

ALASKA LEGISLATURE

1477

HOUSE and SENATE FINANCE COMMITTEE FILES, 1995-1996



2A

Alaska Permanent Fund Corporation

FINANCIAL PROJECTIONS (in millions)

as of January 31, 1995

GROWTH OF FUND PRINCIPAL

FY	FY Begin Balance	Appropriations	Dedicated State Revenues*	Inflation-Proofing	FY End Balance	Inflation-Proofing Shortfall
78	0		54		54	
79	54		34		139	
80	139		344		483	
81	483	900	385		1,769	
82	1,769	500	400		2,969	
83	2,969	400	421	231	4,021	
84	4,021	300	368	151	4,838	
85	4,838	300	368	235	5,741	
86	5,741		323	216	6,281	
87	6,281	1,254	170	148	7,864	
88	7,864		418	303	8,585	
89	8,585		228	380	9,173	
90	9,173		287	454	9,894	
91	9,894		435	559	10,888	
92	10,888		338	477	11,703	
93	11,703	5	315	382	12,385	
94	12,385	5	210	372	12,973	
95	12,973	5	212	344	13,534	
96	13,534	5	198	324	14,561	
97	14,561	7	194	308	15,848	
98	15,848	7	185	290	16,790	
99	16,790	8	169	1,018	17,986	
00	17,985	9	160	1,089	19,243	
01	19,243	10	145	1,163	20,560	
02	20,560	11	130	1,241	21,843	
03	21,943	12	117	1,324	23,386	
04	23,396	13	108	1,410	24,825	
05	24,925	15	94	1,501	26,535	
06	26,535	16	87	1,587	28,238	
07	28,238	18	81	1,680	30,033	
08	30,033	20	78	1,807	31,838	
09	31,938	22	70	1,920	33,947	
10	33,947	24	67	2,041	36,079	

Cumulative Totals Projected:
For FY 1995-2010: 2,023 20,838

USE OF FUND INCOME

FY	Net Income	Distributions			Reserves		FY
		Inflation-Proofing	Per Capita Dividends	General Fund	Add (Delete)	FY End Balance	
78	2				1		78
79	3				7		79
80	32		12		12		80
81	150		28		28	59	81
82	368		71	\$1,000.00	71	185	82
83	471	231	108	\$388.15	110	110	83
84	530	151	175	\$331.29		203	84
85	658	235	217	\$404.00		208	85
86	1,021	218	303	\$558.28		501	86
87	1,069	148	391	\$708.19		329	87
88	789	303	424	\$828.93		52	88
89	868	380	480	\$873.18	4	44	89
90	918	454	487	\$962.83	4	(30)	90
91	1,030	559	488	\$831.34	4	(24)	91
92	1,038	477	488	\$819.84	5	54	92
93	1,228	382	532	\$948.48	5	320	93
94	1,088	372	558	\$813.90	11	151	94
95	950	344	521	\$677.00	14	65	95
96	1,814	324	486	\$308.00		288	96
97	1,737	388	475	\$753.00		390	97
98	1,917	950	448	\$530.00		512	98
99	2,087	1,018	480	\$725.00		591	99
00	2,291	1,089	508	\$748.00		687	00
01	2,502	1,163	583	\$818.00		788	01
02	2,728	1,241	628	\$883.00		848	02
03	2,971	1,324	897	\$978.00		938	03
04	3,231	1,410	773	\$1,088.00		1,034	04
05	3,510	1,501	958	\$1,180.00		1,137	05
06	3,808	1,587	948	\$1,282.00		1,248	06
07	4,130	1,680	1,044	\$1,371.00		1,388	07
08	4,475	1,807	1,148	\$1,488.00		1,488	08
09	4,848	1,920	1,263	\$1,608.00		1,840	09
10	5,243	2,041	1,388	\$1,740.00		1,783	10

48,088 20,813 12,226 \$1,837 14

REALIZED RATE OF RETURN ASSUMPTIONS:

