \$7,500 per attorney, \$5,000 per paraprofessional, \$3,000 per secretary, per annum.
- Expert witness fees, \$60,000 per case.
- Witness fees paid to others, \$6,000 per case.
- Deposition/court reporter charges, \$20,000 per case.

Death Sentence Appellate Review

- Staff travel, \$3,500 per attorney, \$2,500 per paraprofessional, per annum.
- Expert witness fees, legal scholars for years two and three only, \$30,000, each year.
- Socio-psychiatric experts, \$25,000 in years two and three.
- Socio-psychiatric experts, \$50,000 by year four.
- Transcription/court reporter costs, \$30,000 per case.

FISCAL NOTE

1996 LEGISLATIVE SESSION

BILL NO. CSSSSB 52 (JUD)

ANALYSIS CONTINUATION:

Fiscal Analysis CSSSSB 52 (JUD)
Cost Summary (First Year - FY 98 - Capital Trials)

<u>OBJECT</u>	<u>Attv V</u>	<u>(2) Attv IV</u>	<u>(2) Assoc. ATTY I</u>	<u>P/A II</u>	<u>Sec I</u>	<u>Sec I</u>	<u>TOTAL</u>
100 - Salaries & Benefits	<u>86.6</u> 86.6	<u>164.0</u> 164.0	<u>105.8</u> 105.8	<u>51.1</u> 51.1	<u>36.4</u> 36.4	<u>36.4</u> 36.4	<u>481.0</u> 481.0
200 - Travel							
Staff Travel & Per Diem	<u>7.5</u> 7.5	<u>15.0</u> 15.0	<u>10.0</u> 10.0	<u>5.0</u> 5.0	<u>3.0</u> 3.0	<u>3.0</u> 3.0	<u>43.5</u> 43.5
300 - Contractual							
Communications, Copy	3.6	7.2	4.8	2.4	2.4	2.4	22.8
Office Space Leases	5.6	11.2	11.2	5.6	5.6	5.6	44.8
PC Network Maintenance	1.5	3.0	3.0	1.5	1.5	1.5	12.0
WestLaw	<u>1.2</u> 11.9	<u>2.4</u> 23.8	<u>2.4</u> 21.4	<u>1.2</u> 10.7	<u>0.0</u> 9.5	<u>0.0</u> 9.5	<u>7.2</u> 86.8
400 - Supplies							
Office Consumables	1.8	3.6	3.6	1.8	1.2	1.2	13.2
Law Library	1.2	2.4	2.4	1.2	0.0	0.0	7.2
New Position Supplies	<u>1.5</u> 4.5	<u>3.0</u> 9.0	<u>3.0</u> 9.0	<u>1.5</u> 4.5	<u>1.5</u> 2.7	<u>1.5</u> 2.7	<u>12.0</u> 32.4
500 - Equipment							
New Position Equipment	2.5	5.0	5.0	2.5	2.0	2.0	19.0
PC/Word Processing	<u>4.0</u> 6.5	<u>8.0</u> 13.0	<u>8.0</u> 13.0	<u>4.0</u> 6.5	<u>6.5</u> 8.5	<u>6.5</u> 8.5	<u>37.0</u> 56.0
TOTAL	117.0	224.8	159.2	77.8	60.1	60.1	699.7

FISCAL NOTE

1998 LEGISLATIVE SESSION

BILL NO CSSSSB 52 (JUD)

ANALYSIS CONTINUATION:

Fiscal Analysis CSSSSB 52 (JUD)
 Cost Summary (Second and Third Years Additions -
 FY 99 and FY 00 - Capital Trials)

OBJECT	<u>Second Year</u>					<u>Third Year</u>			
	<u>Atty V</u>	<u>Atty IV</u>	(2) Assoc <u>Atty I</u>	2 Legal <u>Sec I</u>	<u>TOTAL</u>	<u>Atty IV</u>	<u>P/A II</u>	Legal <u>Sec I</u>	<u>TOTAL</u>
100 - Salaries & Benefits	<u>87.3</u>	<u>82.0</u>	<u>105.8</u>	<u>72.8</u>	<u>347.9</u>	<u>82.0</u>	<u>51.1</u>	<u>36.4</u>	<u>169.5</u>
	87.3	82.0	105.8	72.8	347.9	82.0	51.1	36.4	169.5
200 - Travel									
Staff Travel & Per Diem	<u>7.5</u>	<u>7.5</u>	<u>10.0</u>	<u>6.0</u>	<u>31.0</u>	<u>7.5</u>	<u>5.0</u>	<u>3.0</u>	<u>15.5</u>
	7.5	7.5	10.0	6.0	31.0	7.5	5.0	3.0	15.5
300 - Contractual									
Communications, Copy, Document Production	<u>3.6</u>	<u>3.6</u>	<u>7.2</u>	<u>4.8</u>	<u>19.2</u>	<u>3.6</u>	<u>3.6</u>	<u>2.4</u>	<u>9.6</u>
Office Space Leases	<u>5.6</u>	<u>5.6</u>	<u>11.2</u>	<u>11.2</u>	<u>33.6</u>	<u>5.6</u>	<u>5.6</u>	<u>5.6</u>	<u>15.8</u>
PC Network Maintenance	<u>1.5</u>	<u>1.5</u>	<u>3.0</u>	<u>3.0</u>	<u>9.0</u>	<u>1.5</u>	<u>1.5</u>	<u>1.5</u>	<u>4.5</u>
WestLaw	<u>1.2</u>	<u>1.2</u>	<u>2.4</u>	<u>0.0</u>	<u>4.8</u>	<u>1.2</u>	<u>1.2</u>	<u>0.0</u>	<u>2.4</u>
	11.9	11.9	23.8	19.0	66.6	11.9	11.9	9.5	33.3
400 - Supplies									
Office Consumables	<u>1.8</u>	<u>1.8</u>	<u>3.6</u>	<u>2.4</u>	<u>9.6</u>	<u>1.8</u>	<u>1.8</u>	<u>1.2</u>	<u>4.8</u>
Law Library	<u>1.2</u>	<u>1.2</u>	<u>2.4</u>	<u>0.0</u>	<u>4.8</u>	<u>1.2</u>	<u>1.2</u>	<u>0.0</u>	<u>2.4</u>
New Position Supplies	<u>1.5</u>	<u>1.5</u>	<u>3.0</u>	<u>3.0</u>	<u>9.0</u>	<u>1.5</u>	<u>1.5</u>	<u>1.5</u>	<u>4.5</u>
	4.5	4.5	9.0	5.4	23.4	4.5	4.5	2.7	11.7
500 - Equipment									
New Position Equipment	<u>2.5</u>	<u>2.5</u>	<u>5.0</u>	<u>4.0</u>	<u>14.0</u>	<u>2.5</u>	<u>2.5</u>	<u>2.0</u>	<u>7.0</u>
PC/Word Processing	<u>4.0</u>	<u>4.0</u>	<u>8.0</u>	<u>13.0</u>	<u>29.0</u>	<u>4.0</u>	<u>4.0</u>	<u>6.5</u>	<u>14.5</u>
	6.5	6.5	13.0	17.0	43.0	6.5	6.5	8.5	21.5
TOTAL	117.7	112.4	161.6	120.2	511.9	112.4	79.0	60.1	251.5

FISCAL NOTE

1998 LEGISLATIVE SESSION

BILL NO. CSSSSB 52 (JUD)

ANALYSIS CONTINUATION:

Fiscal Analysis CSSSSB 52 (JUD)
 Cost Summary (Second and Third Years Additions -
 FY 99 and FY 00 - Appellate Review Process)

OBJECT	<u>Second Year</u>				<u>Third Year</u>			
	<u>Attv V</u>	<u>Assoc Attv I</u>	<u>Legal Sec. I</u>	<u>TOTAL</u>	<u>(2.0) Attv IV</u>	<u>P/A II</u>	<u>(2) Legal Sec. I</u>	<u>TOTAL</u>
100 - Salaries & Benefits	<u>87.3</u> 87.3	<u>52.9</u> 52.9	<u>36.4</u> 36.4	<u>176.6</u> 176.6	<u>164.0</u> 164.0	<u>51.1</u> 51.1	<u>72.8</u> 72.8	<u>287.9</u> 287.9
200 - Travel								
Staff Travel & Per Diem	<u>3.5</u> 3.5	<u>2.5</u> 2.5	<u>0.0</u> 0.0	<u>6.0</u> 6.0	<u>7.0</u> 7.0	<u>2.5</u> 2.5	<u>0.0</u> 0.0	<u>9.5</u> 9.5
300 - Contractual								
Communications, Copy, Document Production	22.4	22.4	2.4	47.2	44.8	22.4	4.8	72.0
Office Space Leases	5.6	5.6	5.6	16.8	11.2	5.6	11.2	28.0
PC Network Maintenance	1.5	1.5	1.5	4.5	3.0	1.5	3.0	7.5
WestLaw	<u>2.4</u> 31.9	<u>2.4</u> 31.9	<u>0.0</u> 9.5	<u>4.8</u> 73.3	<u>4.8</u> 63.8	<u>2.4</u> 31.9	<u>0.0</u> 19.0	<u>7.2</u> 114.7
400 - Supplies								
Office Consumables	1.8	1.8	1.2	4.8	3.6	1.8	2.4	7.8
Law Library	1.2	1.2	0.0	2.4	2.4	1.2	0.0	3.6
New Position Supplies	<u>1.5</u> 4.5	<u>1.5</u> 4.5	<u>1.5</u> 2.7	<u>7.2</u> 11.7	<u>3.0</u> 9.0	<u>1.5</u> 4.5	<u>3.0</u> 5.4	<u>11.4</u> 18.9
500 - Equipment								
New Position Equipment	2.5	2.5	2.0	7.0	5.0	2.5	4.0	11.5
PC/Word Processing	<u>4.0</u> 6.5	<u>4.0</u> 6.5	<u>6.5</u> 8.5	<u>14.5</u> 21.5	<u>8.0</u> 13.0	<u>4.0</u> 6.5	<u>13.0</u> 17.0	<u>25.0</u> 36.5
TOTAL	133.7	98.3	57.1	289.1	256.8	96.5	114.2	467.5

FISCAL NOTE

1998 LEGISLATIVE SESSION

BILL No. CSSSSB 52 (JUD)

ANALYSIS CONTINUATION:

Fiscal Analysis CSSSSB 52 (JUD)
Cumulative Implementation Cost by Year

<u>Object</u>	<u>Criminal Felony Trial</u>				<u>Appellate Review</u>			
	<u>Year 1</u>	<u>Year 2</u>	<u>Year 3</u>	<u>Year 4+</u>	<u>Year 1</u>	<u>Year 2</u>	<u>Year 3</u>	<u>Year 4+</u>
100 - Personal Services	481.0	328.9	998.4	998.4	0.0	176.6	464.5	464.5
200 - Travel - Staff	43.5	74.5	90.0	90.0	0.0	6.0	15.5	15.5
Travel - Witness	200.0	400.0	500.0	500.0	0.0	0.0	0.0	0.0
300 - Contractual - Staff	86.8	153.4	186.7	186.7	0.0	73.3	188.0	188.0
Contractual - Outside Svcs	344.0	688.0	860.0	860.0	0.0	175.0	295.0	230.0
400 - Supplies	32.4	43.8	46.5	42.0	0.0	11.7	26.1	18.6
500 - Equipment	<u>56.0</u>	<u>43.0</u>	<u>21.5</u>	<u>0.0</u>	<u>0.0</u>	<u>21.5</u>	<u>36.5</u>	<u>0.0</u>
TOTAL	1,243.7	2,231.6	2,703.1	2,677.1	0.0	464.1	1,025.6	916.6

FISCAL NOTE

1996 LEGISLATIVE SESSION

BILL NO.

CSSSSB 52 (JUD)

ANALYSIS CONTINUATION:

Out-of-Pocket Costs - Capital Felony Trials

Year One (4 cases underway) (FY 98)

Witness travel and subsistence \$50,000 per case X's 4 cases =	\$200,000
Expert witness fees \$60,000 per case X's 4 cases =	\$240,000
Witness fees (witnesses of fact) \$6,000 per case X's 4 cases =	\$24,000
Deposition/court reporter charges \$20,000 per case X's 4 cases =	\$80,000

Year Two (8 cases underway) (FY 99)

Witness travel and subsistence \$50,000 per case X's 8 cases =	\$400,000
Expert witness fees \$60,000 per case X's 8 cases =	\$480,000
Witness fees (witnesses of fact) \$6,000 per case X's 8 cases =	\$48,000
Deposition/court reporter charges \$20,000 per case X's 8 cases =	\$160,000

Estimate of any current year (FY96) cost: \$

Year Three (10 cases underway) (FY 00)

Witness travel and subsistence \$50,000 per case X's 10 cases =	\$500,000
Expert witness fees \$60,000 per case X's 10 cases =	\$600,000
Witness fees (witnesses of fact) \$6,000 per case X's 10 cases =	\$60,000
Deposition/court reporter charges \$20,000 per case X's 10 cases =	\$200,000

FISCAL NOTE

STATE OF ALASKA
1996 LEGISLATIVE SESSION

BILL NO. C5555B 52 (JUD)

ANALYSIS CONTINUATION:

Capital Felony Appeals

Year Two (4 cases underway) (FY 99)

Expert witness/legal scholars
to uphold death penalty law
(year two and three only)
\$30,000 per year X's 1 = \$30,000

Expert witness
Socio-psychiatric experts
\$25,000 per year X's 1 = \$25,000

Deposition/court reporter charges
\$30,000 per case X's 4 cases = \$120,000

Year Three (8 cases underway) (FY 00)

Expert witness/legal scholars
to uphold death penalty law
(year two and three only)
\$30,000 per year X's 1 = \$30,000

Expert witness
Socio-psychiatric experts
\$25,000 per year X's 1 = \$25,000

Deposition/court reporter charges
\$30,000 per case X's 8 cases = \$240,000

Year Four (14 cases underway) (FY 01)

Expert witness
Socio-psychiatric experts
\$50,000 per year X's 1 = \$50,000

Deposition/court reporter charges
\$30,000 per case X's 6 cases = \$180,000

02/01/96

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PERSONAL SERVICES EXPENDITURES NEW POSITION DETAIL REPORT

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 DEPARTMENT OF LAW SCENARIO: 1
 COMPONENT #: 6501020600 NAME: CRIMINAL APPEALS & SPECIAL PROSECUTIONS BRU NAME: CRIMINAL DIVISION

PER	UNAUTN	JOB CLASS TITLE	T	LOCATION NAME	R B S	R&S POS	SALARY	PREM	BENEF	PER. SERV.	G. F.
	PCM		S		C U	BUDG		PAY		COSTS	AMOUNT

1/011		ATTORNEY V		F ANCHORAGE		A XE AA 25A 12	66332	0	20933	87265.67	
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*** JUSTIFICATION:

This senior level Attorney V position will be needed to oversee and head capital felony prosecutions, during the first year that capital felony law goes into effect. The substantial due process protections accorded to defendants by the U.S. Supreme Court, will require a three-fold increase in prosecution effort in order to obtain death penalty convictions. Legal expertise at the highest level will be required to handle these prosecutions, allocations of Attorney V level is therefore recommended. This position will be required in FY 1998.

TRAVEL COSTS	7500.00	
CONTRACTUAL COSTS	11900.00	
SUPPLIES COSTS	4500.00	
EQUIPMENT COSTS	6500.00	
OTHER COSTS	0.00	
TOTAL COSTS	117665.67	87265.67

*** FUNDING DETAIL:

1004 GENERAL FUND RECEIPTS	87265.67
TOTAL FUNDING	87265.67

1/012		ATTORNEY IV		F ANCHORAGE		A XE AA 24A 12	61923	0	20100	82023.52	
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*** JUSTIFICATION:

This Attorney IV position will be required to handle capital felony trials, during the first year after the law goes into effect. "Super" due process trial consideration and sentencing proceedings are expected to take more than triple the time now required for murder trials. First degree murder trials require highly skilled prosecutors and for this reason the department is requesting the full working level prosecutor classification of Attorney IV. This attorney will be needed for the truncated capital trials, beginning in FY 1998.

TRAVEL COSTS	7500.00	
CONTRACTUAL COSTS	11900.00	
SUPPLIES COSTS	4500.00	
EQUIPMENT COSTS	6500.00	
OTHER COSTS	0.00	
TOTAL COSTS	112423.52	82023.52

*** FUNDING DETAIL:

1004 GENERAL FUND RECEIPTS	82023.52
TOTAL FUNDING	82023.52

1/013		ATTORNEY IV		F ANCHORAGE		A XE AA 24A 12	61923	0	20100	82023.52	
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*** JUSTIFICATION:

TRAVEL COSTS	7500.00	
CONTRACTUAL COSTS	11900.00	
SUPPLIES COSTS	4500.00	
EQUIPMENT COSTS	6500.00	
OTHER COSTS	0.00	
TOTAL COSTS	112423.52	82023.52

*** FUNDING DETAIL:

1004 GENERAL FUND RECEIPTS	82023.52
TOTAL FUNDING	82023.52

DEPARTMENT OF LAW SCENARIO: 1
 COMPONENT #: 6501020600 NAME: CRIMINAL APPEALS & SPECIAL PROSECUTIONS BRU NAME: CRIMINAL DIVISION

PCN	UNAM/II	JOB CLASS TITLE	T	LOCATION NAME	R B S	R&S	HOS	SALARY	PREH	BENES	PER.SERV.	G. F.
	PCN		S		C U		BUDG		PAY		COSTS	AMOUNT

0014		ASSOC ATTORNEY I		F ANCHORAGE	A	XE	AA	17A	12	38440	0	14412	52852.89
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** JUSTIFICATION:

is advanced paraprofessional position will be required during the first year that the capital felony law goes into effect, to handle evidence preparation and assist in legal research that is necessary to try capital cases. The heightened due process protection accorded defendants in these cases, causes a far more severe burden of proof under for prosecution. Allocation to the Associate Paraprofessional level is therefore recommended. This position will be required in FY 1998.

TRAVEL COSTS	5000.00	
CONTRACTUAL COSTS	10700.00	
SUPPLIES COSTS	4500.00	
EQUIPMENT COSTS	6500.00	
OTHER COSTS	0.00	
TOTAL COSTS	79552.89	52852.89

*** FUNDING DETAIL:

1004 GENERAL FUND RECEIPTS	52852.89
TOTAL FUNDING	52852.89

0015		PARALECAL ASST II		F ANCHORAGE	A	CG	2A	16A	12	36990	0	14157	51148.42
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** JUSTIFICATION:

is paralegal assistant position will be needed during the first year after the capital felony law goes into effect to assist the attorneys assigned to prosecuting defendants in capital crimes, where the state is seeking the death penalty. The position will be responsible for witness attendance and coordination, and assist with trial logistics. Allocation to the full working paraprofessional level of Paralegal Assistant II is recommended. This position will be required in FY 1998.

TRAVEL COSTS	5000.00	
CONTRACTUAL COSTS	10700.00	
SUPPLIES COSTS	4500.00	
EQUIPMENT COSTS	6500.00	
OTHER COSTS	0.00	
TOTAL COSTS	77048.42	51148.42

*** FUNDING DETAIL:

1004 GENERAL FUND RECEIPTS	51148.42
TOTAL FUNDING	51148.42

0016		LEGAL SECRETARY I		F ANCHORAGE	A	CG	2A	10A	12	25127	0	11284	36411.80
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** JUSTIFICATION:

is one of two legal secretaries needed to provide office services support for three attorneys and three paraprofessionals who will be required to handle capital felony trials, during the first year the law goes into effect. The work of the attorneys is expected to generate considerable legal documentation, in the form of motions and briefs, requiring full-time secretarial support. This position will be required in FY 1998.

TRAVEL COSTS	3000.00	
CONTRACTUAL COSTS	9500.00	
SUPPLIES COSTS	2700.00	
EQUIPMENT COSTS	8500.00	
OTHER COSTS	0.00	
TOTAL COSTS	60111.80	36411.80

*** FUNDING DETAIL:

1004 GENERAL FUND RECEIPTS	36411.80
TOTAL FUNDING	36411.80

02/01/96

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PERSONAL SERVICES EXPENDITURES NEW POSITION DETAIL REPORT

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DEPARTMENT OF LAW

SCENARIO: 1

COMPONENT #: 6501020600 NAME: CRIMINAL APPEALS & SPECIAL PROSECUTIONS DRU NAME: CRIMINAL DIVISION

PCN	UNAUTH PCN	JOB CLASS TITLE	Y S	LOCATION NAME	R B S C U	RBS POS BUDG	SALARY	PRER PAY	BENEF	PER.SERV. COSTS	G. F. AMOUNT
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037017		LEGAL SECRETARY I	F	ANCHORAGE	A	CG 2A 10A 12	25127	0	11284	36411.80	
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**** JUSTIFICATION:

This is one of two legal secretaries needed to provide office services support for the three attorneys and three paraprofessionals who will be required to handle capital felony trials, during the first year the law goes into effect. The work of the attorneys is expected to generate considerable legal documentation, in the form of motions and briefs, requiring full-time clerical support. This position is required in FY 1998.

TRAVEL COSTS	3000.00	
CONTRACTUAL COSTS	9500.00	
SUPPLIES COSTS	2700.00	
EQUIPMENT COSTS	8500.00	
OTHER COSTS	0.00	
TOTAL COSTS	60111.80	36411.80

*** FUNDING DETAIL:

1004 GENERAL FUND RECEIPTS	36411.80
TOTAL FUNDING	36411.80

037018		ATTORNEY V	F	ANCHORAGE	A	XE AA 25A 12	66332	0	20933	87265.67	
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**** JUSTIFICATION:

This senior level Attorney V position will be needed during the second year the capital felony law goes into effect, to handle the growing number of capital trials. During the second year eight additional trials should be underway and ten additional capital felonies will have been committed. The extraordinary due process standards required of prosecution, in capital cases, necessitate the highest level of legal expertise. Allocation to the Attorney V level is therefore recommended. This position will be required in FY 1999.

TRAVEL COSTS	7500.00	
CONTRACTUAL COSTS	11900.00	
SUPPLIES COSTS	4500.00	
EQUIPMENT COSTS	6500.00	
OTHER COSTS	0.00	
TOTAL COSTS	117665.67	87265.67

*** FUNDING DETAIL:

1004 GENERAL FUND RECEIPTS	87265.67
TOTAL FUNDING	87265.67

037019		ASSOC ATTORNEY I	F	ANCHORAGE	A	XE AA 17A 12	30440	0	14412	52852.89	
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**** JUSTIFICATION:

This advanced paraprofessional position will be required, during the second year the capital felony law is in effect, to handle the growing number of capital trials. Eight new trials are expected to commence during the second year, and ten new offenses will have been committed. This position will help organize and examine evidence, and assist attorneys with legal research. Allocation to the Associate Attorney I level is therefore recommended. This position is required in FY 1999.