	Nominal	Inflation	Real
FY 95-	5.49%	2.61%	3.88%
FY 96-99-	10.31%	6.00%	4.31%
FY 2000-10-	10.31%	6.00%	4.31%

* Department of Revenue Fall 1994 Low-Cost Revenue Forecast.
 ** Earnings reserve appropriated to Fund principal by the Legislature July 1, 1987.
 *** Transferred to principal from earnings reserve account per AS 37.13.145(d).
 **** Based on capital market assumptions adopted by the Trustees in March 1994.
 SENATE BILL NO. 51, BUT ASSUMES 10.31% FUTURE RATE OF RETURN AND 6% RATE OF INFLATION.



2-12

Alaska Permanent Fund Corporation

FINANCIAL PROJECTIONS (in millions)

as of January 31, 1995

GROWTH OF FUND PRINCIPAL

FY	FY Begin Balance	Appropriations	Dedicated State Revenues*	Inflation-Proofing	FY End Balance	Inflation-Proofing Shortfall
'91			54		54	
'91	54		34		139	
'01	139		344		483	
'11	483	300	385		1,769	
'21	1,769	500	400		2,969	
'31	2,969	400	421	231	4,021	
'41	4,021	300	368	151	4,838	
'51	4,838	200	368	235	5,741	
'61	5,741		323	216	5,281	
'71	5,281	1,254	170	148	7,864	
'81	7,864		418	303	8,585	
'91	8,585		228	360	9,173	
'01	9,173		267	454	9,894	
'11	9,894		435	559	10,888	
'21	9,894		435	559	10,888	
'31	11,703	5	315	362	12,385	
'41	12,385	5	210	372	12,973	
'51	12,973	5	212	344	13,534	
'61	12,768	5	200	777	13,737	
'71	12,959	5	178	733	13,929	
'81	13,138	5	183	743	14,087	
'91	13,299	5	147	752	14,246	
'01	13,439	7	128	780	14,379	
'11	13,565	7	113	787	14,484	
'21	13,674	7	98	774	14,580	
'31	13,767	3	82	779	14,679	
'41	13,848	3	70	783	14,753	
'51	13,918	3	58	787	14,817	
'61	13,978	3	50	791	14,874	
'71	14,032	3	43	794	14,928	
'81	14,081	3	38	787	14,973	
'91	14,125	10	34	798	15,019	
'01	14,165	10	29	801	15,084	
Cumulative Totals Projected:						
For FY 1995-2010: 1,838 11,983						

USE OF FUND INCOME

Net Income	Distributions			Reserves		FY
	Per Capita Dividends	Inflation-Proofing	General Fund	Add (Delete)	FY End Balance	
2						'91
3						'91
32	12					'01
150	28					'11
368	71	\$1,000.00				'21
471	108	\$388.15	231			'31
530	175	\$331.28	151			'41
558	217	\$404.00	235			'51
1,021	303	\$356.28	216			'61
1,069	391	\$708.19	148			'71
789	424	\$828.83	303			'81
368	480	\$872.18	380			'91
916	487	\$962.83	454			'01
1,030	488	\$931.34	559			'11
1,030	488	\$915.84	559			'21
1,228	532	\$948.48	362			'31
1,098	558	\$983.90	372			'41
950	521	\$872.00	344			'51
1,522	487	\$782.00	777			'61
1,584	422	\$878.00	733			'71
1,610	378	\$578.00	743			'81
1,661	381	\$574.00	752			'91
1,712	378	\$588.00	780			'01
1,784	397	\$575.00	787			'11
1,814	417	\$584.00	774			'21
1,864	437	\$812.00	779			'31
1,912	458	\$830.00	783			'41
1,960	478	\$848.00	787			'51
2,008	488	\$888.00	791			'61
2,062	518	\$881.00	794			'71
2,088	538	\$887.00	797			'81
2,143	558	\$711.00	799			'91
2,188	578	\$728.00	801			'01
28,820	7,426	\$10,580.00	11,983	14		

REALIZED RATE OF RETURN ASSUMPTIONS:

	Nominal	Inflation	Real
FY 95:	5.49%	2.51%	3.88%
FY 98-99:	10.31%	5.00%	4.31%
FY 00-2010:	10.31%	5.00%	4.31%

Constant/Real dollars

In times of any inflation, the value of the dollar erodes over time. Adjusting future nominal amounts to constant 1995 dollars removes the effects of inflation from the future projections.