TRAVEL COSTS	5000.00	
CONTRACTUAL COSTS	11900.00	
SUPPLIES COSTS	4500.00	
EQUIPMENT COSTS	6500.00	
OTHER COSTS	0.00	
TOTAL COSTS	80752.89	52852.89

*** FUNDING DETAIL:

1004 GENERAL FUND RECEIPTS	52852.89
TOTAL FUNDING	52852.89

DEPARTMENT OF LAW

SCENARIO: 1

COMPONENT #: 6501020600 NAME: CRIMINAL APPEALS & SPECIAL PROSECUTIONS ORU NAME: CRIMINAL DIVISION

PCN	UNAUTN	JOB CLASS TITLE	LOCATION NAME	A	B	S	R&S	HOS	SALARY	PREM	BENES	PER.SERV.	G. P.
PCN				C	U		BUDG			PAY		COSTS	AMOUNT
4676		LEGAL SECRETARY I	F ANCHORAGE	A	CG	2A	10A	12	25127	0	11284	36411.80	

*** JUSTIFICATION:

This Legal Secretary I position will be required, during the second year the capital felony law is in effect, to handle the growing caseload. Eight new capital felony trials are expected to commence, and many new offenses will be committed during the year. Legal documentation for these trials will be intense. Allocation to the Legal Secretary I level is therefore recommended. This position will be needed in FY 1999.

TRAVEL COSTS	3000.00	
CONTRACTUAL COSTS	9500.00	
SUPPLIES COSTS	2700.00	
EQUIPMENT COSTS	8500.00	
OTHER COSTS	0.00	
TOTAL COSTS	60111.80	36411.80

*** FUNDING DETAIL:

1004 GENERAL FUND RECEIPTS	36411.80
TOTAL FUNDING	36411.80

47021		ATTORNEY V	F ANCHORAGE	A	XE	AA	25A	12	66332	0	20933	87265.67	
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*** JUSTIFICATION:

This Attorney V position will be required, during the second year the capital felony law is in effect, to handle the post-conviction appellate review process. It is anticipated that six defendants' convictions will be on appeal during the second year. Up to ten years or more may pass before these appeals are finally resolved. Initially, legal attacks on the law itself will go to the Alaska Supreme Court. If upheld, appeals will go to the federal court system, including the U.S. District Court. The highest level of legal expertise will be required to handle these appeals. Allocation to the Attorney V level is therefore recommended. This position will be needed in FY 1999.

TRAVEL COSTS	3500.00	
CONTRACTUAL COSTS	31900.00	
SUPPLIES COSTS	4500.00	
EQUIPMENT COSTS	6500.00	
OTHER COSTS	0.00	
TOTAL COSTS	133665.67	87265.67

*** FUNDING DETAIL:

1004 GENERAL FUND RECEIPTS	87265.67
TOTAL FUNDING	87265.67

48022		ASSOC ATTORNEY I	F ANCHORAGE	A	XE	AA	17A	12	38440	0	14412	52852.89	
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*** JUSTIFICATION:

This Associate Attorney paraprofessional position will be required, during the second year the capital felony law is in effect, to assist handling legal research for post-conviction appellate review process. It is anticipated that six defendants' convictions will be on appeal during the second year. Legal attacks on the law itself will be before the Alaska Supreme Court, as will appeals of convictions. Further appeals to the federal court system will commence, if the law is upheld. An enormous amount of research will be required. Allocation to the Associate Attorney I level is therefore recommended.

TRAVEL COSTS	2500.00	
CONTRACTUAL COSTS	31900.00	
SUPPLIES COSTS	4500.00	
EQUIPMENT COSTS	6500.00	
OTHER COSTS	0.00	
TOTAL COSTS	98252.89	52852.89

*** FUNDING DETAIL:

NEW	UNAUTH	JOB CLASS TITLE	T	LOCATION NAME	R	B	S	R&S	MOB	SALARY	PREM	BENEF	PER.SERV.	G. F.
	PCM		S		C	U			BUDG		PAY		COSTS	AMOUNT

1004 GENERAL FUND RECEIPTS	52852.89
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TOTAL FUNDING	52852.89
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17023	LEGAL SECRETARY I	F ANCHORAGE		A GG 2A 10A 12	25127	0	11284			36411.80
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*** JUSTIFICATION:

This Legal Secretary I position will be required, during the second year the capital felony law is in effect, to handle the post-conviction appellate review process. This process is expected to begin during the third year, when the first six convictions should be appealed. This process is document intensive and full-spectrum secretarial services will be required. Allocation to the Legal Secretary I level is therefore recommended. This position is needed in FY 1999.

TRAVEL COSTS	0.00
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CONTRACTUAL COSTS	9500.00
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SUPPLIES COSTS	2700.00
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EQUIPMENT COSTS	8500.00
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OTHER COSTS	0.00
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TOTAL COSTS	57111.80	36411.80
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*** FUNDING DETAIL:

1004 GENERAL FUND RECEIPTS	36411.80
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TOTAL FUNDING	36411.80
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17025	ATTORNEY IV	F ANCHORAGE		A XE AA 24A 12	61923	0	20100			82023.52
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*** JUSTIFICATION:

This Attorney IV position will be required, during the third year the capital felony law is in effect, to handle the growing number of capital felony trials. It is anticipated that ten of these trials will be underway in the third year, and ten new offenses will have been committed. An enormous amount of attorney time is required to handle these because of the heightened due process standards that are mandated for capital prosecutions. Those attorneys require highly skilled prosecutors. Allocation to the full-working level of Attorney IV, is therefore recommended. This position will be needed in FY 2000.

TRAVEL COSTS	7500.00
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CONTRACTUAL COSTS	11900.00
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SUPPLIES COSTS	4500.00
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EQUIPMENT COSTS	6500.00
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OTHER COSTS	0.00
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TOTAL COSTS	112423.52	82023.52
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*** FUNDING DETAIL:

1004 GENERAL FUND RECEIPTS	82023.52
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TOTAL FUNDING	82023.52
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17026	PARALEGAL ASST II	F ANCHORAGE		A GG 2A 16A 12	32990	0	14157			51148.42
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*** JUSTIFICATION:

This Paralegal Assistant position will be required, during the third year the capital felony law is in effect, to handle the growing number of capital felony trials. It is anticipated that ten trials will be underway at this point, and ten new offenses will have been committed. This position will assist witnesses and coordinate witness schedules and trial logistics. Allocation to the Paralegal Assistant II level is therefore recommended. This position will be required in FY 2000.

TRAVEL COSTS	5000.00
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CONTRACTUAL COSTS	11900.00
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SUPPLIES COSTS	4500.00
----------------	---------

EQUIPMENT COSTS	6500.00
-----------------	---------

OTHER COSTS	0.00
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TOTAL COSTS	79048.42	51148.42
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02/01/96

15:49:03.7

PERSONAL SERVICES EXPENDITURES NEW POSITION DETAIL REPORT

PAGE: 1

DEPARTMENT OF LAW

SCENARIO: 1

COMPONENT #: 6501020600 NAME: CRIMINAL APPEALS & SPECIAL PROSECUTIONS DRU NAME: CRIMINAL DIVISION

PCN	UNADTH PCN	JOB CLASS TITLE	Y	LOCATION NAME	R	B	S	RQ\$	HOS	SALARY	PREH	BENES	PER.SERV.	G. F.
			5		C	U			BUDG		PAY		COSTS	AMOUNT

*** FUNDING DETAIL:

1004 GENERAL FUND RECEIPTS	51148.42
TOTAL FUNDING	51148.42

#021	LEGAL SECRETARY I	F ANCHORAGE	A	GO 2A 10A 12	25127	0	11204	36411.80
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** JUSTIFICATION:

This Legal Secretary position will be required, during the third year the capital felony law is in effect, to handle the growing number of capital felonies. It is anticipated that several capital trials will be underway at this point, and that several offenses will have been committed. The work generated by attorneys will require substantial secretarial assistance. Allocation to the Legal Secretary I level is therefore recommended. This position will be needed in 2000.

TRAVEL COSTS	3000.00	
CONTRACTUAL COSTS	9500.00	
SUPPLIES COSTS	2700.00	
EQUIPMENT COSTS	8500.00	
OTHER COSTS	0.00	
TOTAL COSTS	60111.00	36411.80

*** FUNDING DETAIL:

1004 GENERAL FUND RECEIPTS	36411.80
TOTAL FUNDING	36411.80

#028	ATTORNEY IV	F ANCHORAGE	A	XE AA 24A 12	61923	0	20100	82023.52
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** JUSTIFICATION:

This Attorney IV position will be required, during the third year the capital felony law is in effect, to handle post-conviction appeals. It is anticipated that six new convictions will be on appeal by the third year, bringing the total cases on appeal to 12. Capital penalty appeals have an average span of ten years. These appeals are heard in the Alaska Supreme Court, the U.S. District Court, the U.S. Court of Appeals and the U.S. Supreme Court. Those appeals often move up and down, through the system, as each issue is argued. Full-working level legal expertise is necessary to handle this work, and allocation to Attorney IV is therefore recommended. This position will be needed in FY 2000.

TRAVEL COSTS	3500.00	
CONTRACTUAL COSTS	31900.00	
SUPPLIES COSTS	4500.00	
EQUIPMENT COSTS	8500.00	
OTHER COSTS	0.00	
TOTAL COSTS	120423.52	82023.52

*** FUNDING DETAIL:

1004 GENERAL FUND RECEIPTS	82023.52
TOTAL FUNDING	82023.52

#029	PARALEGAL ASST II	F ANCHORAGE	A	GO 2A 16A 12	36990	0	14157	51148.42
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** JUSTIFICATION:

This Paralegal Assistant II position will be required, during the third year of the capital felony law, to assist the preparation of appellate documentation and research. Six new appeals are expected in the third year, bringing the total to be handled to 12. These appeals have an average time span of ten years.

TRAVEL COSTS	2500.00	
CONTRACTUAL COSTS	31900.00	
SUPPLIES COSTS	4500.00	
EQUIPMENT COSTS	6500.00	
OTHER COSTS	0.00	

DEPARTMENT OF LAW SCENARIO: 1
 COMPONENT #: 6501020600 NAME: CRIMINAL APPEALS & SPECIAL PROSECUTIONS BRU NAME: CRIMINAL DIVISION

PCN	UNAUTH PCN	JOB CLASS TITLE	T S	LOCATION NAME	R B C U	S RBS	MOS BUDG	SALARY	PREM PAY	BERES	PER.SERV. COSTS	G. F. AMOUNT
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numerous amounts of time must be spent researching the law, examining trial records, and preparing legal arguments, and briefs. A substantial documents and research effort will be required. Allocation to the

TOTAL COSTS	96548.42	51148.42
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*** FUNDING DETAIL:

1004 GENERAL FUND RECEIPTS

51148.42

TOTAL FUNDING

51148.42

117030	LEGAL SECRETARY I	F ANCHORAGE	A	GC 2A 10A 12	25127	0	11284	36411.80
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** JUSTIFICATION:

This Legal Secretary I will be required, during the first year the capital felony law is in effect, to handle a growing number of post-conviction appellate reviews. It is anticipated that a total of six reviews will be underway at this time, and this number will grow by six reviews, each year, thereafter. Each review lasts about ten years and involves numerous courts, and many court proceedings. Substantial secretarial assistance will be needed to handle this work. Allocation to the Legal Secretary I level is therefore recommended. This position will be needed in FY 2000.

TRAVEL COSTS	0.00
CONTRACTUAL COSTS	9500.00
SUPPLIES COSTS	2700.00
EQUIPMENT COSTS	8500.00
OTHER COSTS	0.00
TOTAL COSTS	57111.80
	36411.80

*** FUNDING DETAIL:

1004 GENERAL FUND RECEIPTS

36411.80

TOTAL FUNDING

36411.80

117031	ASSOC ATTORNEY I	F ANCHORAGE	A	XE AA 17A 12	38440	0	14412	52852.89
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*** JUSTIFICATION:

This advanced paraprofessional position will be required, during the first year that the capital felony law goes into effect, to handle evidence preparation and assist in legal research that is necessary to try capital cases. The heightened due process protection accorded defendants in these cases, causes a far more severe burden of proof standard for prosecution. Allocation to the Associate Attorney I paraprofessional level is therefore recommended. This position will be required in FY 1998.

TRAVEL COSTS	5000.00
CONTRACTUAL COSTS	10700.00
SUPPLIES COSTS	4500.00
EQUIPMENT COSTS	6500.00
OTHER COSTS	0.00
TOTAL COSTS	79552.89
	52852.89

*** FUNDING DETAIL:

1004 GENERAL FUND RECEIPTS

52852.89

TOTAL FUNDING

52852.89

117032	ASSOC ATTORNEY I	F ANCHORAGE	A	XE AA 17A 12	38440	0	14412	52852.89
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*** JUSTIFICATION:

This advanced paraprofessional position will be required, during the second year that the capital felony law is in effect, to handle evidence preparation and assist in legal research that is necessary to try capital cases. The

TRAVEL COSTS	5000.00
CONTRACTUAL COSTS	11900.00
SUPPLIES COSTS	4500.00
EQUIPMENT COSTS	6500.00

02/01/96

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PERSONAL SERVICES EXPENDITURES NEW POSITION DETAIL REPORT

PAGE: 9

DEPARTMENT OF LAW

SCENARIO: 1

COMPONENT #: 6501020600 NAME: CRIMINAL APPEALS & SPECIAL PROSECUTIONS DRU NAME: CRIMINAL DIVISION

UNADJN	JOB CLASS TITLE	Y	LOCATION NAME	R B \$	R&S	HOS	SALARY	PREM	BENES	PER.SERV.	G. F.
PCN		S		G U		BUDG		PAY		COSTS	AMOUNT

ationed due process protection accorded defendants. In
se cases, causes a far more severe burden of proof
standard for prosecution. Allocation to the Associate
Attorney I (paraprofessional level) is therefore recommended.
This position will be required in FY 1999.

OTHER COSTS	0.00	
TOTAL COSTS	80752.89	52852.09

*** FUNDING DETAIL:

1004 GENERAL FUND RECEIPTS 52852.89

TOTAL FUNDING 52852.89

031	ATTORNEY IV	F ANCHORAGE	A XE AA 24A 12	61923	0	20100	82023.52
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** JUSTIFICATION:

This Attorney IV position will be required, during the
third year the capital felony law is in effect, to
handle post-conviction appeals. It is anticipated that
new convictions will be on appeal by the third year,
bringing the total cases on appeal to 12. Capital
felony appeals have an average span of ten years.
As appeals are heard in the Alaska Supreme Court, the
District Court, the U.S. Circuit Court of Appeals,
and the U.S. Supreme Court. These appeals often move
up and down, through the system, as each separate issue
is argued. Full-working level legal expertise is
necessary to handle this work, and allocation to Attorney
IV is therefore recommended. This position will be
needed in FY 2000.

TRAVEL COSTS	3500.00	
CONTRACTUAL COSTS	31900.00	
SUPPLIES COSTS	4500.00	
EQUIPMENT COSTS	6500.00	
OTHER COSTS	0.00	
TOTAL COSTS	128423.52	82023.52

*** FUNDING DETAIL:

1004 GENERAL FUND RECEIPTS 82023.52

TOTAL FUNDING 82023.52

011	LEGAL SECRETARY I	F ANCHORAGE	A GG 2A 10A 12	25127	0	11284	36411.80
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** JUSTIFICATION:

This Legal Secretary I will be required, during the
third year the capital felony law is in effect, to
handle a growing number of post-conviction appellate
reviews. It is anticipated that a total of six reviews
will be underway at this time, and this number will
grow by six reviews, each year, thereafter. Each review
lasts about ten years and involves numerous courts, and
many court proceedings. Substantial secretarial assistance
will be needed to handle that work. Allocation to the
Legal Secretary I is therefore recommended. This position
will be needed in FY 2000.

TRAVEL COSTS	0.00	
CONTRACTUAL COSTS	9500.00	
SUPPLIES COSTS	2700.00	
EQUIPMENT COSTS	6500.00	
OTHER COSTS	0.00	
TOTAL COSTS	57111.80	36411.80

*** FUNDING DETAIL:

1004 GENERAL FUND RECEIPTS 36411.80

TOTAL FUNDING 36411.80

PCN	UNADYII PCN	JOB CLASS TITLE	Y S	LOCATION NAME	R D S C U	RAS POS BUDG	SALARY	PREM PAY	BENEF	PER.SERV. COSTS	G. F. AMOUNT
03/035		ATTORNEY IV		F ANCHORAGE	A XE AA	24A 12	61923	0	20100	82023.52	

**** JUSTIFICATION:

This Attorney IV position will be needed during the second year the capital felony law goes into effect, to handle the growing number of capital trials. During the second year eight additional trials should be underway and ten additional capital felonies will have been committed. The extraordinary due process standards required of prosecution, in capital cases necessitate the full working level of legal expertise. Allocation to the Attorney IV level is therefore recommended. This position will be required in FY 1999.

TRAVEL COSTS	7500.00	
CONTRACTUAL COSTS	11900.00	
SUPPLIES COSTS	4500.00	
EQUIPMENT COSTS	6500.00	
OTHER COSTS	0.00	
TOTAL COSTS	112423.52	82023.52

*** FUNDING DETAIL:

1004 GENERAL FUND RECEIPTS	82023.52
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TOTAL FUNDING	82023.52
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03/036		LEGAL SECRETARY I		F ANCHORAGE	A GG ZA	10A 12	25127	0	11204	36411.80	
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**** JUSTIFICATION:

This Legal Secretary I position will be required, during the second year the capital felony law is in effect, to handle the growing caseload. Eight new capital felony trials are expected to commence, and ten new offenses will be committed during the year. Legal documentation for these trials will be intense. Allocation to the Legal Secretary I level is therefore recommended. This position will be needed in FY 1999.

TRAVEL COSTS	3000.00	
CONTRACTUAL COSTS	9500.00	
SUPPLIES COSTS	2700.00	
EQUIPMENT COSTS	8500.00	
OTHER COSTS	0.00	
TOTAL COSTS	60111.80	36411.80

*** FUNDING DETAIL:

1004 GENERAL FUND RECEIPTS	36411.80
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TOTAL FUNDING	36411.80
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**** COMPONENT TOTALS:

FULL TIME NEW POSITIONS	25	TOTAL PERSONAL SERVICES	1462942.24
PART TIME/SEASONAL NEW POSITIONS	0	TOTAL COSTS INC. ASSOC COSTS	2219742.24
NON PERMANENT NEW POSITIONS	0		
OTHER.....	0		

NUMBER OF NEW POSITIONS IN COMPONENT:	25
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FUNDING DATA: G.F. & G.F. MATCH:	1462942.24
OTHER FUNDS:	0.00

TOTAL FUNDING:	1462942.24
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5/2/96

A Statement from
Alaskans AGAINST the Death Penalty
on its
Opposition to Senate Bill 52

The Senate Judiciary Committee has passed a committee substitute to SB 52 which proposes placing a question on November's ballot asking voters to decide whether Alaska should re-enact the death penalty. The proposed question reads:

"Shall the Alaska State Legislature enact a law providing for capital punishment for murder in the first degree and establishing procedures for the imposition of capital punishment that are consistent with the United States Constitution as interpreted by the United States Supreme Court?"

Although we believe that a fully informed public debate on the death penalty is necessary and appropriate, the advisory ballot proposal will not accomplish such a goal. As worded, the question is designed to produce a biased result without informing voters of the reasons why the death penalty is a bad idea. For this reason, we oppose the advisory ballot.

The advisory ballot does not provide Alaskans with any information about the death penalty, thus the voters will be largely uninformed when they go to vote.

Because most Alaskans have not had first-hand experience with a death penalty, or with the criminal justice system in Alaska, their vote on the subject will be largely uninformed. Many people have very strong opinions in favor of capital punishment. Revenge is a natural, understandable human reaction when someone has committed a heinous crime. If asked a general question about imposing a death penalty, many voters will likely vote yes. However, it would be a mistake for legislators to decide so serious a question based on the results of an uninformed poll of the public. The proposed ballot question does not provide an analysis of the impact of the death penalty on the state, nor a disclosure to the public of the monumental costs of instituting a death penalty.

Most Alaskans base their support for the death penalty on the erroneous belief that murderers do not serve lengthy sentences and that the death penalty will save them money. A statewide random sampling poll of Alaskans indicated that 78% of Alaskans believe that the average person convicted of first degree murder serves less than 20 years in jail. In fact, this is a legal impossibility -- the mandatory minimum sentence for first degree murder in Alaska is 20 years. According to the Department of Law, the average sentence for first degree murder is between 80 and 90 years and the typical sentence for the most serious murders (the kind that would be death eligible under proposed bills) is 99 years with parole eligibility restricted by the court. Therefore, people who are convicted of the types of crimes for which they would receive the death penalty are not released from prison. The same poll also asked Alaskans which they believed was more expensive, life imprisonment or the death penalty -- 74% replied life imprisonment was more expensive. In actuality, every state that has studied the economic costs of the death penalty have found that they are spending between 2 to 6 times as much money to carry out a capital trial, appeals and an execution than to conduct a regular trial, appeals and incarcerate someone for life. Fiscal notes provided by the Department of Law, Corrections and the Public Defender Agency conservatively estimate that a single execution in Alaska will cost \$5 million dollars, or half of the annual prosecution budget for the state of Alaska!

The advisory ballot asks the wrong question by failing to include more popular options other than the death penalty.

We believe that many Alaskans who may answer the general advisory question in favor of a death penalty, might oppose a death penalty if they knew more information about the realities associated with implementing one. A national, bi-partisan opinion poll conducted throughout the United States revealed that if asked a general question about capital punishment, a large majority of Americans, 77%, favored capital punishment. However, if asked whether they would prefer capital punishment or life imprisonment without the possibility of parole and restitution to the victim's family, the percentage of those favoring capital punishment fell to 41%. The main reasons cited in support of capital punishment were the belief that capital punishment saves money and that murderers are serving lenient sentences. (See 1993 Greenberg/Lake and Tarrance Group Bi-partisan poll.)

(Continued on Reverse Side)

If asked a general question regarding support for capital punishment, most Alaskans may indicate favorable support, like those questioned in the Greenberg/Lake-Tarrance poll, because of their erroneous beliefs that murderers are serving lenient sentences and the death penalty will save us money. Until Alaskans are informed of the actual economic costs of the death penalty, and the truth about sentencing laws in this state, the results of this ballot question will be grossly biased by this misinformation.

The simple "yes/no" results of an advisory vote may be used by legislators to justify passage of death penalty legislation instead of relying on thoughtful analysis and studied consideration of the complex factors related to enactment of the death penalty.

Emotional considerations aside, the facts show that the death penalty is a bad idea for Alaska:

* In some states it is as much as 6 times more expensive to pay for a death penalty trial, appeals, and execution than it is to house a person in jail for life. The average cost per execution in California is 15 million dollars. Conservative estimates in Alaska indicate that implementing a death penalty will cost at least \$21 million dollars a year for 4 years and will continue to substantially increase over time as more and more of the death penalty cases back-up in the system. For example, Ohio has had the death penalty for over 14 years and has over 120 people on death row, but not one person has been executed. Based on the experiences of other states, Alaskans can expect to spend well over \$50 million dollars on the death penalty before even one person is executed.

* The death penalty in the United States, and in Alaska prior to Statehood, was used predominantly against poor and minority people. 75% of all executions this century in Alaska were against African-Americans and Alaska Natives in spite of the fact that the vast majority of homicides were committed by White men.

* At least 1300 innocent people have been on death row in the United States this century; at least 24 innocent people have been executed.

While understandably very difficult, it is clearly the job of Alaska's elected legislators to weigh all the myriad public policy issues related to adoption of a death penalty bill, including such concerns as 1) the enormous costs of death penalty litigation and the impact a death penalty would have on the ability of the state's prosecutors and law enforcement divisions to maintain the resources necessary to adequately pursue its non-death penalty caseload; 2) the likely racist impact of a death penalty on Alaskan minority groups; and 3) the fact that innocent people will be executed. These are but a few of the very important and complex issues raised which will not be answered by a "simple" ballot question.

A legislator who has the benefit of all available information and who thoroughly educates him or herself on the well-documented problems surrounding death penalty cases and executions may decide that enacting the death penalty is not in the best interests of the state. However, if a majority of Alaskans were to vote in favor of the advisory ballot proposition, it might be difficult for that legislator to vote against future death penalty bills.

Throughout history, our country has had laws which enjoyed majority favor at the time, but later proved to be unjust. If put to an advisory ballot, Slavery, Jim Crow laws, no voting rights for African-Americans or women, are laws which all would have enjoyed support by a majority of Americans. In hindsight, these laws proved to be unjust and were ultimately abolished. The death penalty is a law which our society will ultimately decide was a grave mistake. Today, 28 European countries have abolished the death penalty, including France and Great Britain. Canada abolished the death penalty in 1976. Both Great Britain and Canada experienced a decrease in homicide rates after abolishing the death penalty. If Alaska passes a death penalty, we will live to regret it. We urge you to do all you can to defeat SB 52 and House Bills 45 and 481 and to oppose any form of an advisory ballot on the death penalty.

For more information and copies of all studies referred to contact:

Alaskans AGAINST the Death Penalty
P. O. Box 202296
Anchorage, AK 99520-2296
Phone/Fax (907) 258-2296

**POPULAR OPINION TOTALLY WRONG:
Executions Cost MUCH MORE Than Prison!**

Q: Which do you believe costs more
the death penalty or life in prison without parole?

74% life in prison costs more

21% death penalty costs more

5% unsure

*[1994 Survey of ≈ 500
Alas Kans by Craciun group]*

THE TRUTH: It costs **MILLIONS and MILLIONS MORE**
to execute **JUST ONE** murderer than to keep him in
prison for life.

NORTH CAROLINA: \$2.16 Million MORE

CALIFORNIA: \$15 Million /execution
6 x MORE than prison

TEXAS: \$2.3 Million /execution
3 x MORE than prison

FLORIDA: \$3.2 Million /execution

***** MOST costs are at the TRIAL level,
NOT the result of appeals. *****

ALASKA CANNOT AFFORD THE DEATH PENALTY

Attorney General Botelho estimates the cost of obtaining a single execution in Alaska at \$5 MILLION -- that's HALF the ANNUAL PROSECUTION BUDGET!

* * * * *

Previous prosecutor, defender, and court estimates have conservatively predicted that 6 capital cases a year would cost taxpayers \$18.8 MILLION for the first four years alone. This estimate does NOT include costs of constructing, maintaining and staffing a death row/execution facility.

* * * * *

Alaskans can expect to spend well in excess of \$50,000,000.00 on the death penalty before even one person is executed!

**POPULAR OPINION TOTALLY WRONG:
Convicted Murderers Stay In Prison!**

Q: If a person is convicted in Alaska of 1st degree murder and **sentenced to life**, how long do you think that person will be in prison before being **paroled or released** back into society?

Public opinion of years
before parole / release:

1 - 9 yrs = 37%

10 - 14 yrs = 23%

15 - 20 yrs = 18%

21 - 30 yrs = 6%

31 - 40 yrs = 2%

41 - 50 yrs = 1%

51+ yrs = 1%

never released = 3%

don't know/unsure = 9%

[1995 Survey of \approx 500 Alaskans
by Craciun group]

THE TRUTH: Law requires
NO RELEASE for 20 yrs

78% of Alaskans
believe in a crime
risk that does NOT
and can NOT exist!

**THE TRUTH: ALASKA IS
ALREADY TOUGH ON CRIME**

The average sentence for
murder-1 = 80 - 90 yrs

HALF of those sentenced for **Murder-1** receive **99 yrs**. Composite sentences in the aggravated cases, for which the death penalty is proposed, always exceed 99 yrs and/or include parole restrictions, resulting in terms of natural life without any possibility of parole.

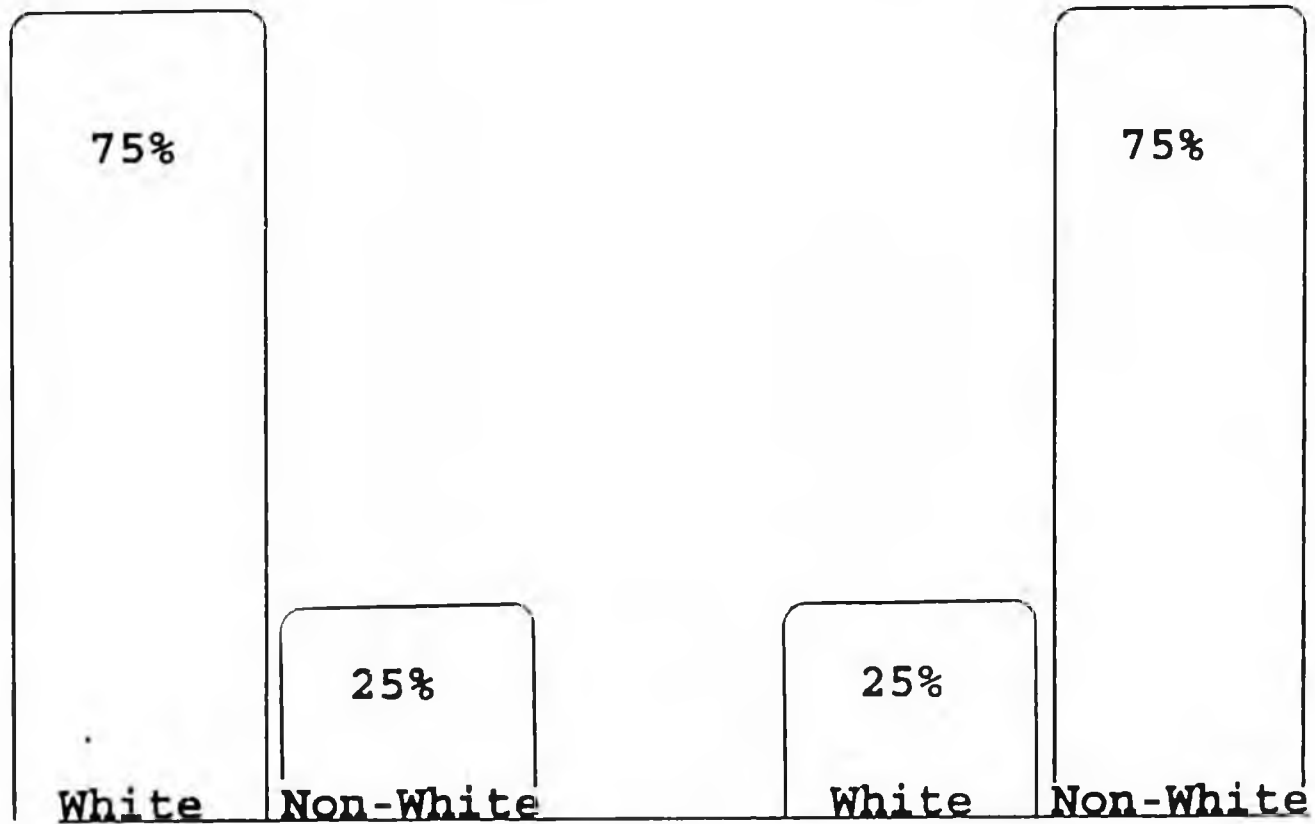
THE TRUTH: The death penalty makes
NO contribution to public safety.

**RACE & EXECUTIONS
IN TERRITORIAL ALASKA**

1900-1957

WHO COMMITTED MURDERS?

WHO WAS EXECUTED?

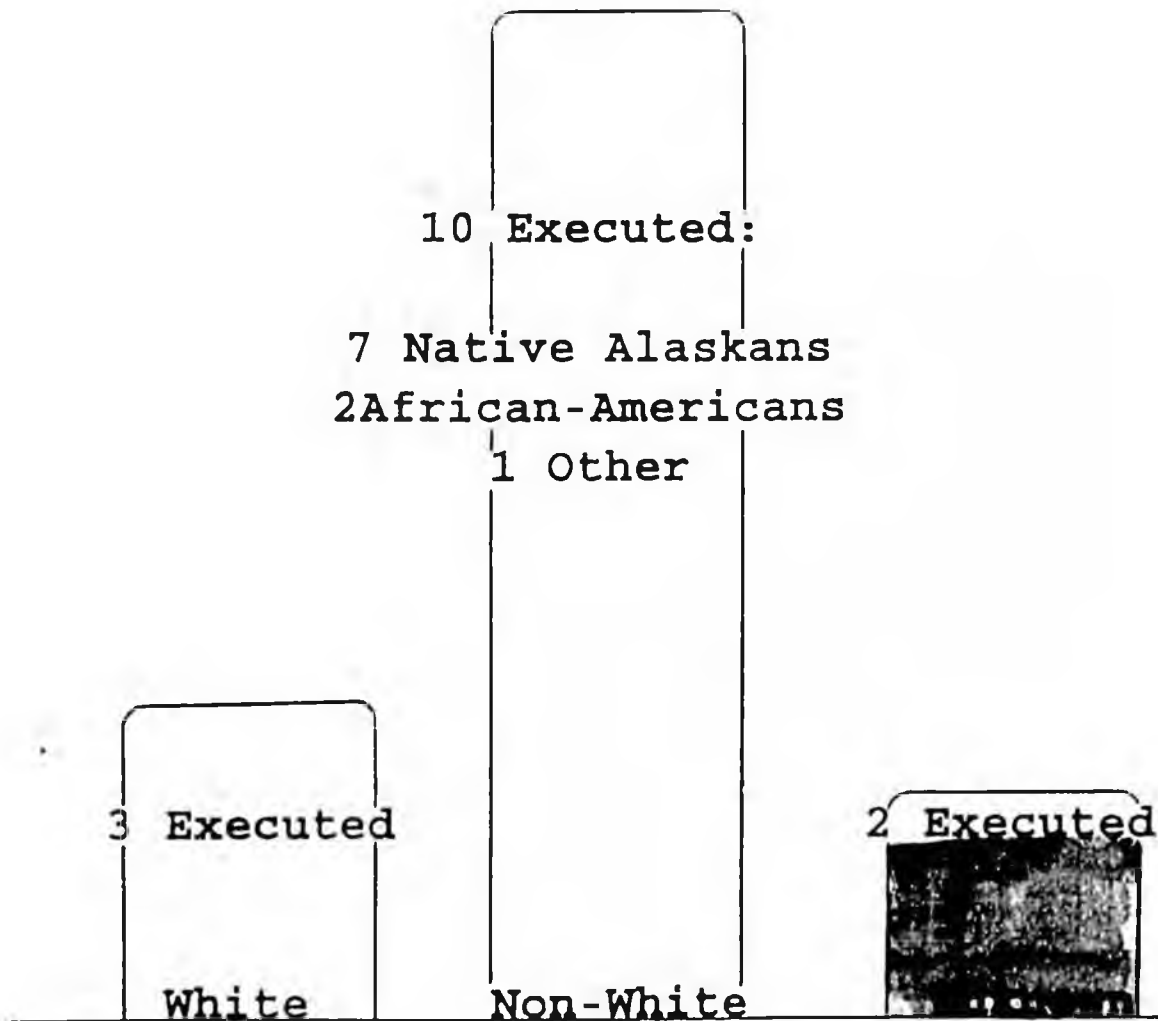


A. Lerman, Capital Punishment in Territorial Alaska, presented at Alaska State Historical Society Annual Meeting (October 1995)

Kynell, A Different Frontier (U. Press of America, Lanham, MD 1991)

RACE & EXECUTIONS
IN TERRITORIAL ALASKA

1869-1957



Alaska State Legislature
Legislative Research Agency
Memo, February 25, 1993

MISTAKES ARE MADE:

INNOCENT LIVES ARE LOST

Americans NOW on death row: 3,046

Since 1973,
Death CASES OVERTURNED by courts: 1,480

INNOCENT PEOPLE
RELEASED from death row: 48

Since 1900,
Unquestionably INNOCENT citizens
who have been actually EXECUTED: 23

Death Row, U.S.A., NAACP Bulletin
(Fall 1995)

Innocence and the Death Penalty: Assessing
the Danger of Mistaken Executions, Staff
Report, Subcomm. on Civil and
Constitutional Rights, Judiciary Comm.,
103d Congress, First Session (1993)

Radelet, Bedeau & Putnam, In Spite of
Innocence (Northeastern U. Press 1992)

MISTAKES ARE MADE:

INNOCENT LIVES ARE LOST... IN ALASKA

Eugene LaMoore, a 42 year old African-American fisherman from Juneau, was the last Alaskan executed. Although convicted of minimal participation in a robbery-murder, there is substantial evidence that Mr. LaMoore was, in fact, innocent.

LaMoore's death sentence rested on a "confession" obtained when authorities brought Austin Nelson -- already convicted of doing the stabbing -- into his cell, to beg for help in saving his life, just days before Nelson's scheduled execution.

A prominent attorney, who LaMoore naively thought had come to represent him, then advised LaMoore to put his "confession" in a statement. LaMoore fell for this stratagem, with fatal consequences!

Eugene LaMoore was hanged in Juneau on April 14, 1950.

A. Lerman, Capital Punishment in Territorial Alaska, presented at Alaska State Historical Society Annual Meeting (October 1995)

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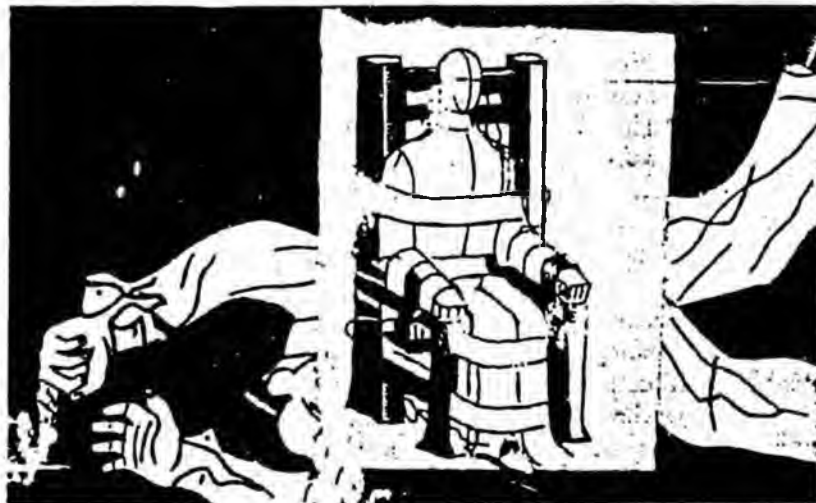
THE LIFE PRESERVER

While the Governor maneuvers to get the death penalty enforced, his new Capital Defender is equally determined that it will never happen.

BY JAMES TRAUB

KEVIN DOYLE is an ardent Catholic and a passionate moralist who in moments of high seriousness slips into a pontifical mode. Doyle is New York State's Capital Defender, which is to say that he runs the state-funded office that represents indi-

vidual Representation Resource Center, a federally funded public defenders' group, Doyle never had a client whom he had defended at trial sentenced to death. The same was true of the other attorneys at the resource center. "Where there is competent counsel at the trial



The Capital Defender Office is likely to represent the alleged murderer of a Bronx policeman in what promises to be a death-penalty test case.

gent defendants charged under New York's new death-penalty statute. One evening last summer, as Doyle sat in an office in lower Manhattan decorated with a map of New York State and a photograph of Martin Luther King, Jr., he raised a forefinger in the air and declared to an audience of one, "District attorneys in this state realize that to casually bring a capital indictment will be a mistake, because every capital case will be litigated with an intensity and a depth with which they are not familiar, and will be commensurate with the societal attempt to take a human life." Prosecutors who fail to recognize this fact, Doyle went on, "will, I'm certain, have a different view in a very short period of time."

Doyle's declaration had the brassy ring of bravado, but he was, in fact, speaking from experience. In five and a half years as a staff attorney for the Alabama Capi-

level, which has been a rare occurrence, the success rate of prosecutors in getting the death penalty hovers near zero," Eric M. Freedman, a professor of constitutional law at Hofstra, says. The reason that there are so many prisoners on death row, according to Doyle, is that in most states indigent defendants have to make do with untrained and underpaid private lawyers.

You have to wonder if New York's Governor George Pataki knew what he was doing when he agreed to include an independent, well-financed public defenders' office in the death-penalty statute. Pataki, who made capital punishment one of the core issues of his 1994 campaign, has argued that the threat of execution serves as an important deterrent to crime. He has been openly impatient with the slow pace of capital indictments: only three have been filed since the law took effect, last September 1st. Ten days ago,

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frustrated by the apparent refusal of the Bronx District Attorney, Robert Johnson, to seek the death penalty in a case involving the fatal shooting of a policeman, the Governor forced Johnson out of the case and replaced him with the New York State Attorney General, Dennis Vacco, who is another capital-punishment enthusiast. Both Johnson and the Capital Defender Office (acting independently) are likely to move to have Vacco's appointment vacated. Should they fail, Vacco is almost certain to seek the death penalty for the alleged shooter, Angel Diaz, whom the C.D.O. is defending. Governor Pataki will have his test case. But if Doyle and his colleagues do their jobs well, it's unlikely that Diaz or anyone else in New York will be executed.

LIKE many people in his profession, Kevin Doyle, at forty, is old enough to have been mesmerized by the moral struggle of the civil-rights movement but too young to have done any marching of his own. When he was growing up, his heroes were Martin Luther King, Jr., and the Berrigan brothers. In the eighties, Doyle spent six years as a Legal Aid lawyer in New York, but it was only after he went down South and started working on capital cases that he found his calling. In the late eighties, during a brief stint with a Wall Street law firm, he had agreed to do some pro-bono work on a death-penalty appeal in Alabama. "I had the transcript in my home, and I showed it to my wife," Doyle recalls. It was the closing

argument in the trial's "penalty phase." In a death-penalty case, if a jury finds a defendant guilty, a second trial immediately ensues—the penalty phase, in which the jury must choose between execution and a lesser sentence, usually life without parole. "And she read it, and her comment was 'God, I hope this guy had a good lawyer,'" Doyle goes on. "And I said, 'Mary, that *was* the lawyer.' The whole thing ran to less than a page." It wasn't the fault of the lawyer, Doyle says, but of the system, which farmed out legal work in capital cases at the rate of forty dollars an hour.

That system, Doyle became convinced, was specifically designed to convey defendants, most of them poor and black, to death row as swiftly as possible. "I've seen several summations in which a prosecutor analogized to Old Yeller," Doyle says. "It's not that we're putting him out of his misery but that we're putting him out of *our* misery." This cavalier attitude in the face of death staggered Doyle, as it staggers virtually every lawyer who goes down South to try death-penalty cases. This may explain why so many capital-defense lawyers are far more horrified by the evil of the criminal-justice system than by the evil of which their own clients stand accused, and often convicted.

Despite the years down South, Doyle is still recognizably a scrappy Irish kid from the Bronx, with the metabolism of a fire engine and a New York accent that renders "law" as "lore." He is in many ways supremely suited to his profession. He has endless reserves of moral indig-

nation, a sharp mind, and a charming way with a joke. And yet there is a sense of propriety, and even conservatism, about Doyle that is unusual in his highly radicalized profession. He is probably the only prominent member of the capital bar whose father and two uncles were policemen. In a world that is filled with loners living on late-night pizza, Doyle is a family man with three children. He is also a steady churchgoer, and opposes capital punishment—when life without parole is an alternative—as a violation of Catholic teaching and of Jesus' example of mercy. (John Cardinal O'Connor made a similar argument in a much publicized address a week ago.)

Doyle happens to be on comfortable terms with Aquinas and the Church Fathers. Listening to him, you realize that capital law is one of the few professions where it helps to have a strong grounding in teleology. The Supreme Court, as Doyle often points out, has described the jury's deliberations on a capital sentence as a process of moral reasoning, and when Doyle talks about how he persuades a jury to keep his clients off death row his language grades from the tactical to the spiritual. "Most trial lawyers are very good for the trumpet and brass section," Doyle says. "They're good with the hard nose. They're good with the logic. They're good with the burden of proof. They're not so great with the string section. I don't mean the sappy pulling of strings. I mean doing the kind of sentencing advocacy that convinces the jury, No. 1, that life without parole is not the equivalent of dinner with the Governor and a ticker-tape parade and, more important, that there are things about an individual's life that make a jury say, 'There but for the grace of God . . . Not too loudly, not even ten per cent, but enough identification that this person is a human being, and enough acknowledgment of how influences interact with free will to bring people to different places, that they'll decide that this very harsh punishment of making someone socially dead'—life without parole—"is enough."

AN essential paradox of capital law is that although the great majority of Americans support capital punishment, a lawyer with the skills that Doyle describes can usually persuade a jury of death-penalty advocates that mercy is the better part of justice. But this persuasion requires a vast commitment of



Shanahan

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time, resources, and emotional energy by defense attorneys: they have to learn to use a language they've never used before, make strategic calculations they've never made before, and make them under the pressure of the highest stakes.