* Department of Revenue Fall 1994 Low-Cost Revenue Forecast.
 ** Earnings reserve appropriated to Fund principal by the Legislature July 1, 1987.
 *** Transferred to principal from earnings reserve account per AS 37.13.145(d).
 **** Based on capital market assumptions adopted by the Trustees in March 1994.
 SENATE BILL NO. 51, BUT ASSUMES 10.31% FUTURE RATE OF RETURN AND 6% RATE OF INFLATION; IN REAL 1995 \$\$.



2 B

Alaska Permanent Fund Corporation

FINANCIAL PROJECTIONS (in millions)

as of January 31, 1995

GROWTH OF FUND PRINCIPAL						USE OF FUND INCOME								
FY	FY Begin Balance	Appropriations	Dedicated State Revenues*	Inflation-Proofing	FY End Balance	Inflation-Proofing Shortfall	Distributions			Reserves		FY		
							Net Income	Inflation-Proofing	Per Capita Dividends	General Fund	Add (Delete)		FY End Balance	
81	0		34		34		2			1		81		
91	34		34		139		3			7		79		
101	139		344		433		12			12		301		
111	483	500	385		1,769		150	28		28	59	311		
121	1,769	300	400		2,969		368	71	\$1,000.00	71	185	244	321	
131	2,969	400	421	231	4,021		471	231	108	\$388.15	110	110	354	331
141	4,021	300	368	151	4,838		530	151	175	\$331.29	203	557	341	
151	4,838	300	368	215	5,741		558	215	217	\$404.00	208	763	351	
161	5,741		323	216	6,281		1,021	216	303	\$556.26	501	1,264	361	
171	6,281	1,264	170	148	7,864		1,069	148	391	\$708.19	529	529	371	
181	7,864		418	303	8,585		789	303	424	\$826.93	62	591	381	
191	8,585		228	360	9,173		668	360	460	\$873.16	4	44	535	391
201	9,173		257	454	9,894		918	454	487	\$952.63	4	(30)	605	301
211	9,894		435	559	10,888		1,030	559	489	\$931.34	4	(24)	581	311
221	10,888		338	477	11,703		1,036	477	488	\$915.84	5	54	645	321
231	11,703	5	315	362	12,385		1,228	362	532	\$948.48	5	320	965	331
241	12,385	5	210	372	12,973		1,098	372	556	\$983.90	11	151	1,117	341
251	12,973	5	212	344	13,534		950	344	521	\$877.00	14	65	1,182	351
261	13,534	9	198	548	14,290		1,814	549	524	\$858.00	532	1,714	961	361
271	14,290	10	194	579	15,073		1,754	579	535	\$858.00	529	2,343	971	371
281	15,073	11	185	610	15,879		1,907	610	543	\$848.00	743	3,086	981	381
291	15,879	12	199	642	16,702		2,075	642	613	\$840.00	308	3,896	991	391
301	16,702	13	160	675	17,550		2,253	675	678	\$1,020.00	887	4,782	01	401
311	17,550	15	145	708	18,417		2,441	708	747	\$1,102.00	971	5,753	11	411
321	18,417	16	130	742	19,305		2,640	742	822	\$1,190.00	1,060	6,813	21	421
331	19,305	18	117	777	20,217		2,852	777	903	\$1,282.00	1,155	7,968	31	431
341	20,217	20	108	813	21,155		3,077	813	989	\$1,378.00	1,258	9,224	41	441
351	21,155	22	94	850	22,121		3,315	850	1,081	\$1,479.00	1,363	10,587	51	451
361	22,121	24	87	888	23,120		3,568	888	1,178	\$1,588.00	1,479	12,066	61	461
371	23,120	26	81	928	24,158		3,839	928	1,283	\$1,698.00	1,502	13,668	71	471
381	24,158	29	78	988	25,229		4,128	988	1,395	\$1,818.00	1,734	15,401	81	481
391	25,229	32	70	1,012	26,342		4,432	1,012	1,514	\$1,938.00	1,875	17,278	91	491
401	26,342	35	67	1,058	27,501		4,758	1,058	1,641	\$2,072.00	2,025	19,301	101	501
Cumulative Totals Projected:							45,803	12,143	14,967	\$20,542	14			