One of the most important tasks that Doyle faced when he became Capital Defender was to organize and train a network of private attorneys and public defenders to supplement the work of the fifty-person C.D.O. staff. At the end of October, I attended one of these training sessions, which was held at a conference center in Westchester. The first speaker was David Bruck, a well-known attorney in the capital-defense field who had defied expectations by convincing a jury that it should give a sentence of life in prison to Susan Smith, the young South Carolina mother who drowned her two sons. Bruck had gone to extraordinary lengths to unearth information about Smith that would make her chilling act seem almost predestined: he had spent months investigating her background, had hired social workers and mental-health experts, and had put dozens of witnesses on the stand. His defense had been an enormous effort, and an expensive one. Some jurors later said that they had been prepared to vote for death until Bruck pleaded his penalty-phase case, after which their pity for the defendant overcame their rage at her deed.

At the training session, Bruck recreated his famous summation. "You saw the history of depression in her bloodlines going back three generations on both sides of her family—the alcoholism, the depression, the attempted suicides," he had told the jurors. "Was that a choice that she made? No. The losing of her father to suicide when she was six and a half years old—was that a choice that she made? Her depression, her obsession with suicide when she was a very young girl—you decide if that was a choice that she made." Then Bruck had shifted direction. "You have a choice, too," he went on. "It's not going to help the victims' family on this side of the courtroom to crush the hearts of the victims"—Susan's own family and friends—"on this side." He spoke of the Biblical story, in John 8, of the adulteress whom Jesus saved from stoning. He speculated about the ordinary citizens who decided to drop their stones. How did they explain it to the neighbors? "We know that

the people were tested that day, and we know that they passed that test," Bruck said quietly. "It could be that only one of you will be tested. And all the other eleven jurors will be part of the test." This was an ingenious way of putting steel in the spine of the one or two jurors who might be holdouts.

Presenting mitigating evidence, even as convincingly as this, is the easy part; obtaining it can be dauntingly difficult work. "You've got to become your client's biographer," George Kendall, a staff attorney with the N.A.A.C.P. Legal Defense and Educational Fund, told me. Several speakers at the training session described the painstaking lengths they had gone to in order to gain the trust of a defendant's family, and of the defendant himself: getting his TV fixed, eating jail food with him, talking openly about their own lives.

Carey Haughwout, a private defense attorney from West Palm Beach, described voir dire, the process by which attorneys question potential jurors, as "the most important aspect of the trial." Jurors in a capital case must be "death qualified," which is to say that they must be willing to impose the death penalty, though not in every case. A jury of death-penalty fanatics will be deaf to even the most compelling arguments. A big problem, Haughwout said, is that jurors who don't believe in the death penalty are likely to be more candid about their feelings than those who would impose it all the time. "Those few blessed souls who don't believe in the death penalty need to know that if they can't say they can consider it they won't be on the jury," Haughwout said.

Capital cases are like three-dimensional chess: defense lawyers always have to be thinking about the penalty phase even as they conduct the first, or guilt, phase. "You lose all credibility when you say in trial, 'He didn't do it,' and then in the penalty phase you say, 'Well, he did,'" Haughwout said. If, on the other hand, you use a mental-health defense, she went on, then you can argue, "This is why the person behaved that way." David Bruck said, "You have to make agonizing choices. In cases where your client is actually in danger of being sentenced to death, life without parole is actually a win."

Bruck mentioned the "oppositional" cast of mind that had drawn many of the

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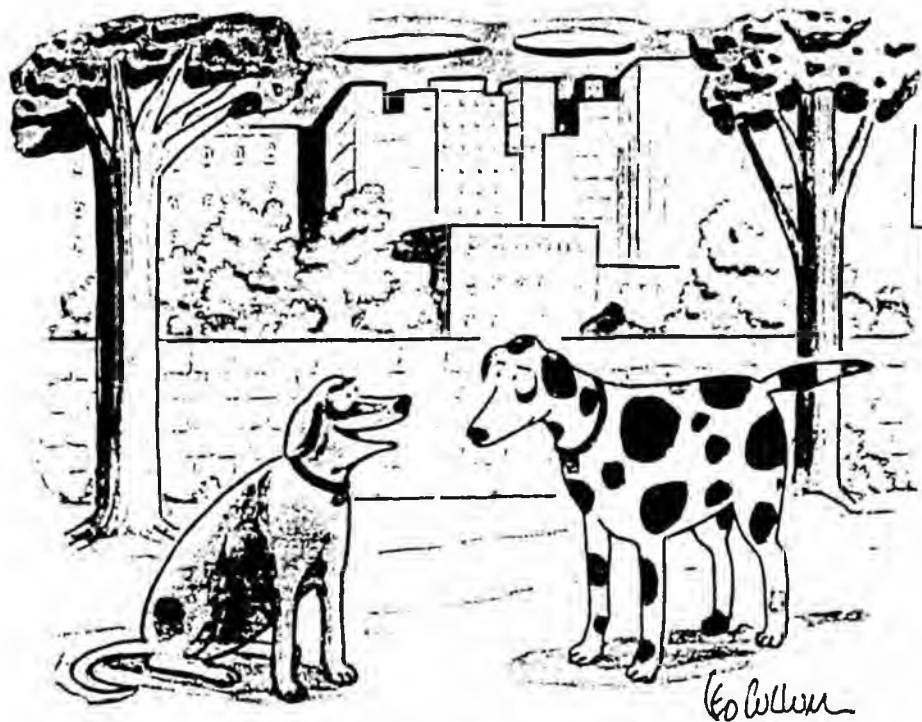
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"I bit someone once. It tasted like chicken."

people at the training session to the profession in the first place. It wasn't hard to detect. And yet every once in a while a speaker acknowledged having moments of doubt. Michael O'Connor, a capital-defense attorney in Tempe, Arizona, said that defense attorneys sometimes find themselves identifying with the victim or the victim's family. O'Connor admonished the group, "You have to overcome the revulsion you feel at the crime your client has been accused of." He singled out the sexual abuse and murder of a child, but he did not explain how to throttle the reflex to identify with the victim.

Kevin Doyle delivered a speech that evening. Doyle looks less like a defense attorney than like a prosecutor—and more like a prosecutor than most prosecutors do. He is tall and slender; his carriage is unbendingly erect; and he has cropped, sandy hair whose prow cleaves the air before him. Capital lawyers tend to be a dishevelled lot, as a matter both of economy and of cultural choice. Almost everyone had come to the meeting in sweaters and jeans, but Doyle, whose suits run the gamut from navy blue to navy blue, had come in jacket and tie. His speech was entitled "Lethal Lies We Will Not Tell Ourselves." Lethal Lie No. 8 was "This is serious: I better not

piss anyone off." Doyle said, "You should not be lured into a false sense of decorum and civility. You cannot think that you should 'behave'—because, God knows, based on my experience in Alabama, you can't assume that the judge or the prosecutor is going to feel that he should."

The most striking passage in Doyle's speech was Lethal Lie No. 9: "The jury will come to me." "Most Americans, most citizens of this state define life's ultimate moral questions in religious terms and in terms of virtue and personal moral responsibility," Doyle said. He was speaking from one end of a long cafeteria, yet his booming voice easily reached the most distant attorney. "For those of you who have yet to locate the gift of faith, I am not suggesting you have to return to your church or synagogue. I am suggesting that you cheat your client when you kid yourself about the moral language your jurors speak or refuse to learn it yourself. So go out and study a children's Bible or try to remember what your parents taught you as a kid. But meet the jury in the moral world it occupies."

IN late February, Kevin Doyle used his vacation time to try a death-penalty case in Dothan, a county seat in the peanut country of southeastern Alabama. The defendant, a thirty-two-year-old

black man named Willie Williams, had been convicted of capital murder and sentenced to death in 1990, but the conviction had been reversed when an appeals court found that the prosecutor, District Attorney Douglas Valeska, had been racially discriminatory in removing a potential juror. Doyle had been working on the case since 1993, and now it was finally coming up for retrial. He was not looking forward to the experience, for Dothan was the kind of place where the phrase "death-qualified jury" was practically a redundancy. Doyle viewed Douglas Valeska as the very incarnation of a hateful system. In an argument before the judge, Doyle called Valeska a racist to his face. But with the jury present he treated the prosecutor with a millimetre-thin veneer of courtesy. The D.A., on the other hand, referred to the defense lawyer only as Doyle—or, rather, "Dawl."

The judge, Denny Holloway, required the potential jurors to fill out a lengthy questionnaire compiled by Doyle. But since he refused to permit Doyle to interview most of them individually, the voir dire consisted primarily of one surprising question: "I'm going to ask each of you who your heroes are," Doyle said. "Billy Graham," the first potential juror replied. "Billy Graham, I guess," the next answered. Then came votes for Charles Colson, Nancy Reagan, Ronald Reagan, Sam Walton, and a flood of additional Billy Grahams. There were ten blacks at the voir dire, and virtually all of them mentioned Martin Luther King, Jr., but Doyle knew that the prosecutor would try to keep as many off the jury as he could. Doyle tried to get the jurors to explain why they admired their selections. He told me later that he wasn't looking for signs of bias—he already knew he was in Billy Graham country—so much as using the idea of the moral exemplar to introduce the principle of moral reasoning, and so to bring the jurors to a higher plane. Besides, he told me, "I have an excellent Billy Graham story."

Doyle's opening statement was even more unorthodox. Williams had already confessed to killing a friend named Cheryl Mayo, in 1989. They had been smoking crack together one evening, and Williams had attacked Mayo with a knife, inflicting more than thirty wounds. He had then left, carrying her VCR, as she

lay dying in her blood-spattered apartment. Williams, who is about six feet nine and weighs about two hundred and sixty pounds, had claimed self-defense. Doyle tried to recast the killing as "a tragedy" that had been caused by "two reckless individuals" who had plunged into the "chaotic, senseless world of crack cocaine." Cheryl Mayo, he pointed out, weighed two hundred and thirty-six pounds and had a long history of mental illness and of violence. Mayo, he suggested, may have threatened Williams. And then Doyle said that his client nevertheless accepted "full legal and moral responsibility for what he did," and went on, "He asks you—I ask you on his behalf—to return a verdict of guilty of capital murder." The move took nearly everyone, and especially the prosecutor, by surprise: Doyle had just pleaded his client *guilty*.

Doyle had told me beforehand that he was very nervous about this tactic. It was "heretical," he said, to enter a guilty plea without a plea bargain, and it utterly violated his competitive impulses. It was one of those agonizing choices which David Bruck had talked about, and Doyle had made it in the hope of saving his client's life. Despite the self-defense issue, Doyle thought that Williams had virtually no chance in the guilt phase of the trial. The only solution, as he saw it, was to present the guilty plea to the jury as a sign of Williams's contrition and acceptance. Doyle wasn't hopeful, though, particularly since Valeska had succeeded in keeping all but one black from the jury. However, Alabama law deems the jury's verdict advisory, rather than binding, and Doyle reasoned that if he lost with the jury the guilty plea still might persuade Judge Holloway, whom he considered moderate and fair-minded.

Alabama law stipulates that juries must hear the evidence in a capital case even if the defendant pleads guilty. The entire guilt phase took only a day. Valeska put on witnesses who testified graphically about the blood-drenched crime scene, and, over Doyle's objection, he offered in evidence hideous photographs of Mayo's mangled corpse. In his closing, Doyle dwelt at length on Mayo's history of drug and alcohol abuse and of violence and involuntary commit-

ment to mental institutions. Willie Williams's crime had been heinous, but as one listened to Doyle it seemed appalling that Williams was facing the electric chair for an unpremeditated murder that had been arguably committed under the influence of drugs and with at least a plausible element of self-defense. Williams, unlike Mayo, had no prior record of violence.

After the jury found Williams guilty, the state presented its penalty-phase case, which was brief but effective. One of Valeska's assistants read to the jury testimony that Williams had given at his first trial, in which he conceded that Mayo had not died instantly, that as he washed the blood off his hands she was still moving, and that she was groaning as he left her apartment. His callousness made the act seem truly cold-blooded, even if it was unpremeditated. It was up to Doyle to disentangle the man from the crime, and here he faced another serious problem: Williams was not the sort of pathological personality whose family background was rich in abuse and abandonment. Only after Williams started using drugs regularly, in 1987, had he lost his way. Doyle could not argue, as Bruck had in the Susan Smith case, that destiny had propelled the defendant to his act. Instead, he

focused on evidence of Williams's post-conviction behavior. It wasn't a strong suit, but it was the only one he had. He called as a witness Williams's stepmother, Gussie, and she testified that Williams had become a good father to his children.

Gussie read heart-wrenching letters that Williams's two remaining children, aged eight and nine, had written to the court; his wife, his mother-in-law, and his eldest daughter had been killed by a drunken truck driver while they were returning from a visit to Williams in jail. Doyle put on two members of a jail ministry who described Williams's gentleness, his kindness toward others, his "inward repentance." A corrections officer said that Williams had been a model prisoner.

At 5 P.M., Doyle rose to address the jury for the last time. Earlier that day, he had delivered his summation in the guilt phase and his opening in the penalty phase, both of them lengthy, tightly structured, and, it appeared, emotionally



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draining. Now he faced the jury and said quietly, "Even though this decision won't affect you, I suggest that it's one of the starkest and most important moral decisions you're ever going to make." Then Doyle turned to a blackboard and on it began listing the mitigating factors: Williams's guilty plea, the possibility of self-defense, the lack of premeditation. He spoke of the "inherent worth" that Williams's wife, Joanne, had seen in him as demonstrated by her visits to him on death row. He recalled the testimony of Williams's conversion.

Doyle turned back to face the jury. He talked about the idea of redemption, and then he segued into his Billy Graham story, which involved a condemned convict in North Carolina named Velma Barfield: "Billy Graham talked about how after her conversion she turned her death-row cell into a powerful pulpit." He spoke of the Biblical story of Paul, who had himself been involved in a murder, and then he invoked the tale of Jesus and the adulteress, the ur-text of the capital summation. "Our Lord intervened," Doyle recalled gravely. "Christ said, 'Go, and sin no more.'" He recalled that the survivors of Robert Kennedy and Martin Luther King had asked authorities not to seek the death penalty. "Does that mean that they were dishonoring him?" The words were pouring out now; Doyle seemed to be in almost a transfigured state. He told a story about Mother Teresa, who had spoken with a governor on the eve of a planned execution: "Mother Teresa did not try to persuade him as to her views about the death penalty. She didn't talk to him about Scripture. . . . She did one thing. She said, 'Do what Jesus would do.'" Doyle's voice was breaking; he appeared to be exhausted. He opened his mouth, and at first nothing came out. Then he mastered himself, and, in a hoarse whisper, said, "Please, follow the law by the light of your faith and reason and do what Jesus would do." Doyle turned away from the jury, choking back tears.

Then Douglas Valeska leaped up and scornfully cried. "Let me give him a *handkerchief!*" Valeska's rebuttal summation was a cascade of ridicule. "I'm no preacher," he told the jury. "I am not going to stand up here and cry to you. . . . All he is try-

ing to do is put a guilt trip on you." It was as if Valeska had waited for the final moment to release the full measure of his venom. He reviewed the evidence of Willie Williams's lies, of his adulterous relationship with another woman, and, above all, of the brutality of the crime itself. Valeska shouted that he was not the only one who was asking for the death penalty. "Willie Williams, Jr., himself believes in the death penalty, because he was *judge, jury, executioner* to Cheryl Mayo!"



The jury exited. I had brought a book to idle away the hours until a verdict was reached, but before I had got very far with my reading the word came down: "The jurors are filing in." It seemed impossible; they had been

out for only twenty-six minutes. They had to wait while someone went to find Valeska. Then the jurors did file in, and the foreman, Sammy Benson, stood up and said that by a vote of eleven to one the jury had found that Williams should be sentenced to death. (In Alabama, the votes of only ten jurors are required for a recommendation of death.) It wasn't the decision that was shocking so much as the speed. It was as if Doyle had wasted his breath; the jury had already sized Williams up for death. Was it really possible to deliberate the issue of a man's life—to follow the path of moral reasoning—in twenty-six minutes?

Several days after the trial, I telephoned some of the jurors at home. One of them, Thomas McLaney, said that he was "a little tossed up" over Mayo's history of violence, but that he had voted for the death penalty because of "the extent he went to kill her." Another juror, Sandra Lamb, said, "I felt that since he took a life he should have his life taken." The only juror I spoke with who seemed to have seriously reflected on the case was Sammy Benson. It had been, he said, a "gut-wrenching experience." His own feelings were all over the map. When he learned that Mayo was still "suffocating in her own blood" at the time that Williams left, he said, "This nailed him." On the other hand, he said, "Willie Williams was guilty of stupidity. Can I see killing a man for being grossly stupid? No." Benson kept coming back to one

idea: "We gave the Judge the leeway to do as he sees fit." Apparently, Benson could not bear the weight of personal responsibility that goes with the death sentence.

Judge Holloway held his sentencing hearing on March 22nd. Doyle presented further mitigating evidence. The Judge listened, and withdrew to his chambers. "That half hour was torturous," Doyle said later. "It was one of those moments when I ask myself, 'How can I do this work?'" And then he got the answer: the Judge returned and said that he had decided to sentence Willie Williams to life without parole.

IF Governor Pataki does, indeed, want a capital-punishment showdown, he seems to have picked the right case. In Angel Diaz, the alleged cop killer in the Bronx, Doyle has a client who seems to be a far less sympathetic defendant even than Willie Williams. According to press reports, Diaz has a prior conviction for armed robbery, and a prison record that includes assaults against an inmate and a corrections-staff member. When he was arrested for murder, he reportedly said, "Why don't you kill me now? It'll be better than going back to prison." If Dennis Vacco is permitted to remain on the case, the trial is likely to be an epic confrontation between two different agencies of the state, with two profoundly different conceptions of justice. Kevin Doyle likes to say that an absolute punishment requires absolute justice. In an ongoing capital case in Ulster County, attorneys from the C.D.O.'s Albany office have already angered the local prosecutor by filing dozens of pretrial motions, seeking months of extra time, and arguing every issue into the ground. Doyle's office is not about to change its tactics for the Bronx, and Vacco and his staff are not about to accept Doyle's definition of justice. At a recent forum in Albany, George B. Quinlan, who is the head of Vacco's prosecution team, complained that Doyle's office had been intentionally filing "frivolous" and confusing motions in Ulster County, and added that the C.D.O. was showing too much regard for Justice's blindfold and not enough for her sword. It is, of course, Kevin Doyle's job to stand between that sword and its intended victim. If Angel Diaz really wants to die, he has chosen the wrong place to commit murder. ♦

Death Penalty Information Center 4

FINANCIAL FACTS ABOUT THE DEATH PENALTY

- The most comprehensive study in the country found that the death penalty costs North Carolina \$2.16 million per execution over the costs of a non-death penalty murder case with a sentence of imprisonment for life. (Duke University, May 1993). On a national basis, these figures translate to an extra cost of \$670 million dollars spent since 1976 on the death penalty.
- The death penalty costs California \$90 million annually beyond the ordinary costs of the justice system-\$78 million of that total is incurred at the trial level. (Sacramento Bee, March 28, 1988).
- Florida spent an estimated \$57 million on the death penalty from 1973 to 1988 to achieve 18 executions - that is an average of \$3.2 million per execution. (Miami Herald, July 10, 1988).
- In Texas, a death penalty case costs an average of \$2.3 million, about three times the cost of imprisoning someone in a single cell at the highest security level for 40 years. (Dallas Morning News, March 8, 1992).

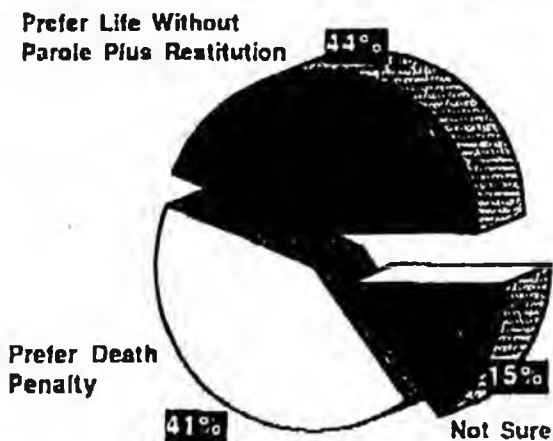
INNOCENCE AND THE DEATH PENALTY

- Since 1970, 59 people have been released from death row with evidence of their innocence. (Staff Report, House Judiciary Subcommittee on Civil & Constitutional Rights, Oct. 1993, with updates from DPIC).
- Researchers Radelet & Bedau found 23 cases since 1900 where innocent people were executed. (*In Spite of Innocence*, Northeastern Univ. Press, 1992).

PUBLIC OPINION AND THE DEATH PENALTY

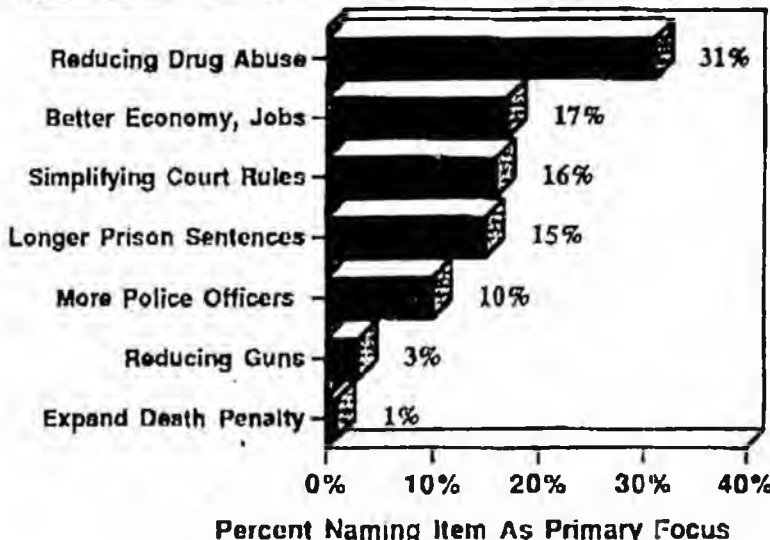
- Public support for the death penalty drops to below 50% when voters are offered alternative sentences. More people would support life without parole plus restitution to the victim's family than would choose the death penalty.
- A 1995 Hart Research Poll of police chiefs in the U.S. found that the majority of the chiefs do not believe that the death penalty is an effective law enforcement tool.

More People Support Alternatives to the Death Penalty



Greenberg/Laku and Tarrance Group National Poll (April 1993)

Police Chiefs Place Death Penalty Last in Reducing Violent Crime



The Death Penalty Information Center has available more extensive reports on a variety of issues, including:

- "With Justice for Few: The Growing Crisis in Death Penalty Representation" (1995)
 - "On the Front Line: Law Enforcement Views on the Death Penalty" (1995)
 - "The Future of the Death Penalty in the United States: A Texas-Sized Crisis" (1994)
 - "Millions Misspent: What Politicians Don't Say About the High Costs of the Death Penalty" (updated 1994)
 - "Innocence and the Death Penalty: Assessing the Danger of Mistaken Executions" (1993)
 - "Sentencing for Life: Americans Embrace Alternatives to the Death Penalty" (1993)
- Reports are \$5 each, including postage. Bulk prices on request. DPIC is a non-profit organization.

-From Facts about the Death Penalty (updated 4-1-96)

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2/22/95

Across the U.S., Executions Are Neither Swift Nor Cheap



Andrew Lohman/Impact Visuals

By SAM HOWE VERHOVEK

Fifteen years ago, California reinstated capital punishment and with it the long and costly legal process involved in executing a criminal.

Fifteen years passed before the first man was gassed to death at San Quentin. One other man has since been executed, while 397 men and 8 women await their fates on death row.

When Gov. George E. Pataki and state legislative leaders reached a preliminary agreement last week on restoring the death penalty in New York State, the Governor rejected proposals for a study of the measure's costs because, he insisted, the law would deter crime and save tax dollars.

But the experience of California and many other states offers a cautionary example of both the legal burdens and daunting expense of capital punishment. People may debate passionately whether the death penalty deters crime, whether it is applied fairly to rich and poor, black and white, or whether it is moral. But there is little dispute that it is a costly, complicated undertaking. "It certainly is an expensive

Punishable by Death Lessons for New York

First of three articles.

process," said Ronald M. George, a justice on the California Supreme Court who once, as a deputy state attorney general, argued for the death penalty before the United States Supreme Court. "It has to be, in order to make it fair."

Governor Pataki said he aims to make justice more efficient and to limit appeals from death row. But other states have found that nearly everything about a trial in which prosecutors seek a judgment of death takes longer and costs more than one in which they do not. And to meet Federal constitutional standards, lengthy appeals are nearly inevitable.

"The penalty of death is qualitatively different from a sentence of imprisonment, however long," the United States Supreme Court said nearly 30 years ago. The penalty is also, for that reason, uniquely difficult to impose:

Continued on Page B2, Column 1

B2

THE NEW YORK TIMES ME

NEW YORK

Other Death-Penalty States Find Ex

Continued From Page A1

of the 37 states that have restored capital punishment since the Supreme Court cleared the way in 1976, 7 have executed 1 or 2 people, and 13 have executed none.

Even in Texas, which leads the nation with 73 executions since 1978, many condemned criminals have spent a decade or more on death row; a man put to death just yesterday had spent 18 years in appeals. Many small Texas counties have all but stopped asking for the death penalty in murder cases, purely, prosecutors say, because it is too expensive.

A Duke University study of capital murder cases in North Carolina, conducted for that state's court system two years ago, found that it cost taxpayers twice as much to try, convict and sentence a defendant to death as it did to secure — and impose — a first-degree murder conviction with a sentence of 20 years to life.

California, which like New York has a long history of strong protections for the accused, has not commissioned an equivalent study. But prosecutors, defense lawyers and experts on capital punishment agree that in the state's 18-year history of well over 1,000 death penalty trials and just two executions, the extra costs have easily run into the hundreds of millions of dollars.

"It is always more expensive to have and use the death penalty than it is not to have it, for the very simple reason that lawyers are more expensive than prison guards," said Franklin E. Zimring, director of the Earl Warren Legal Institute at the University of California at Berkeley. "It's that simple."

Judges on California's highest court have spent half of their time in recent years reviewing death penalty appeals, and judges on New York's highest court have already quietly expressed concerns about a similar burden on their docket.

Lawyers in the California Attorney General's office, their cost to the taxpayer clocked at \$89 an hour, logged 57,000 hours last year on such appeals. The state has also established an \$8 million-a-year Office of Public Defender that does nothing but appellate work for indigent de-

fendants on death row, but it can handle only a fraction of the caseload. So the state has also assigned a full-time officer to recruit private attorneys, who are offered a flat fee usually ranging from \$75,000 to \$200,000, sometimes much more.

Even at that, nearly one-third of the people on death row still have no one to represent them on appeal. So, despite a common perception that nearly all death-row inmates can delay execution by filing endless appeals, many actually do so simply because the state can't find them a lawyer. Until they are assigned one, they are virtually assured of not being executed.

The Wait

Protracted Cases And Reversals

Nationally, the vast majority of those who have been sentenced to death since 1976 have not been executed; for those who were, the average wait between sentence and death was 7 years, 10 months, according to the Death Penalty Information Center, a group based in Washington that opposes capital punishment.

Federal courts in several states have made moves in recent years to limit appeals and otherwise speed the process.

Still, the basic constitutional guarantees accorded anyone facing the death penalty, including the right to file a petition challenging the sentence and to question the competency of the defense, are likely to insure that most death-row inmates will continue to gain years of reprieve. And studies have suggested that nearly half of Federal positions filed in death penalty cases result in either a reversal of the sentence or an overturned conviction.

For prosecutors and defense lawyers alike in death penalty cases, all aspects of a trial are more protracted — beginning with jury selection, in which prospective jurors are polled extensively on their feelings about sentencing someone to death, and concluding with "convicting," which amounts to a second trial in itself and frequently involves an examination of the defendant's whole life.

"The prosecution looks at all the things that badly reflect on the person's character and the defense looks at the opposite, the things that would elicit mercy," said John G. Costantino, a defense lawyer in San Diego. "It is an involved process."

In at least one important respect, New York could face even slower going in the march toward capital punishment. California reinstated it swiftly after the Supreme Court ruling. But no prosecutor has tried a death-penalty case in New York, and no lawyer has defended someone in such a case in nearly a generation.

The new statute in New York is not yet completed, and civil liberties groups have already vowed to challenge it before the Court of Appeals, the state's highest court. All of its members were chosen by former Gov. Mario M. Cuomo, a staunch opponent of the death penalty.

At a time of tight budgets, the state will have to come up with substantial new funds to implement the death penalty. While some states have imposed more stringent caps than California's on how much they will pay lawyers for the defense of indigent clients, New York's courts may well insist on wide-ranging — and costly — requirements that poor defendants, as most people charged with murder are, be exhaustively represented before they are put to death.

Governor Pataki promised last week to create a new statewide office charged with choosing, training and providing technical assistance to public defenders for defendants facing the death penalty who are unable to pay for their defense. He did not estimate a cost for such an office.

He has also pledged state assistance to local governments trying to cope with the enormous costs of prosecuting a death penalty case.

In California, remote Sierra County, near the Nevada border, found itself overwhelmed several years ago with just a handful of death-penalty cases, which together were costing \$400,000 a year, or more than one-tenth the county's annual budget. Vacant positions in the Sheriff's Office went unfilled, and a variety of county maintenance costs were deferred. Dan McLaughlin, the county auditor, said in an interview. The strain there and elsewhere ultimately led the state to pass the Rural Homicide Act, which reimbursed part of the

TRO WEDNESDAY, FEBRUARY 22, 1995

K STATE

Execution Is Costly Process to Invoke

costs of death penalty prosecutions to smaller counties.

The Cost

In 1 State, \$2 Million Each

What is generally described as the most definitive study ever aimed at quantifying the death penalty was released two years ago by two professors of public policy at Duke, Philip J. Cook and Donna B. Sawson, who studied the total costs of every death penalty case in North Carolina over a two-year period.

They concluded that it cost taxpayers an average \$329,000 more to try, convict and sentence a defendant to death than it did to obtain a first-degree murder conviction with a sentence of 20 years to life.

If the person was executed 10 years after the sentence (the current average), the savings on prison costs would amount to about \$166,000, meaning that the net cost to the taxpayer for the death penalty was \$163,000. The researchers did not calculate what the relative costs would be if the alternative to death were life imprisonment with no possibility of parole, a sentence that is rarely imposed around the country and is not an option in many states.

After studying the costs of housing and guarding the inmates as they wait on death row, the researchers concluded that the extra cost to the state of each execution actually carried out was \$2.16 million.

"To many people, the notion that the death penalty costs money is counter-intuitive," they wrote. "Common sense says that it's cheaper to supply a few jolts of electricity than to shell out the equivalent of tuition at Harvard for incarceration for the next 20 years.

"But when all the costs are weighed," they continued, "just the opposite is true. The death penalty is more expensive because of the constitutional protections embodied in the judicial determination that death, as a punishment, is different."

California declines to release any figures on the costs of an individual death-penalty case until it is concluded, meaning that such records are unavailable for anyone now sitting on a death row.

But records did come to light a few years ago after one man on death

row, 29-year-old Joselito Cinco, killed himself while his case was in the early stages of the appeals process. The former auto mechanic had

been convicted in 1988 in the 1984 murder of two police officers.

His defense alone cost taxpayers nearly \$1 million, including \$255,000 on forensic and legal experts, \$100,000 for private investigators, \$50,000 for law clerks and paralegals and most of the rest for attorneys' fees.

The Debate

Swifter And Cheaper?

Of course, the observation that the death penalty is expensive does not quell the debate over its use. Many people argue that it could be made less expensive if the courts would impose stricter rules and time limits on appeals. "We hear the argument that the death penalty is basically unenforceable," said Dane Gillette, the deputy state attorney general in California and the statewide coordinator for capital murder cases.

"We hear it made all the time," he said. "But it is being made by the very people who are manipulating the system in such a way to make it look like it's unenforceable. It's disingenuous to say, 'You haven't executed anybody, therefore the system doesn't work.'"

Justice was certainly swifter in February 1933, when Giuseppe Zangara shot at President-elect Franklin D. Roosevelt in Miami, hitting and killing Chicago Mayor Anton Cermak instead. Twenty-two days after the shooting, he confessed; the next day he was sentenced to death, and 10 days later, he was electrocuted at Florida State Prison, yelling: "Go ahead, push the button."

Such a time line for a death-penalty case today is all but inconceivable, even in the rare cases when a murderer insists he wants to be executed. None of the steps to speed up capital punishment under serious consideration today would violate what are now considered to be constitutional rights. In California, all death sentences are automatically appealed to the state's Supreme Court, and there are many grounds

for challenges at both state and Federal levels.

For example, the first person executed in California after the state reinstated the penalty, Robert Alton Harris, filed nine petitions at the state level and four in the Federal courts, and had five execution dates before he was put to death in April 1992.

Convicted in 1979 of murdering two teenagers, Mr. Harris waited two years before the state's highest court affirmed the conviction. No fewer than 15 sets of appeals wound through the courts for the next 11 years. Many challenged procedure at the trial, others contested his death sentence on the grounds that, among other things, the death penalty arbitrarily discriminated against younger murderers (Mr. Harris was 26 at the time of the killings), against men, and against the killers of white people.

His lawyers also challenged whether he had been given a proper psychiatric evaluation before trial, and they contested the means of execution, cyanide gas, contending it was "cruel and unusual punishment." (While that appeal was rejected, and Mr. Harris was killed with gas, a subsequent lawsuit resulted last year in a ruling that gas was indeed cruel and unusual. California is appealing the ruling but for now executions cannot be carried out with gas.)

In many states, one major question is whether the money spent on the death penalty could be better spent. In New York, a study by the Department of Correctional Services in 1989 estimated that for the amount the state would spend to reinstate the death penalty over the next five years, New York could hire 250 additional police officers and build prison space for 6,000 inmates.

But many death-penalty supporters say that money is not the real issue in any case.

"I don't look at it as a money-saver or a money-waster or whatever," Assemblyman Anthony S. Semminerio, a Queens Democrat, said in an interview. "I don't care if it costs more. I don't care, as long as the guy pays with his life."

NEXT: Vast differences persist in how the death penalty operates from state to state — and even county to county.

Coro

THE NEW YORK TIMES OP-ED WEDNESDAY

For an Honest Death Penalty

By Alex Kozinski and Sean Gallagher

Its steps of very strong support for the death penalty; in opinion polls, roughly 70 percent consistently favor it. Yet the popular will on this issue has been thwarted.

To be sure, we have many capital trials, convictions and death sentences; we have endless and massively costly appeals; and a few people do get put to death every year, but compared to the number of death sentences, the number of executions is minuscule, and the gap is widening fast.

In 1972, the Supreme Court struck down all existing death penalty statutes and emptied the nation's death rows. Almost immediately, states began passing death penalty laws to comply with the Court's reinterpretation of the Eighth Amendment. Since then, more than 5,900 men and a handful of women have been given the death sentence; about 2,000 of those sentences have been set aside; fewer than 300 have been carried out.

The reasons are complex, but they boil down to this: The Supreme Court's death penalty case law reflects an uneasy accommodation between the will of the popular majority, who favor capital punishment, and the objections of a much smaller — but ferociously committed — minority, who view it as a barbaric anachronism.

Assuaging death penalty opponents, the Court has devised a number of extraordinary safeguards applicable to capital cases; but responding to complaints that these procedures were used for obstruction and delay, it has also imposed various limitations and exceptions to these safeguards. This pull and tug has resulted in a procedural structure — what Justice Harry A. Blackmun called a "machinery of death" — that is remarkably time-consuming, painfully cumbersome and extremely expensive.

No one knows precisely how large a slice of our productive resources we force-feed to this behemoth, but we can make some educated guesses. To begin with, while 80 to 90 percent of all criminal cases end in plea bargains, capital cases almost always go to trial, and the trials are vastly more complex than their non-capital counterparts. If the defendant is sentenced to death, the case shuttles between the state and Federal courts for years, sometimes decades.

The Robert H. Frankel Center for Forensic Science found its way to the California Supreme Court six times: It was reviewed in Federal district court on five occasions and each time it was appealed to the Ninth Circuit. The U.S. Supreme Court reviewed the case once on the merits, though on five other occasions it considered and declined Mr. Harris's request for review. Before Mr. Harris was executed in 1992, his case was reviewed by at least 30 judges and justices on more than 20 occasions over 13 years.

State and local governments pay for the prosecution as well as for the defense team — which consists of at least two lawyers and a battery of investigators and experts; much of this money is spent even if the defendant eventually gets a lesser sentence. California reportedly spends \$90 million a year on the death penalty. Once the case gets into Federal court, the United States starts picking up the defense tab, and the sums can be daunting. In one recent case, a Federal district court paid defense lawyers more than \$400,000, which didn't include the appeal or petition to the Supreme Court. Our own estimate is that death cases, on the average, cost taxpayers about a million dollars more than their non-capital counterparts. With 3,000 or so inmates on death row, to paraphrase Senator Everett Dirksen, pretty soon you get into real money.

Another significant cost is the burden on the courts. More than a quarter of the opinions published by the California Supreme Court from 1987 to 1993 involved death penalty cases. Since capital appeals are mandatory while appeals in other cases are discretionary, much of this burden is borne by other litigants who must vie for a diminished share of that court's attention. Estimating the judicial resources devoted to a capital case in the Federal courts is difficult, but a fair guess would be 10 times those in other cases.

Perhaps the most significant cost of the death penalty is the lack of finality. Death cases raise many more issues, and far more complex issues, than other criminal cases; convictions are attacked with more gusto and reviewed with more vigor

in the courts. As a result, fully 40 percent of the death sentences imposed since 1972 have been vacated, sometimes 5, 10 or 15 years after trial. One worries about the effect on the families of the victims, who have to endure the possibility — often the reality — of retrials, evidentiary hearings and last-minute stays of execution for years after the crime.

What are we getting in return? Where near executing the number of people we put on death row, and probably never will. We sentence about 250 inmates to death every year but have never executed more than 40. Just to keep up with the number of new death row inmates, states would have to sextuple the pace of executions; to eliminate the backlog, there would have to be one execution a day for the next 26 years.

This reality mutes much of the traditional debate about the death penalty. Death penalty opponents have certainly not won the popular battle; despite relentless assaults, the public remains firmly committed to capital punishment. Nor have opponents won the moral battle; most of us continue to believe that those who show utter contempt for human life by committing remorseless, premeditated murder justly forfeit the right to their own life.

Other arguments against the death penalty also fall flat. For example, the fear that an innocent person may be convicted also applies to noncapital cases; no one, after all, can give back the 20 years someone wrongfully spends behind bars. Our system is therefore heavily geared to give the criminal defendant the benefit of the doubt. Wrongfully convicted defendants are rare; wrongfully convicted capital defendants are even rarer. The case where the innocent defendant is saved from the electric chair because the meek man shows up and confesses happens only in the movies.

Death penalty opponents are winning the war nevertheless. Unable to stop the majority altogether, they have managed to vastly increase the cost of imposing the death penalty while reducing the rate of executions to a trickle. This trend is not likely to be reversed. Even if we were willing to double or triple the resources we devote to the death penalty, even if we could put all other civil and criminal cases handled by the state and Federal courts on the back burner, it would be to no avail.

The great stumbling block is the lawyers: the jurisprudence of death is so complex, so esoteric, so harrowing, this is the one area where there aren't nearly enough lawyers willing and able to handle all the current cases. In California, for example, almost half the pending death penalty appeals — more than 100 — are on hold because the state can't find lawyers to handle them.

We are thus left in a punitive limbo: we have constructed a machine that is extremely expensive, chokes our legal institutions, visits named attorneys produced nothing like the benefits we would expect from an effective system of capital punishment. This is surely the worst of all worlds.

Only two solutions suggest themselves, one judicial and the other political. The judicial solution would require a wholesale reformation of the Supreme Court's death penalty jurisprudence. This is unlikely to happen. Over the last quarter-century, the Court has developed a substantial body of case law, consisting of some four score opinions, premised on the proposition that death is different and we must exercise extraordinary caution before taking human life. As we learned a few years back in the area of abortion, conservative justices are reluctant to reverse such major constitutional judgments.

A political solution may be no easier to achieve, but it's all we have left. The key to any such solution lies with the majority, precisely those among us who consistently strive for imposition of the death penalty for an ever-widening circle of crimes.

The majority must come to understand that this is a self-defeating tactic. Increasing the number of crimes punishable by death, widening the circumstances under which death may be imposed, obtaining more guilty verdicts and expanding death row populations will do nothing to insure that the very worst members of our society are put to death. The majority must accept that we may be willing and able to carry out 30, 40, maybe 50 executions a year, but that we cannot — will not — carry out one a day, every day, for the foreseeable future.

Once that reality is accepted, a difficult but essential next step is to identify where we want to spend our death penalty resources. Instead of adopting a very expansive list of crimes for which the death penalty is an option, state legislatures should draft narrow statutes that reserve the death penalty for only the most heinous criminals. Everyone on death row is very bad, but even within that depraved group, it's possible to make moral judgments about how deeply someone has stepped down the rungs of Hell. Hitler was worse than Eichmann, though both were unacceptably evil by any standard; John Wayne Gacy, with two dozen or so brutal deaths on his conscience, must be considered worse than John Spengelink, who killed only once.

Differentiating among depraved killers would force us to do some painful soul-searching about the nature of human evil, but it would have three significant advantages. First, it would mean that in a world of limited resources and in the face of a determined opposition, we will sentence to death only those we intend to execute. Second, it would insure that those who suffer the death penalty are the worst of the very bad — mass murderers, hired killers, airplane bombers, for example. This must be better than leaving our death rows with many more than we can possibly execute, and then picking those who will die essentially at random.

Third, a political solution would put the process of accommodating diver-

gence, where it belongs. This would mean that the people, through their elected representatives, would re-process, rather than letting the courts and chance perform the accommodation on an ad hoc, irrational basis.

It will take a heroic act of will for the majority to initiate a political compromise on this emotionally charged issue. But as with democracy itself, the alternatives are much worse.

Alex Kozinski is a judge on the United States Court of Appeals for the Ninth Circuit. Sean Gallagher is his law clerk. This article is adapted from a lecture of the Case Western Reserve Law School, it is first published as a comment on the bill enacted yesterday in New York State.

A Report by the
Death Penalty Information Center

REVISED EDITION—FALL 1994

MILLIONS MISSPENT

What Politicians Don't Say
About the High Costs
of the Death Penalty

MILLIONS MISSPENT:

What Politicians Don't Say About the High Costs of the Death Penalty

*"Whether you're for it or against
it, I think the fact is that Oregon
simply can't afford it."*

*—James Ellis,
Chief Criminal Judge, Oregon*

A Report by
The Death Penalty Information Center
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October 1992

Executive Summary

Across the country, police are being laid off, prisoners are being released early, the courts are clogged, and crime continues to rise. The economic recession has caused cutbacks in the backbone of the criminal justice system. In Florida, the budget crisis resulted in the early release of 3,000 prisoners. In Texas, prisoners are serving only 20% of their time and rearrests are common. Georgia is laying off 900 correctional personnel and New Jersey has had to dismiss 500 police officers. Yet these same states, and many others like them, are pouring millions of dollars into the death penalty with no resultant reduction in crime.

The exorbitant costs of capital punishment are actually making America less safe because badly needed financial and legal resources are being diverted from effective crime fighting strategies. Before the Los Angeles riots, for example, California had little money for innovations like community policing, but was managing to spend an extra \$90 million per year on capital punishment. Texas, with over 300 people on death row, is spending an estimated \$2.3 million per case, but its murder rate remains one of the highest in the country.

The death penalty is escaping the decisive cost-benefit analysis to which every other program is being put in times of austerity. Rather than being posed as a single, but costly, alternative in a spectrum of approaches to crime, the death penalty operates at the extremes of political rhetoric. Candidates use the death penalty as a facile solution to crime which allows them to distinguish themselves by

the toughness of their position rather than its effectiveness.

The death penalty is much more expensive than its closest alternative—life imprisonment with no parole. Capital trials are longer and more expensive at every step than other murder trials. Pre-trial motions, expert witness investigations, jury selection, and the necessity for two trials—one on guilt and one on sentencing—make capital cases extremely costly, even before the appeals process begins. Guilty pleas are almost unheard of when the punishment is death. In addition, many of these trials result in a life sentence rather than the death penalty, so the state pays the cost of life imprisonment on top of the expensive trial.

The high price of the death penalty is often most keenly felt in those counties responsible for both the prosecution and defense of capital defendants. A single trial can mean near bankruptcy, tax increases, and the laying off of vital personnel. Trials costing a small county \$100,000 from unbudgeted funds are common and some officials have even gone to jail in resisting payment.

Nevertheless, politicians from prosecutors to presidents choose symbol over substance in their support of the death penalty. Campaign rhetoric becomes legislative policy with no analysis of whether the expense will produce any good for the people. The death penalty, in short, has been given a free ride. The expansion of the death penalty in America is on a collision course with a shrinking budget for crime prevention. It is time for politicians and the public to give this costly punishment a hard look.

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"When politicians offer voters the death penalty as a solution to violence, the people actually become worse off in their fight against crime."

Introduction

Over two-thirds of the states and the federal government have installed an exorbitantly expensive system of capital punishment which has been a failure by any measure of effectiveness. Literally hundreds of millions of dollars have already been spent on a response to crime which is calculated to be carried out on a few people each year and which has done nothing to stem the rise in violent crime.

For years, candidates have been using the death penalty to portray themselves as tough on crime. But when politicians offer voters the death penalty as a solution to violence, the people actually become worse off in their fight against crime. The public is left with fewer resources and little discussion about proven crime prevention programs which could benefit their entire community. In today's depressed economy, the criminal justice system is breaking down for lack of funds while states pour more money into the black hole of capital punishment expense.

Local governments often bear the brunt of capital punishment costs and are particularly burdened. A single death penalty trial can exhaust a county's resources. Politicians singing the praises of the death penalty rarely address the question of whether a government's resources might be more effectively put to use in other methods of fighting crime. A million dollars spent pursuing the execution of one defendant

could provide far more effective long-term crime reduction: many additional police officers; speedier trials; or drug rehabilitation programs. Instead, in today's political atmosphere, politicians worry about appearing soft on crime, even if soft means espousing proven methods of crime reduction. Thus, there is little debate about whether the death penalty accomplishes any good at all.

Meanwhile, the death penalty is reaching a critical stage in America. No longer isolated in the South, the death penalty has become a national phenomenon. There are more people on death row than at any time in the nation's history. The list of states actually carrying out executions has grown to 20, with 4 new states added this year. The number of executions in 1992 is likely to be the largest in 30 years and the costs of pursuing the death penalty continue to mount. At the same time, the United States has parted company from the other democratic countries of the world which have largely abandoned capital punishment.

In the 1990 elections, politicians were particularly blatant in their promotion of the death penalty. It was advanced at all levels of the political process as an answer to crime and was used by liberals and conservatives alike. This year, the death

penalty rhetoric, while not as blatant, continues the charade: vital crime fighting programs are being cut while the high-priced death penalty goes unchecked.

Like the emperor's cowering subjects who praised his invisible robes, many politicians extol the death penalty as if it were a solution to the problem of crime. It is a cynical manipulation of the public's legitimate fear of the growing tide of violence: a symbol without substance, a "solution" for politicians who know that no credible evidence exists linking the death penalty to a reduction of murder.

This report will focus first on the role the death penalty plays in the economic crisis facing states and local governments. As budgets everywhere are being tightened, the death penalty looms as an exorbitant and superfluous "luxury item." Some counties have been pushed to the brink of bankruptcy and have had to enact repeated tax increases to fund these extremely expensive cases. As money is spent on the death penalty, it is thereby less available for the very programs which are the backbone of the effort to reduce crime in this country.

Secondly, the report will illustrate how politicians have manipulated the death penalty issue and avoided debate on the real causes of crime. Their approach has been typically marked by a simplistic rhetoric of revenge which ignores the ineffectiveness and costs of capital punishment. This superficial treatment comes

precisely at a time when the economic crisis in criminal justice and crime prevention demands that the death penalty be given a harder look.

The Financial Costs of the Death Penalty

Death penalty cases are much more expensive than other criminal cases and cost more than imprisonment for life with no possibility of parole. In California, capital trials are six times more costly than other murder trials.¹ A study in Kansas indicated that a capital trial costs \$116,700 more than an ordinary murder trial.² Complex pre-trial motions, lengthy jury selections, and expenses for expert witnesses are all likely to add to the costs in death penalty cases. The irreversibility of the death sentence requires courts to follow heightened due process in the preparation and course of the trial. The separate sentencing phase of the trial can take even longer than the guilt or innocence phase of the trial. And defendants are much more likely to insist on a trial when they are facing a possible death sentence. After conviction, there are constitutionally mandated appeals which involve both prosecution and defense costs.

Most of these costs occur in every case for which capital punishment is sought, regardless of the outcome. Thus, the true cost of the death penalty includes all the added expenses of the "unsuccessful" trials in which the death penalty is sought but not achieved. Moreover, if a defendant is convicted but not given the death sentence, the

state will still incur the costs of life imprisonment, in addition to the increased trial expenses.

For the states which employ the death penalty, this luxury comes at a high price. In Texas, a death penalty case costs taxpayers an average of \$2.3 million, about three times the cost of imprisoning someone in a single cell at the highest security level for 40 years.³ In Florida, each execution is costing the state \$3.2 million.⁴ In financially strapped California, one report estimated that the state could save \$90 million each year by abolishing capital punishment.⁵ The New York Department of Correctional Services estimated that implementing the death penalty would cost the state about \$118 million annually.⁶

The Recession and the Death Penalty

The effects of the present financial crisis on the criminal justice system vary widely, but the common thread has been cutbacks in critical areas. In a report released in August of this year, the American Bar Association found that "*the justice system in many parts of the United States is on the verge of collapse due to inadequate funding and unbalanced funding.*" The report went on to state that "*the very notion of justice in the United States is threatened by a lack of adequate resources to operate the very system which has protected our rights for more than two centuries.*"⁷

"The very notion of justice in the United States is threatened by a lack of adequate resources to operate the very system which has protected our rights for more than two centuries."

-American Bar Association

“Virtually every major program designed to address the underlying causes of violence and to support the poor, vulnerable, powerless victims of crime is being cut even further to the bone.... In this context, the proposition that the death penalty is a needed addition to our arsenal of weapons lacks credibility”

—Scott Harshbarger,
Attorney General of
Massachusetts

New Jersey, for example, laid off more than 500 police officers in 1991.⁸ At the same time, it was implementing a death penalty which would cost an estimated \$16 million per year,⁹ more than enough to hire the same number of officers at a salary of \$30,000 per year.

In Florida, a mid-year budget cut of \$45 million for the Department of Corrections forced the early release of 3,000 inmates.¹⁰ Yet, by 1988 Florida had spent \$57.2 million to accomplish the execution of 18 people.¹¹ It costs six times more to execute a person in Florida than to incarcerate a prisoner for life with no parole.¹² In contrast, Professors Richard Moran and Joseph Ellis estimated that the money it would take to implement the death penalty in New York for just five years would be enough to fund 250 additional police officers and build prisons for 6,000 inmates.¹³

Ten other states also reported early release of prisoners because of overcrowding and underfunding.¹⁴ In Texas, the early release of prisoners has meant that inmates are serving only 20 percent of their sentences and re-arrests are common.¹⁵ On the other hand, Texas spent an estimated \$183.2 million in just six years on the death penalty.¹⁶

Illinois built new prisons but does not have the funds to open them.¹⁷ It does, however, have the fourth largest death row in the country. Georgia's Department of Corrections lost over 900 positions¹⁸ in the past year while

local counties have had to raise taxes to pay for death penalty trials.

Police officers on the beat, imprisonment of offenders, and a functioning criminal justice and correctional system form the heart of the nation's response to crime. Yet, in state after state, these programs are suffering drastic cuts while the death penalty absorbs time, money and political attention.

The Cost to Local Governments

An increasingly significant consequence of the death penalty in the United States is the crushing financial burden it places on local governments. The current economic recession has made it clear that there is no unlimited source of government largesse. Counties, which bear the brunt of the costs of death penalty trials, are also the primary deliverers of local health and human services in the public sector.¹⁹ Hard choices have to be made among the demands of providing essential services, creative crime reduction programs such as community policing, and the vigorous pursuit of a few death penalty cases.

As Scott Harshbarger, Attorney General of Massachusetts, put it: “Virtually every major program designed to address the underlying causes of violence and to support the poor, vulnerable, powerless victims of crime is being cut even further to the bone. . . . In this context, the

proposition that the death penalty is a needed addition to our arsenal of weapons lacks credibility and is, as a sheer matter of equity, morally irresponsible. If this is really the best we can do, then our public value system is bankrupt and we have truly lost our way."²⁰

While state and national politicians promote the death penalty, the county government is typically responsible for the costs of prosecution and the costs of the criminal trial. In some cases, the county is also responsible for the costs of defending the indigent. Georgia, Alabama and Arkansas, for example, provide little or no funding for indigent defense from the state treasury.²¹ In Lincoln County, Georgia, citizens have had to face repeated tax increases just to fund one capital case.

Even where the state provides some of the money for the counties to pursue the death penalty, the burden on the county can be crushing. California, for example, was spending \$10 million a year reimbursing counties for expert witnesses, investigators and other death-penalty defense costs, plus \$2 million more to help pay for the overall cost of murder trials in smaller counties. (Now, even that reimbursement is being cut.) But many financially strapped smaller counties still could not afford to prosecute the complicated death-penalty cases. Some small counties have only one prosecutor with little or no

experience in death-penalty cases, no investigators, and only a single Superior Court judge.²²

In Sierra County, California authorities had to cut police services in 1988 to pick up the tab of pursuing death penalty prosecutions. The County's District Attorney, James Reichle, complained, "If we didn't have to pay \$500,000 a pop for Sacramento's murders, I'd have an investigator and the sheriff would have a couple of extra deputies and we could do some lasting good for Sierra County law enforcement. The sewage system at the courthouse is failing, a bridge collapsed, there's no county library, no county park, and we have volunteer fire and volunteer search and rescue." The county's auditor, Don Hemphill, said that if death penalty expenses kept piling up, the county would soon be broke.²³ Just recently, Mr. Hemphill indicated that another death penalty case would likely require the county to lay off 10 percent of its police and sheriff force.²⁴

In Imperial County, California, the county supervisors refused to pay the bill for the defense of a man facing the death penalty because the case would bankrupt the county. The county budget officer spent three days in jail for refusing to pay the bill. A judge reviewing the case took away the county's right to seek the death penalty, thus costing the county the partial reimbursement which the state provided for capital cases. The County took the challenge all the way to the California Supreme Court and

"Even though I'm a firm believer in the death penalty, I also understand what the cost is. If you can't be satisfied with putting a person in the penitentiary for the rest of his life . . . I think maybe we have to be satisfied with that as opposed to spending \$1 million to try and get them executed."

—Norman Kinne,
Dallas County
District Attorney

ended up costing the County half a million dollars.²⁵ In the criminal trial, the defendant was acquitted.

A similar incident occurred recently in Lincoln County, Georgia. The county commissioners also refused to pay the defense costs when the attorney won a new trial for a death row inmate Johnny Lee Jones. As in California, the commissioners were sent to jail. Walker Norman, chair of the County Commission explained: "We're a rural county of 7,500 people with a small tax base. We had to raise taxes once already for this case when it was originally tried, and now we are going to have to raise taxes again. It's not fair."²⁶ The first trial alone cost the county \$125,000.²⁷ The second trial was completed in September and the defendant received a life sentence.

In Meriwether County, Georgia, a county of 21,000 residents and a \$1 million annual budget, the prosecutor sought the death penalty three times for Eddie Lee Spraggins, a mentally retarded man. The case cost the county \$84,000, not including the defense attorney's bill for appealing, and the third conviction was again overturned by the Georgia Supreme Court.²⁸ Spraggins was finally granted a plea and received a life sentence.

In Mississippi, Kemper and Lauderdale Counties recently conducted a border survey battle to avoid responsibility for a capital murder trial. Faced with a case that could cost the county

\$100,000, Kemper County wanted to show that the scene of the murder was outside their border and conducted two surveys of the site. County Supervisor Mike Luke explained, "As much as we were talking about the taxpayers of Kemper County having to pay out, we believed we needed to be sure." Luke said that the decision to seek the death penalty was not his—he only had to come up with the money. Lauderdale County, where the trial was originally scheduled, has now sent a bill to Kemper County for expenses incurred while holding the defendant in jail for 19 months. Kemper County is considering how much it will have to raise taxes just to pay the initial costs of the prosecution.²⁹

In Yazoo City, Mississippi, the town is worried that it, too, might get stuck with an expensive death penalty case. "A capital murder trial is the worst financial nightmare any government body could envision," said the editor of the local paper.³⁰

With more death row inmates and more executions than any other state, Texas is also experiencing the high costs of executions. Norman Kinne, Dallas County District Attorney, expressed his frustration at the expense:

"[E]ven though I'm a firm believer in the death penalty, I also understand what the cost is. If you can be satisfied with putting a person in the penitentiary for the rest of his

life . . . I think maybe we have to be satisfied with that as opposed to spending \$1 million to try and get them executed. . . . I think we could use (the money) better for additional penitentiary space, rehabilitation efforts, drug rehabilitation, education, (and) especially devote a lot of attention to juveniles."³¹

Vincent Perini of the Texas Bar Association, calls the death penalty a "luxury": "There's some things that a modern American city and state have got to have. You have to have police and fire and public safety protection. You have to have a criminal justice system. You do not have to have a death penalty. The death penalty in criminal justice is kind of a luxury item. It's an add-on; it's an optional item when you buy your criminal justice vehicle."³²

Chief Criminal Judge, James Ellis, came to a similar conclusion in Oregon: "Whether you're for it or against it, I think the fact is that Oregon simply can't afford it."³³ James Exum, Chief Justice of the North Carolina Supreme Court, agrees: "I think those of us involved in prosecuting these (death penalty) cases have this uneasy notion that . . . these cases are very time-consuming and very troublesome and take a lot of resources that might be better spent on other kinds of crimes. . . ."

Efforts are under way in both Congress and the Supreme Court to reduce the avenues of appeal available to death row inmates. But most of the costs

associated with the death penalty occur at the trial level.³⁴

Whatever effect cutting back on the writ of habeas corpus may have on the time from trial to execution, it is not clear that the changes will make the death penalty any less expensive, and they may result in the execution of innocent people. With the number of people on death row growing each year, the overall costs of the death penalty are likely to increase.

Some state appeals courts are overwhelmed with death penalty cases. The California Supreme Court, for example, spends more than half its time reviewing death cases.³⁵ The Florida Supreme Court also spends about half its time on death penalty cases.³⁶ Many governors spend a significant percentage of their time reviewing clemency petitions and more will face this task as executions spread. As John Dixon, Chief Justice (Retired) of the Louisiana Supreme Court, said: "The people have a constitutional right to the death penalty and we'll do our best to make it work rationally. But you can see what it's doing. Capital punishment is destroying the system."³⁷

Alternatives for Reducing Crime

New York does not have the death penalty. In the early 1980s, the N.Y. State Defenders Association conducted a study to estimate how much the death penalty would cost if it were to be implemented in New York. The estimates were that each case

"The death penalty, however, has no place in this reform effort. It is a simplistic, arbitrary, misguided, ineffective and costly response, cloaked in the guise of a remedy to the brutalizing violence that angers and frustrates us all."

—Scott Harshbarger,
Attorney General of
Massachusetts

would cost the state \$1.8 million, just for the trial and the first stages of appeal.³⁸ The majority of those costs would be borne by the local governments. New Yorkers have consistently re-elected a governor whom they know will veto any death penalty legislation which comes across his desk. Now it appears that New York may be reaping the benefit of that choice.

Significantly, no city in New York State, without the death penalty, is among the nation's top twenty-five cities in homicide rates according to statistics recently released by the FBI.³⁹ In particular, New York City bucked the national trend and experienced a decline in every major category of crime last year.⁴⁰ In the first four months of 1992, crime is again down across the board in New York, compared to the same period two years ago, with murders decreasing by over 11 percent.⁴¹

While direct causes for a decrease in crime are difficult to pinpoint, many experts have attributed New York's success to an increasingly popular concept known as community policing. Two years ago, New York had 750 foot officers on the street. Today that number is 3,000.⁴² Community policing is a strategy for utilizing police officers not just as people who react to crime, but also as people who solve problems by becoming an integral part of the neighborhoods they serve.

Such programs do not come cheaply, but they do seem to be effective. In Prince George's County, Maryland, police Capt. Terry Evans said their community policing program is "the only thing I've seen in 23 years of law enforcement that's had an impact, actually turned it around."⁴³ Fully implemented, Prince George's community policing program will cost the county \$10 million per year.

The programs apparently work best where governments can afford to add officers, rather than taking from existing numbers, leaving other work unattended. This is borne out in cities like Boston where murders dropped 23 percent in 1991, partly because of a program that put more police officers on the beat.⁴⁴ The need for more police officers is supported by a survey of Chiefs of Police from around the country, 70 percent of whom said they could no longer provide the type of crime prevention activities they did ten years ago because of too few police officers.⁴⁵

Boston, like New York, is in a state without the death penalty, though Governor William Weld (R-Mass.) has been attempting to re-instate it. That proposal has met with opposition from the state's district attorneys. Judd Carhart, past president of the district attorneys' association said a majority of the state's district attorneys oppose capital

punishment partially on the grounds that it is a waste of money better spent on other areas of law enforcement and incarceration.⁴⁶ Attorney General Scott Harshbarger agreed: "We need major criminal justice and court reform now to address the crisis in our criminal justice system. The death penalty, however, has no place in this reform effort. It is a simplistic, arbitrary, misguided, ineffective and costly response, cloaked in the guise of a remedy to the brutalizing violence that angers and frustrates us all."⁴⁷

Compared to community policing and other successful programs, the death penalty, for all its cost, appears to have no effect on crime. A New York Times editorial noted recently that the number of executions in this country "constituted less than .001 percent of all murderers . . . and were only .000004 percent of all violent criminals. Even if U.S. executions were multiplied by a factor of 10 they would still constitute an infinitesimal element of criminal justice." The public seems to agree: only 13 percent of those who support capital punishment believe it deters crime.⁴⁸

New York and Massachusetts can be contrasted with Texas which is the nation's leader in the use of the death penalty. Texas has the largest

death row and has executed almost twice as many people as the next leading state. Houston alone accounts for 10% of all people executed in the United States since 1976.⁴⁹ Yet, the murder rates in three of Texas' major cities rank among the nation's top 25 cities. In all three, Houston, Dallas and Fort Worth, the number of murders increased significantly last year.⁵⁰

Wherever the death penalty is in place, it siphons off resources which could be going to the front line in the war against crime: to police, to correctional systems, and to neighborhood programs which have proven effective. Instead, these essential services are repeatedly cut while the death penalty continues to expand. Politicians could address this crisis, but, for the most part, they either endorse executions or remain silent.

"Even if U.S. executions were multiplied by a factor of 10 they would still constitute an infinitesimal element of criminal justice."

***—New York Times
editorial, 1992***

Political Manipulation of the Death Penalty

What drives this high spending on such an ineffective program? The answer lies partly in the promotion by politicians who hope to benefit by advocating the death penalty. Even though it fails to meet the cost-benefit test applied to other government programs, many politicians use capital punishment to distinguish themselves from their opponents. Politicians have generally not posed the death penalty as one alternative among a limited number of crime fighting initiatives which the people must ultimately pay for. Rather, the death penalty is used to play on the public's fear of crime and to create an atmosphere in which the extreme view wins. The rhetoric then becomes policy and the people pay.

The Death Penalty in National Politics

Flush with his party's convincing victory in the 1988 Presidential elections, Republican National Chairman Lee Atwater urged his fellow Republicans to capitalize on the issue of crime because "almost every Democrat out there running is opposed to the death penalty."⁵¹ Apparently, the Democrats were listening as well since politicians of all stripes rushed to proclaim their support of capital punishment.

From Florida to California, the political races in 1990 were marked by excessive attempts by

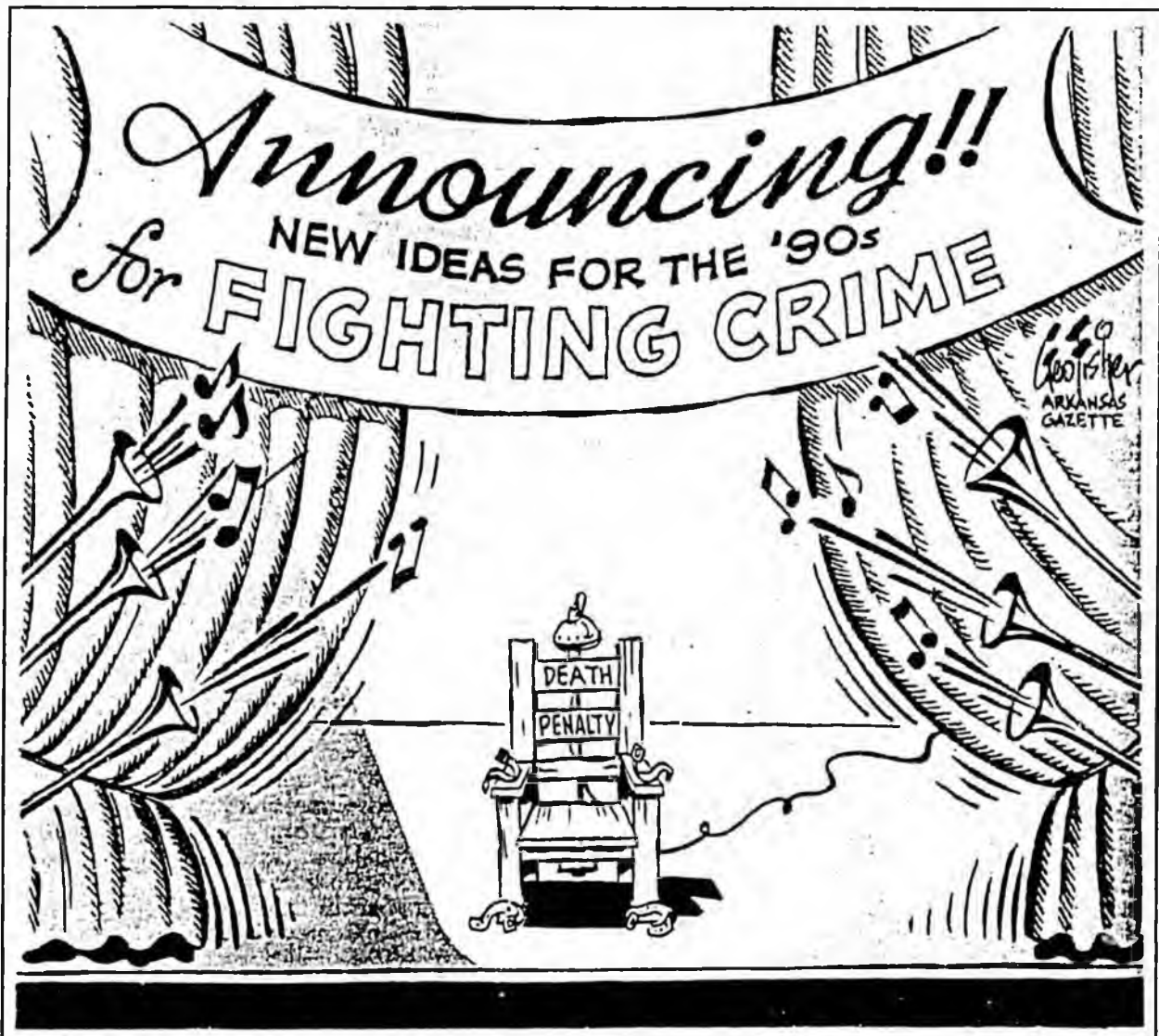
politicians to appear tougher on crime by their willingness to execute people. Ironically, those who were most demonstrative about the death penalty were defeated, though seldom by opponents of capital punishment.

In this election year, the national political debate on the death penalty is more conspicuous for its silence. The utility of the death penalty as a defining issue was lost when most of the Democratic Presidential candidates supported the death penalty. George Bush, Bill Clinton and Ross Perot are all in favor of the death penalty, though none has made it a major campaign issue.

George Bush: From Willie Horton to the Crime Bill

In the previous campaign, George Bush was able to link a furlough for convicted murderer Willie Horton with Michael Dukakis' position against the death penalty, thus portraying Dukakis as soft on crime. This time, President Bush has sought to convey a tough image by his support for a greatly expanded federal death penalty. When recent unemployment figures indicated that the economy was going to be a negative for the Bush campaign, his advisers called for a greater emphasis on crime to bolster the President's popularity.⁵²

In 1990, President Bush sought to identify the Republican Party as tough on crime. He introduced a crime bill whose



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centerpiece was an expansion of the federal death penalty to over 40 new crimes. Not to be outdone, the Democrats endorsed a bill allowing the death penalty in over 50 new crimes. Despite two years of debate and attempts to expand the death penalty even further, the bill remains in political gridlock. While the bill's death penalty provisions and restrictions on federal habeas corpus appeals have received the most notice, proposals for law enforcement, prison construction, boot camps

and other crime fighting provisions have received little attention.

Just prior to the last presidential election in 1988, the death penalty was also promoted as a way of appearing tough on drug crime. Legislation was passed imposing the death penalty in drug-related murders but that law has resulted in only seven prosecutions and one death sentence in almost four years. Bush's bill is designed to have a much broader application. However, some parts of the

"What they mean when they say they're 'getting tough' is simply that they are talking tough."

—Franklin Zimring,
Earl Warren Legal
Institute

current bill are also window dressing, having little to do with the public's concern about crime.

The crime bill would impose death sentences for such offenses as treason, espionage, murder in the act of destroying a maritime platform, murder of federal egg product inspectors, horse inspectors and poultry inspectors. These proposals will have no real impact on crime in the streets, which is the rationale for proposing such legislation. As one legal commentator put it: "What they mean when they say they're 'getting tough' is simply that they are talking tough."⁵³

An expanded federal death penalty could also prove to be enormously expensive. One amendment approved by the Senate would impose the death penalty for murders involving weapons used in interstate commerce. The Congressional Budget Office estimated that this proposal would cost as much as \$600 million over four years.⁵⁴

Senator Thomas Daschle (D.-SD) described much of the talk about the death penalty on Capitol Hill as political posturing: "We debate in codes, like the death penalty as a code for toughness on crime. The whole game is a rush to acquire the code: he who gets the code first wins. . . . It denigrates the national debate."⁵⁵

Bill Clinton: Insulating Himself from Attack

Although Clinton's pro-death penalty stance has partially neutralized Bush's use of this

tactic in the current campaign, on the death penalty one can never be tough enough. For example, Vice President Dan Quayle recently attacked Clinton for being soft on capital punishment (despite having presided over four executions as Arkansas Governor) because Clinton had suggested that Gov. Mario Cuomo (D-NY) might make a good Supreme Court Justice.⁵³

Bill Clinton has criticized Bush's manipulation of the death penalty issue: "President Bush has used an expansion of the death penalty as a cover for actually weakening the partnership of the federal government in the fight against crime."⁵⁷ However, Clinton bowed to the popular wisdom when he made a prominent demonstration of his support for the death penalty by leaving the primary campaign in January to preside over the execution of a brain damaged defendant in Arkansas.

Ever since he lost the Governor's race in Arkansas after serving only one term, Clinton has made clear his support for the death penalty. Clinton returned to office as Governor in 1983 and has granted no commutations to anyone on death row and has presided over all four of the state's executions in the modern era. However, as Arkansas was returning to executions, its murder rate was increasing: murders in Little Rock, alone, jumped 40 percent in the past year.⁵⁸

The Death Penalty in State Politics

The death penalty is almost the exclusive function of the states rather than the federal government. It is not surprising, then, that some of the most blatant attempts at political manipulation of the death penalty have occurred on the level of state politics.

Florida and Texas are two states with the largest death rows and most active execution chambers. They were also the scene of recent gubernatorial races featuring candidates boasting of their ability to secure more executions than their opponent. In 1990, Florida's Governor Bob Martinez campaigned with background shots of smirking serial killer Ted Bundy, while reminding the voters how many death warrants he had signed. Martinez was defeated by Democrat Lawton Chiles who also favors the death penalty.

The Texas Campaign: "Who Can Kill the Most Texans?"

The governor's race in Texas presented a variety of candidates vying to demonstrate their greater support of the death penalty. As populist Democrat Jim Hightower put it, the race boiled down to one issue: "Who can kill the most Texans?"⁵⁹

Former governor Mark White portrayed his toughness by walking through a display of large photos of the people executed during his term. Attorney General Jim Mattox

insisted that he was the one who should be given credit for the 32 executions carried out under his watch. Meanwhile, the Republican candidate, Clayton Williams showed pictures of a simulated kidnapping of young children from a school yard and then touted his backing of a separate law to impose the death penalty for killing children. His ad ended with the slogan: "That's the way to make Texas great again."⁶⁰

In the end, the campaigns succeeded only in gaining embarrassing notoriety for Texas as Democrat Ann Richards became the eventual winner. Richards has continued Texas' leadership in carrying out the most executions of any state. However, while Texas is spending hundreds of millions of dollars on the death penalty, it is having to release other prisoners early to avoid overcrowding. Inmates serve only an average of one-fifth of their sentences. In Harris County (Houston), arguably the death penalty capital of the country, 67 percent of those arrested are recidivists and crime is the people's number one concern.⁶¹

California Politics: A Case of Neglect

California's 1990 gubernatorial race also involved jockeying for the position of "death penalty candidate." Dianne Feinstein was the most outspoken, describing herself in commercials as "the only Democratic candidate for governor in favor of the death

penalty."⁶² This ploy caused her Democratic rival, John Van de Kamp, to respond with ads assuring the voters that he wouldn't let his conscience get in the way of carrying out executions. Although personally opposed to the death penalty, his ads proclaimed his record as attorney general of putting or keeping almost 300 people on California's death row and featured pictures of the condemned inmates in the background.

Van de Kamp lost to Feinstein and Feinstein then lost to Republican Pete Wilson, another strident pro-death penalty candidate. This year Feinstein is running for the Senate and all 11 of the major candidates for California's two Senate seats support the death penalty.⁶³

California is in the throes of an extreme financial crisis. The state paid its workers with IOUs for two months and most social services are facing major cuts. Los Angeles County alone is considering laying off 500 sheriff's deputies to cope with the loss of state funds. Such cuts are likely to have a direct effect on public safety. As one official remarked, "The public doesn't seem to have a heightened sense of urgency about this yet, and I don't think they ever will—until they become victims themselves."⁶⁴ Nevertheless, the state has been paying an estimated \$90 million per year over normal costs to carry out the death penalty.⁶⁵ With over 300

people condemned to death, California has the second largest death row in the country.

The Los Angeles riots were a stark reminder of the anger which simmers as a result of social neglect. Reforms like community policing were contemplated in L.A. but were viewed skeptically by former Police Chief Daryl Gates because no funds were available: "The first problem," Gates said in his new book, "is the need for more officers. But again, how much more can taxpayers be asked to pay?"⁶⁶ As a result, L.A.'s police force was described by one expert as "the antithesis of community policing. The department was cool, aloof, disconnected from the community."⁶⁷ The city burned.

New York Politics: Grandstanding on the Death Penalty

New York illustrates that voters are not monolithic when it comes to the death penalty. Although more executions have been carried out in New York since 1900 than in any other state, it does not have the death penalty now and has not executed anyone since 1963. For ten straight years, the state legislature has passed death penalty legislation and for ten years Governor Cuomo has vetoed the bills, continuing the tradition of Governor Hugh Carey before him. Although the majority of New Yorkers appears to support capital punishment, Cuomo has been re-elected

repeatedly. Cuomo's 1990 Republican opponent, Pierre Rinfret, built a campaign around the death penalty but failed to win voter support. Even fellow Republican and death penalty supporter Jack Kemp rejected such blatant manipulation:

"He's running on the death penalty for drug pushers. I mean, goodness gracious, if . . . that's what politics has descended into in the 1990s—who can get to the far right on the death penalty—it is a sad day. . . . I don't want to be in the Republican Party of New York if that's all they can talk about, the death penalty. I am for the death penalty, but that pales in significance to the need for a healthy economic and opportunity-oriented state, whether it is New York or the state of the economy nationally."⁶⁸

The New York legislature has often come close to overriding Cuomo's veto. Lately, however, that movement has been losing steam. The controversy demonstrates that switching one's allegiance on the death penalty issue to join the mainstream is not always a ticket to electoral success. In the 1990 elections, three Assemblymen who once opposed the death penalty, but who had lately switched their votes, were all defeated.⁶⁹ As a result, the vote to override Cuomo's veto lost by a larger margin in the next session.

The New York Daily News, long a supporter of the death penalty with such subtle

headlines as FRY HIM!, has apparently become frustrated with the political games-playing surrounding the issue and now rejects the death penalty. In an editorial earlier this year, the News took particular aim at those pro-death penalty politicians who vote against the alternative sentence of life-without-parole because it would make their own death penalty bill harder to pass: "Why won't the Legislature adopt the obvious alternative—life without parole? Because pols would rather grandstand on the death penalty. It is cheap political expedience, not wise public policy."⁷⁰

The death penalty's chief proponent in the New York Assembly, Vincent Graber from Buffalo, acknowledged the kind of manipulation the News criticized. Graber admitted that the life-without-parole bill was rejected because it interfered with the quest for capital punishment: "This being an election year," Graber said in 1990, "I don't think the Senate is in the mood to go with mandatory life, no parole. The death penalty would become less of a campaign issue and I don't think they want to do that."⁷¹

Politics in Other Places

Politicians are quick to capitalize on an opportunity to promote the death penalty. Massachusetts does not have the death penalty, but when Carol Stuart, a young white, pregnant woman, was brutally murdered in 1989, the city of Boston reacted in angry shock. The media and

"I don't want to be in the Republican Party of New York if that's all they can talk about, the death penalty. I am for the death penalty, but that pales in significance to the need for a healthy economic and opportunity-oriented state, whether it is New York or the state of the economy nationally."

—Jack Kemp,
Secretary of HUD

the public were misled to believe that a young black man was the attacker and the Republican Party called a press conference within hours of Stuart's death demanding a return to capital punishment.⁷² After the embarrassing truth came out that Stuart was probably murdered by her own husband, the campaign fizzled.

In Arizona, state Representative Leslie Johnson (R-Mesa) called for the death penalty for child molesters after a particularly horrendous crime in Yuma. On the floor of the House, Johnson proposed the quick fix: "If we do away with these people, if we do have the death penalty and if you are a sex offender, you're just out of here — dead, gone. And if we get a few innocent people, fine and dandy with me. I'll take the percentage, folks, because I don't want to put my children at risk anymore."⁷³

And in the District of Columbia, Senator Richard Shelby (D-Ala.) proposed that the death penalty be enacted for the city by Congress after one of his aides was killed on Capitol Hill. Congress responded by cutting out the Mayor's \$25 million youth and anti-crime initiative while imposing a referendum on the death penalty. The hidden but inevitable costs resulting from having capital punishment were not addressed in the appropriations bill. But if the experience of other states is any indication, it will be years before any execution is carried out, after

an expenditure of as much as \$100 million, either from federal or DC funds.

Finally, the death penalty is manipulated by those politicians who are closest to it: the elected state attorneys and prosecutors who make the decisions on which cases to pursue the ultimate punishment. A campaign advertisement for district attorney Bob Roberts of North Carolina, for example, lists all the defendants for whom he won a death sentence. His slogan: "If one of your loved ones is murdered, who do you want to try the accused? Bob Roberts with his splendid record and experience or his inexperienced opponent."⁷⁴

As a public defender, attorney general Grant Woods of Arizona had argued before a judge that it would be murder if the judge sentenced his innocent client to death. Now, as chief prosecutor and staunch defender of the death penalty, Woods turned on his client, Murray Hooper, saying he is guilty and deserves the death penalty. Since Hooper is still on death row, such a representation has raised questions of legal ethics and client loyalty. Woods claims he is just doing his job.⁷⁵

A district attorney in Georgia, Joseph Briley, was also charged with numerous breaches of legal ethics in a Supreme Court amicus brief signed by 12 legal ethics professors from around the country. When the conviction of Tony Amadeo was overturned, Briley first announced that he would again

seek the death penalty. However, he later allowed the defendant to plead guilty in exchange for a life sentence after the defense proffered three expert witnesses to testify that his ethical violations should disqualify him from retrying the case. Briley's frustration at having to take the plea was summed up in his comment to one of the defense attorneys: "You've probably made me unelectable."⁷⁶

In Kentucky, Commonwealth Attorney Ernest Jasmin made a name for himself by obtaining a death sentence against the killer of two teenagers from Trinity High School. He then campaigned as the Trinity Prosecutor, taking ads in the high school newspaper and campaigning with one of the victims' parents frequently at his side.⁷⁷

In Nebraska, attorney general Don Stenberg took the unusual step of attaching a personal letter to his Supreme Court brief urging the execution of Harold Otey, whom he described as a "vicious killer" who "still smirks at the family of the victim...."⁷⁸ While pushing publicly for Otey's death, Stenberg also sat as one of three decision makers at Otey's clemency hearing and two of his staff presented gruesome details of the murder.

In sum, there has been a steady stream of politicians attempting to capitalize on the death penalty issue in recent years. Real solutions to crime get overshadowed in the tough

talk of capital punishment. When some of these politicians are successful, the death penalty gets implemented or expanded and the people begin to pay the high costs. Somewhere down the road there may be an execution, but the crime rate continues to increase. Politicians do the people a disservice by avoiding the hard economic choices that have to be made between the death penalty and more credible methods of reducing violence.

Conclusion

The death penalty is parading through the streets of America as if it were clothed in the finest robes of criminal justice. Most politicians applaud its finery; others stare in silence, too timid to proclaim that the emperor has no clothes. Instead of confronting the twin crises of the economy and violence, politicians offer the death penalty as if it were a meaningful solution to crime. At the same time, more effective and vital services to the community are being sacrificed. Voters should be told the truth about the death penalty. They should understand that there are programs that do work in reducing crime, but the resources to pay for such programs are being diverted into show executions. Being sensible about crime is not being soft on crime. Too much is at stake to allow political manipulation to silence the truth about the death penalty in America.

Epilogue – Fall 1994

“Every dollar we spend on a capital case is a dollar we can’t spend anywhere else. . . . We have to let the public know what it costs” to pursue a capital case.

—John M. Bailey, Chief State’s Attorney, Connecticut

Since the publication of *Millions Misspent* in the fall of 1992, more judges, prosecutors and other state officials have joined those questioning the death penalty in light of its exorbitant costs. At a time when crime is the nation’s primary concern, new data confirms the Report’s earlier conclusion that the death penalty is draining state treasuries of funds which could be spent on effective crime prevention measures.

The financial burden is particularly acute in counties where administrators are being forced to choose between raising taxes and bankruptcy in order to prosecute death penalty cases. While many politicians continue to ignore these costs in using the death penalty to sound tough, some prosecutors are now deciding not to seek executions because the cases are simply too expensive.

The Duke University Study

In May, 1993, a federally funded study brought a new perspective to the cost debate.⁷⁹ This model study was prompted by an American Bar Association proposal and was conducted at Duke University’s Terry Sanford Institute of Public Policy. It is one of the most comprehensive and thorough analyses on this topic.

Authors Philip Cook and Donna Slawson spent two years comparing the costs of adjudicating capital and noncapital cases in North Carolina and concluded that capital cases *cost at least an extra \$2.16 million per execution*, compared to what taxpayers would have spent if defendants were tried without the death penalty and sentenced to life in prison.⁸⁰ Moreover, the bulk of those costs occur at the trial level.

Applying their figures on a national level implies that \$82 million was spent just for U.S. executions in 1993, and that the national bill for the death penalty has been over \$500 million since the death penalty was reinstated.⁸¹ Yet, the national concern about crime indicates that few feel safer for all this expense.

Time Is Money

Death penalty cases are so expensive because they take longer at every stage and require vast resources for both the prosecution and the defense. The authors of the North Carolina study identified 24 principal areas in which a death penalty case would likely be more expensive than if the case were tried non-capitally.⁸² These areas included:

- More investigative work by both law enforcement officials and the defense team
- More pre-trial motions

"A little rural county in Kentucky just can't deal with (death penalty) bills like that."

—Michael Mager,
Executive Director of
the Kentucky County
Judge-Executives
Association

- More questioning concerning individual jurors' views on capital punishment and more peremptory challenges to jurors at jury selection
- The appointment of two defense attorneys
- A longer and more complex trial
- A separate penalty phase conducted in front of a jury
- A more thorough review of the case on direct appeal
- More post-trial motions
- Greater likelihood that counsel will be appointed for a federal habeas corpus petition
- Greater likelihood that there will be full briefing and argument on federal review
- More preparation for, and a longer clemency proceeding.

The North Carolina study estimated that a death penalty trial takes about four times longer than a non-capital murder trial. And, of course, not every death penalty trial results in a death sentence. Based on the experience in North Carolina, the authors found that less than a third of capital trials resulted in a death sentence.⁶³ Nevertheless, each of these trials had the extra expense associated with death penalty proceedings. The trial costs alone were about \$200,000 more for each death penalty imposed than if no death penalty was involved.⁶⁴

The authors computed the costs of appealing a death penalty case and subtracted the savings which accrue to the state when an execution finally occurs. The

"savings," which are due to the inmate no longer being kept at state expense, only occur when an execution is actually carried out. As with the trial level, there is a "failure" rate resulting from the fact that many inmates who are sentenced to death will never be executed. Many cases will be overturned on appeal, some inmates will commit suicide, others will die of natural causes. Again, based on the experience in North Carolina, the authors estimated that only one inmate would likely be executed for every ten who are sentenced to death.⁶⁵ This is actually higher than the national rate where only about one in every eleven cases which have been resolved has resulted in an execution.⁶⁶

Bulk Of Costs at Trial Level

The importance of accounting for this failure rate is critical for two reasons. First, it represents a truer picture of what it is actually costing the state to achieve an execution. It is not just the cost of a single person's trial and appeals. That would be comparable to saying that the cost of landing a man on the moon was the cost of fuel for the one rocket which brought him there. The state has to pay more for all the trials and appeals which start out as death penalty cases but for which there will never be the "saving" associated with an execution.

Second, the per execution costs reveal that the bulk of death penalty costs occur at the *trial* level. Often those who acknowledge the high costs of the death

penalty believe that the expense is due to "endless appeals." By taking into account the capital cases which will never result in an execution, the North Carolina study makes clear that the *trials* produce the largest share of death penalty costs⁸⁷ and these costs will not be substantially lessened by tinkering with the opportunities that death row inmates have to appeal. A significant financial corollary of this finding is that taxpayers must pay death penalty expenses up front, whereas the costs of a life sentence are meted out gradually over many years, making that alternative even less expensive.

Evidence from Other States

There have been numerous indications from other areas of the country that the death penalty is straining the budgets of state and local governments and that the financial drain is getting worse. Some counties have been brought to the brink of bankruptcy because of death penalty cases. More county commissioners have risked going to jail for balking at paying for capital prosecutions,⁸⁸ while others reluctantly raise taxes to pay the costs of even one capital case.

- In San Diego, California, the prosecution costs alone (not counting defense costs or appeals) for three capital cases averaged over half a million dollars each.⁸⁹ One estimate puts the total California death penalty expense bill at \$1 billion since 1977.⁹⁰ California has executed two people during that time, one

of whom refused to appeal his case.

- In Jasper County, Mississippi, the Circuit Judge and the District Attorney had to address the county supervisors to get more money for death penalty prosecutions. The only solution was to raise county taxes. "It's going to be a fairly substantial increase," said the board president, John Sims. "I hope the taxpayers understand...."⁹¹
- In Connecticut, a state with only a handful of death row inmates, *The Connecticut Law Tribune* was unable to calculate the total costs of capital punishment but concluded that the "costs are staggering."⁹² State's attorney Mark Solak said he spent between 1,000 and 1,500 hours preparing one capital prosecution.⁹³ The defense attorney in the case noted that if his client had been given an offer of life in prison without parole he would have accepted it "in a heartbeat." "The case," he said, "would have been over in 15 minutes. . . . No one would have spent a penny."⁹⁴
- Other items from *The Connecticut Law Tribune's* report:
 - ✓ Jury selection in death cases can take eight weeks.⁹⁵
 - ✓ One state's attorney in one case spent about 7 months distilling a 10,000 page trial transcript, and three other attorneys assisted him, putting in a total of 15

"It's going to be a fairly substantial (tax) increase. I hope the taxpayers understand."

—John Sims,
Jasper County (Miss.)
Board President, on
death penalty prosecution costs

"Life without parole could save millions of dollars. In other words, it's cheaper to lock 'em up and throw away the key. . . . As violent crime continues to escalate, it's something to consider."

—Jim Mattox,
former Texas Attorney
General

"We're running the county out of money."

—Judge Miron Love, Harris County (TX), reflecting on a projected \$60 million expense for pending death penalty cases in that county alone.

"When the law changed so defendants can be sentenced to 40 years flat time, and when you start taking into account what the taxpayers are getting for their money, it seems like some defendants should be tried... without the death penalty."

—Judge Doug Shaver, Harris County (TX)

months' work.⁹⁶

- ✓ The state's public defender office spends about \$138 defending an average criminal case. Death penalty cases, however, have cost over \$200,000 *each* to defend.⁹⁷
- In South Carolina, *The Sun News* reported that the bills for death penalty cases are "skyrocketing" because of a state supreme court ruling that attorneys in death penalty cases deserve reasonable fees. Before the decision, attorneys received no more than \$2,500 for each death penalty case.⁹⁸
- It took six years to extradite Charles Ng from Canada to California mainly because Canada resisted the prospect of sending someone to a possible death sentence. Since coming to California, the case has cost Calaveras County \$3.2 million, an amount which would have bankrupt the county except for the fact that the state agreed to reimburse the county until 1995. Now it looks as though the bailout will have to last until the year 2000, with millions more in expenses yet to come.⁹⁹
- In Harris County, Texas, there are 135 pending death penalty cases. State Judge Miron Love estimated that if the death penalty is assessed in just 20 percent of these cases, it will cost the taxpayers a minimum of \$60 million. Judge Love, who oversees the county's courts, remarked:

"We're running the county out of money."¹⁰⁰

Reactions to the High Costs

There have been many similar reactions from state and local officials who wonder about the wisdom of spending such exorbitant sums on such unpredictable and isolated cases. In Tennessee, the number of people sentenced to death has dropped because prosecutors say death penalty cases cost too much.¹⁰¹

In Texas, Judge Doug Shaver from Houston was also concerned about the high costs of so many capital cases: "I can't figure out why our county is prosecuting so many more (death) cases than comparably large counties around Texas. When the law changed so defendants can be sentenced to 40 years flat time (as an alternative to death), and when you start taking into account what the taxpayers are getting for their money, it seems like some defendants should be tried . . . without the death penalty."¹⁰²

Former Texas Attorney General Jim Mattox agrees: "Life without parole could save millions of dollars." "In other words," he wrote, "it's cheaper to lock 'em up and throw away the key As violent crime continues to escalate, it's something to consider."¹⁰³

California has been hit particularly hard by natural disasters and the economic recession. Many social programs have had to be cut. Yet the state continues to spend hundreds of millions of dollars on the death

penalty which has resulted in two executions in seventeen years. Even supporters of the death penalty recognize that it is a financial loser. In financially strapped Orange County, Vanda Bresnan, who manages the criminal courts, remarked: "Even though I do believe in the death penalty, I wonder how long the state or county can afford it,"¹⁰⁴ she said. Defense attorney, Gary Proctor, who practices in the same county, believes that the solution will be found by cutting other services: "What I see happening is that other services provided to the taxpayer — such as libraries and parks — will be cut back. Certain people are not aware of the tradeoffs." He added: "Strong beliefs are easy enough to hold if you don't think they're coming out of your pocket."¹⁰⁵

In rural Kentucky, tax bases are small and budgets are already stretched. When an expensive capital case is about to be heard in court, the state and county often argue for weeks about who will pay. As Michael Mager, executive director of the Kentucky County Judge-Executives Association, points out, "A little rural county in Kentucky just can't deal with bills like that."¹⁰⁶

And in Connecticut, the Chief State's Attorney, John M. Bailey, echoed similar concerns: "Every dollar we spend on a capital case is a dollar we can't spend anywhere else. . . . We have to let the public know what it costs" to pursue a capital case.¹⁰⁷

Political Manipulation of the Death Penalty

Despite the overwhelming weight of evidence pointing to the unmanageable and growing costs of imposing capital punishment, politicians continue to ignore these costs in using the death penalty to appear tough on crime. This hypocrisy reached new heights with the passage of the federal crime bill. Every time this legislation was considered, the number of new death penalty crimes grew. While debate immediately before the bill's passage centered on whether the proposed crime prevention measures were too expensive, little was said about the costs that these new death penalties would bring or whether they were likely to do any good.

Ultimately, funding for crime prevention programs was cut back but the 60 new federal death penalty crimes were left intact. Unfortunately, the legacy of the death penalty will probably outlast all the other provisions of the legislation. Federal funding for new police, prisons and programs like midnight basketball will be phased out in a few years but the costs of expanding the death penalty will last for decades. Federal prosecutions in death penalty cases are likely to be even more expensive than in the states. Thousands of offenses will now be eligible for the federal death penalty. Even if only a small fraction of these cases are pursued, the costs of additional federal prosecutors, additional federal public defenders and judges will be draining.

"Even though I do believe in the death penalty, I wonder how long the state or county can afford it."

—Vanda Bresnan,
Manager of the
Criminal Courts,
Orange County (CA)

"I know of no law-enforcement professional who believes that all the death penalty provisions and new Federal crimes would affect public safety in the slightest."

—Robert
Morgenthau,
Manhattan (NY)
District Attorney

**"Like a black hole,
the death penalty
absorbs vast quanti-
ties of resources but
emanates no light."**

The federal government will be joining the states in spending millions of dollars for an occasional execution, with no effect on the real problem of crime.

Some Representatives and Senators voted in conscience against the crime bill because of its death penalty provisions. But, for the most part, politics prevailed. Philip Heymann, the former U.S. Deputy Attorney General who recently resigned from the Justice Department, commented that the entire crime debate was "so mired in politics and ideology that no one in the Government dared speak the truth about the subject." The truth, as he saw it, was that the crime bill was a deeply flawed quick fix that sounded great "for the first 15 seconds," the perfect length for a campaign ad sound bite.¹⁰⁸

Robert Morgenthau, the District Attorney for Manhattan, similarly castigated the politics behind expansion of the federal death penalty: "I know of no law-enforcement professional who believes that all the death penalty provisions and new Federal crimes would affect public safety in the slightest." The bill, he noted, "would provide no new Federal judges, prosecutors or courtrooms. That isn't surprising: the new crimes and death sentences are window dressing."¹⁰⁹

Conclusion

Recent studies of death penalty costs reinforce the existing evidence that the death penalty is becoming unmanageably expensive. Like a black hole, it absorbs vast quanti-

ties of resources but emanates no light. Nevertheless, politicians and much of the public are drawn to it in the hope of finding a quick fix to the crime problem. But as the actual costs of capital punishment become clearer, the public should be in a better position to judge the death penalty as they would other programs. If a program is highly cost intensive, given to years of litigious expense, focused on only a few individuals, and produces no measurable results, then it should be replaced by better alternatives.

Amanda Smith assisted in the preparation of this Epilogue.

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The Death Penalty Information Center is a non-profit organization serving the media and the public with analysis and information on issues concerning capital punishment. The Center prepares in-depth reports, issues press releases, conducts briefings for journalists, and serves as a resource to those working on this issue. The Center is a project of the MacArthur Justice Center.



ALASKA STATE LEGISLATURE

PLEASE ENTER INTO THE RECORD MY TESTIMONY TO THE House Finance
 COMMITTEE ON SB 52 DATED May 3, 1996
COMMITTEE NAME
BILLSUBJECT

I support the intent of this bill when dealing with an issue as controversial as capital punishment it is important to seek the input of a knowledgeable public, in this case all qualified voters. I believe the congress should know what the public wants before passing such bills.

As far as the ~~o~~ form which the question appears in I would like to suggest that the words "providing for capital punishment" be changed to indicate that capital punishment is an option and not necessarily the only option in a first degree murder trial.

SIGNED Monique A. Musick
 TESTIFIER

REPRESENTING (OPTIONAL)

P.O. Box 161 Ester AK 99725 4174-5336
 ADDRESS/PHONE NUMBER



ALASKA STATE LEGISLATURE

PLEASE ENTER INTO THE RECORD MY TESTIMONY TO THE House/Finance
 COMMITTEE ON S.B. 58/capitol punishment DATED 5/3/96
 BILL SUBJECT

As written this bill is unclear and poorly written. Many questions are brought forth while reading this bill that should be clarified before it is passed. Line five of the bill states that the legislature "should enact a law providing for capitol punishment for murder in the first degree." Does this mean that every first degree murder trial is subject to capitol punishment? Also, if this bill is to be brought forth for the voter to decide upon, the language should be simplified and the "impositions of capitol punishment that are consistent with the United States Constitution" should be explained in a manner that average citizens can comprehend.

SIGNED Emin Dynes
 TESTIFIER

myself
 REPRESENTING (OPTIONAL)

911 23rd Ave FBKS AK 99701 (907)-458-7015
 ADDRESS/PHONE NUMBER



ALASKA STATE LEGISLATURE

PLEASE ENTER INTO THE RECORD MY TESTIMONY TO THE HOUSE FINANCE
 COMMITTEE ON S.B. 52 CAPITAL PUN. DATED 5/3/96
 BILL/SUBJECT COMMITTEE NAME

As it is I do ~~not~~ feel the language of this bill is too vague. When it states that provides for "capital punishment for murder in the first degree". Does this mean that all 1st degree offenders are immediately given the death penalty or are they just given trial and then either killed or imprisoned further. Meaning that is this just to allow the death penalty to be used in Alaska. Furthermore, why would you want to pass something so you have the ability to pass something else. I mean that why would someone want to vote on something they are unsure of in order to see if they can vote on it again. Maybe I am off track but I would really like to know what exactly I'll be voting on, especially on something which carries so much importance. Please clarify for me if I am

SIGNED Joe O'Connor MISTAKEN. THANK-YOU
 TESTIFIER

MYSELF (FOR 200 PPS)
 REPRESENTING (OPTIONAL)

P.O. box 61996 FAIRBANKS AK 99706 456-8725
 ADDRESS/PHONE NUMBER

REPRESENTATIVE THERRIAULT AND MEMBERS OF THE FINAANCE COMMITTEE

PLEASE DO NOT ADVANCE SB-52 (DEATH PENALTY)

IT IS MORALLY WRONG TO KILL- WHETHER IT IS THE STATE OR ANYONE ELSE WHO DOES IT.

A DEATH PENALTY IS NOT ONLY INEFFECTIVE- IT IS VERY EXPENSIVE AND WOULD TIE UP LIMITED RESOURCES THAT WOULD BE BETTER USED TO ADMINISTER JUSTICE TO OTHER PEOPLE OF OUR STATE.

- IT HAS NOT BEEN ADMINISTERED FAIRLY- EITHER NATIONWIDE OR IN ALASKA BETWEEN 1900 - 1957. THE MAJOR DETERMINING FACTOR IN DEATH PENALTY CASES IN GEORGIA IS STILL RACE OF THE DEFENDANT AND RACE OF THE VICTIM.
- IN ALASKA FROM 1900-1957 75% OF THOSE EXECUTED WERE ALASKA NATIVES OR MINORITIES.
- NO WHITE PERSON WAS EXECUTED IN ALAASKA AFTER 1903
- I WOULD PREDICT THE FIRST DEATH PENALTY CASE IN ALASKA IS LIKLY TO COME FROM NOME OR BETHEL

ARE WE BETTER AND FAIRER TODAY THAN FROM 1900-1957? IF SO WHY DID THE UAA CRIMINAL JUSTICE CENTER DISCOVER THAT A BLACK JUVENILE DELINQUENT CHARGED WITH AN OFFENSE SPENDS, ON AVERAGE, TWICE AS LONG IN PRETRIAL DETENTION AS A WHITE YOUTH SIMILARLY CHARGED. HAVING WORKED AS AN ATTORNEY IN THE CRIMINAL JUSTICE SYSTEM FOR 21 YEARS I BELIEVE THAT STATISTIC IS NO ACCIDENT. RACIAL BIAS IS OH SO SUBTLE BUT OH SO PERVASIVE IN OUR WHOLE JUSTICE SYSTEM.

WHEN I TESTIFIED LAST YEAR ABOUT THIS ISSUE WEV SHEA, FORMER US ATTORNEY FOR ALASKA, OPPOSED THIS BILL BECAUSE HE DID NOT BELIEVE THAT THE DEPAARTMENT OF LAW HAD THE ETHICS OR THE EXPERTISE TO FAIRLY ADMINISTER SUCH A LAW HE BASED THIS IN PART ON THE COMMENTS OF DA MCNALLEY OF ANCHORAGE THAT A DEATH PENALTY COULD BE USED AS A THREAT TO INDUCE PLEAS IN MURDER CASES (AN ENTIRELY UNETHICAL ACT FOR A PROSECUTOR). I CONCUR IN HIS JUDGMENT.

PLEASE DO NOT PASS SB52

JIM CANNON, ESQ.
PO BOX 70891
FAIRBANKS , AK 99707
457-4082

Post-It™ brand fax transmittal memo 7671		# of pages • 2	
To - House Finance	From - Anch T.C.		
Co - Anch	Co - Jean		
Dept.	Phone #		
Fax # 465-2418	Fax #		

May 2, 1996

TO: Members of the House Finance Committee

Thank you for allowing me to testify before you today regarding SB 52. My name is Marietta Phillips, and I am a resident of Anchorage, in Representative Hanley's district. My address is 8962 Forest Village Drive 248-9493
anchorage

I am here to voice my vehement opposition to reinstatement of the death penalty in the State of Alaska. It's disappointing that in this day and age, we are actually continuing to execute people in this world, and we are actually considering bringing capital punishment back to the State of Alaska. Yes, it is also tragic that we are seeing the level of violent crime that we do in our society, and I'm aware that we in Alaska have one of the highest homicide rates in the country (highest per capita?). However, legalizing executions will do nothing to deter this level of crime. Just to give you a brief background of myself, I am a social worker, and have, in the past, worked with women who have been sexually assaulted. I am also a victim of a violent crime. I'm telling you this to let you know I am all too familiar with the emotional and physical scars that burden victims and their families.

Polls show that the majority of the Alaskan population supports capital punishment. Studies conducted at the national level have also shown that if people are truly educated on this issue, the numbers drop from approx. 60% to less than 30%. The population wants convicted murderers off the street - and have been falsely lead into thinking that executing them is the only way to accomplish that. If criminals were sentenced to *true life sentences without possibility of parole*, and restitution was granted to victims' families, people retreat from supporting the death penalty. I see your roles as elected officials to be multiple and diverse, along with representing the constituency comes accurate representation of the facts and issues. I hope you will take the time to educate yourselves and the public on this issue.

Since I sit before the Finance Committee, I'll start with the financial aspect of capital punishment. With the current fiscal gap the State is facing, there is no room to assume the cost of executions. It is false to think that it costs more to incarcerate than execute. Capital trials are estimated to cost between 1 - 3 million dollars more than what the cost of incarceration would be.

Regarding the issue of executing criminals as a deterrent to crime, multiple studies have proven that capital punishment is not an effective deterrent to violent crime. In the U.S. the murder rate is no higher in states that do not have the death penalty than in those that do (*Death Penalty in America*, by Bedau). In Canada, the homicide rate peaked in 1975, the year *before* the death penalty was abolished, and continued to decline for 10 years afterward. In 1987, immediately after the state of Louisiana executed eight people in that many weeks, the murder rate in New Orleans rose 16% (above paragraph from *Dead Man Walking*, by Prejean). Let's face it, executing people is about vengeance.

As a therapist who has worked with many grieving individuals, the prospect of executing the murderer of a loved one further complicates and lengthens the grieving process, contrary to what many may believe - that it enhances peace and resolution. It does not.

Sentencing a person to death is a decision process made by individuals, and therefore can never be fair and impartial. 99% of the people currently on death row in this country are poor, and do not have access to "due process" of the law. In 1972 the U.S. Supreme Court deemed capital punishment to be capricious and arbitrary. I challenge you to demonstrate how it's any different today (*Dead Man Walking*, by Prejean)

The energy and resources that are being directed at the prospect of bringing capital punishment back to our State will be better spent on other programs and factions of our society. I do not support this bill, it is my hope you will do the same.

Thank you for your time

Maureen Phelge

30 April 1996

To Representative Mark Hanley
and all House Finance Committee Members
From Marietta Phillips
8962 Forest Village Drive
Anchorage, AK 99502

I am a constituent of Rep. Hanley's and am writing to strongly urge you to hold SB 52 in committee and hold a hearing. I feel very strongly about this issue and would be more than disappointed to see the death penalty instituted in our state. I am an advocate of victims of violent crimes, and have also been a victim of an armed robbery attempt. I would rather see criminals convicted to *true* life sentences, incarceration with no chance of parole, than executions. 99% of executed criminals are minorities, or poor. The death penalty has been proven to *not* be a deterrent to crime. The cost of an execution far surmounts the cost of lifetime incarceration. Statistics also show that although the majority of the population supports capital punishment, once truly educated on this subject, that support drops from approximately 60% to below 30%. The death penalty is a violation of the Constitution's Eight Amendment. It serves us no purpose.

Thank you for your time



Marietta Phillips, M.S.W., A.C.S.W.

Post-It brand fax transmittal memo 7671 # of pages 1

To <u>House Finance</u>	From <u>Kevin</u>
Co <u>Chaim Slavov</u>	Co. <u>Arch-TC</u>
Dept.	Phone #
Fax # <u>165-2418</u>	Fax #

Kevin Cassidy
 1217 F St
 Anchorage, AK
 99501

Please read into record of SB 52 on 5/3

May 2, 1996

To: House Finance Committee
 State of Alaska.

Dear Committee,

Please kill Senate Bill 52. As a country, we are already responsible for the murder of thirty some innocent people (determined after the fact) via the death penalty. I don't want to be a party to state sponsored killing. I don't want to incur the tremendous expense of state sponsored killing. And I don't want institutions of government teaching violence as a solution to problems.

Life without parole is a fully adequate step towards dealing with violence without further promoting violence. Senate Bill 52 is a step in the wrong direction, fiscally and so many other ways.

Respectfully,
 Kevin Cassidy



Alaska State Legislature

Please enter into the record my testimony to the House FINANCE
 committee name
 committee on 52 ^{Advisory} ~~Vote~~ ^{Final} ~~Amendment~~ dated 5-3-96
 bill/subject

My objections to this proposed Bill are as follows:

- 1) Your advisory question is so general it will fail to elicit any meaningful response
- 2) If legislative judgment depends on an advisory vote on this question why not an advisory vote on every piece of legislation to be possibly enacted? Do your J-B and quit jockeying for political position through the advisory vote
- 3) The question is misleading in that it fails to provide alternatives to death such as a life sentence or life without parole. Again the vote is without involvement as to the enormous cost involved to the taxpayer
- 4) What are Federal procedures for imposing the death penalty? How could they differ from procedures implemented under our STATE constitution?

Signed: [Signature]
 Testifier

Representing (Optional)
P.O. Box 902 Kenai AK.

Address
2F3 - 31201

Phone No.



Alaska State Legislature

Please enter into the record my testimony to the House Finance Committee
committee name

committee on SB 52, dated 5/3/96
bill/subject

I would oppose an advisory vote on capital punishment for several reasons:

1) This is not a binding vote, merely advisory, why expend the funds for such a vote. How much will this cost and why an advisory vote on this issue, why not all issues before the legislature?

2) This bill elicits a vote from an uninformed public. You are asking me to make a decision, a recommendation if you will, without informing me of the ramifications of my vote?

3) What kind of Capital Punishment could be imposed? Injection? Electroution?

4) Murder in the First Degree, all convictions? all ages? Are there any mitigating factors? Aggravating factors?

5) Why are you using imposition of capital punishment consistent w/ the Federal Const. why not AK constitution? We have greater rights under AK constitution why weaken the std as such an important **issue**.

Signed: Renée WRIGHT
Testifier

ALASKAN Registered Voter
Representing (Optional)

Box 2672 KENAI, AK 99611
Address

(907)
Phone No.



Alaska State Legislature

Please enter into the record my testimony to the HOUSE FINANCE
 committee name
 committee on SB 52, dated 5/3/96
 bill/subject

I urge you to vote against the death penalty amendment, SB 52. Alaska does not need to be yet another state on the list of death penalty states. It is excessive punishment, it is not a deterrent, and it is not an efficient use of resources.

I have lived here for 2 years moving here after law school. And when I was making those decisions, I was relieved to find out that Alaska was not a death penalty state. It would be very difficult for me personally and philosophically to practice in a state with the death penalty. It is cruel & unusual punishment, excessive and a violation of Human Rights.

The death penalty is also not a deterrent. I believe studies have shown that death penalty states do not have a lower crime rate. Finally, the death penalty is not an efficient use of resources. It is an expensive law enforcement cost.

Signed: Jo Ann Chung
 Testifier

Representing (Optional)

P.O. Box 3149 Kenai

Address

(907) 283-3556

Phone No.

resources it is an expensive law enforcement cost

go far beyond cost for life

imprisonment.

Under a cost-benefit



Alaska State Legislature

Please enter into the record my testimony to the House Finance
 committee name
 committee on SB 52, dated _____
 bill/subject:

What use is this advisory vote? The public is not informed of the cost. It isn't informed regarding the limits. Why does the Alaska State legislature propose an advisory vote regarding legislation that would comport with the U.S. Constitution? Isn't it unnecessary to cite any constitution? Why would this issue be put to an advisory vote over any other proposed legislation? Is the legislature asking the public for a carte blanche? This type of advisory vote permits the legislature to abuse the political process. It permits the legislature to avoid its own responsibility for understanding the costs and consequences of its actions by using an advisory vote obtained from a completely uninformed public. It justifies its own actions. I oppose this bill because it is irresponsible, it is an unnecessary expense, because the advisory vote serves no legitimate purpose and because the general terms of the language in the vote itself is offensive to the intelligence and integrity of the individual voter.

Signed: Maxwell E. Moran
 Testifier

Representing (Optional)
PO Box 317 Kenai, Alaska 99611
 Address
262-4349
 Phone No.



Alaska State Legislature

#B 52

Please enter into the record my testimony to the House Finance Committee
 committee name
 SB 52
 committee on Capital Punishment dated 5/3/96
 bill/subject

I think instituting an Alaskan capital punishment penalty is a destructive & ill advised move. Beyond its ineffectiveness as far as deterrence, and expensive - in terms of the necessary convoluted, appeals process, to insure as few innocents are executed as possible, the fact that there have been 24 executions of proven & re-acknowledged innocent people this century should horrify any right thinking person. I draw your attention to the cases of Mr. Hernandez & Mr. Jesse Banks in Texas last year. Both executed despite considerable proof of their innocence - existing because the Supreme Court decided the procedural aspects of the convictions were intact - notwithstanding the slow accumulation of new & exonerating evidence, running during the years of appeal. Even Justice Scalia, nobody's paradigm of a free jet, liberal, has called the ~~statute~~ documented cases applications of the death penalty "inexorable & inarguable."

Signed: Barney Ryan
 Testifier Barney Ryan

Representing (Optional)
RDV 2753 HOMER 99603
 Address
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I find it hard to conceive of an argument that could justify ~~it~~ in the people's ultimate quest for the inclusion in our state's judicial system of a just institution like Capital Punishment.



TELECOPY COVER SHEET
Ketchikan Legislative Information Office
Office - (907) 225-9675 Fax - (907) 225-8546

TO: House Finance Committee
ATTN: _____ FAX: 465-2415 PHONE: 415-4929
FROM: Phoebe Newman PHONE: _____
INSTRUCTIONS: Written testimony for SB 52

SENT: Date 5/3/96 Time 3:35 pm
DISPOSAL OF ORIGINAL: Discard _____ Hold for Pickup _____
NUMBER OF PAGES: 1 (NOT counting cover sheet)
TRANSMITTED BY: June