REALIZED RATE OF RETURN ASSUMPTIONS:

	Nominal	Inflation	Real
1995:	5.49%	2.51%	3.88%
1996 - 99:****	10.31%	4.00%	6.31%
2000 - 10:	10.31%	4.00%	6.31%

* Department of Revenue Fall 1994 Low-Case Revenue Forecast.

** Earnings reserve appropriated to Fund principal by the Legislature July 1, 1987.

*** Transferred to principal from earnings reserve account per AS 37.13.145(d).

**** Based on capital market assumptions adopted by the Trustees in March 1994.

SENATE BILL NO. 51, BUT ASSUMES 10.31% FUTURE RATE OF RETURN AND 4% RATE OF INFLATION.



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Alaska Permanent Fund Corporation

FINANCIAL PROJECTIONS (in millions)

As of January 31, 1995

GROWTH OF FUND PRINCIPAL

FY	FY Begin Balance	Appropriations	Dedicated State Revenues*	Inflation-Proofing	FY End Balance	Inflation-Proofing Shortfall
93			54		54	
94	54		54		109	
95	109		244		353	
96	353	300	285		938	
97	938	300	400		2,969	
98	2,969	400	421	231	4,021	
99	4,021	300	368	151	4,838	
00	4,838	300	368	235	5,741	
01	5,741		323	216	6,281	
02	6,281	1,254	170	148	7,864	
03	7,864		418	203	8,583	
04	8,583		228	260	9,173	
05	9,173		257	454	9,884	
06	9,884		435	559	10,888	
07	9,884		435	559	10,888	
08	11,703		315	362	12,385	
09	12,385		210	372	12,973	
10	12,973	5	212	344	13,534	
11	13,013	9	203	328	13,740	
12	13,211	9	183	508	13,938	
13	13,400	10	173	515	14,117	
14	13,574	10	158	522	14,277	
15	13,728	11	139	528	14,425	
16	13,870	11	127	533	14,558	
17	13,995	12	110	538	14,670	
18	14,106	13	96	542	14,773	
19	14,204	14	83	548	14,863	
20	14,292	15	71	549	14,944	
21	14,369	15	51	552	15,018	
22	14,441	16	54	555	15,087	
23	14,507	17	48	557	15,152	
24	14,569	18	44	560	15,212	
25	14,627	20	39	562	15,270	

USE OF FUND INCOME

FY	Net Income	Distributions			Reserves		FY
		Dividends	Per Capita Dividends	Inflation-Proofing	General Fund	Add (Delete) Balance	
93	2					1	93
94	3					7	94
95	32	12				12	95
96	150	28				28	96
97	268	71	\$1,000.00			71	97
98	471	108	\$388.15	231	110	110	98
99	530	173	\$331.29	151		223	99
00	558	217	\$404.00	235		228	00
01	1,021	303	\$358.28	216		501	01
02	1,089	391	\$708.19	148		529	02
03	789	424	\$328.93	303		52	03
04	968	480	\$873.18	360	4	44	04
05	916	487	\$852.83	454	4	(30)	05
06	1,030	488	\$331.34	559	4	(24)	06
07	1,030	489	\$915.84	559	4	(24)	07
08	1,226	532	\$948.48	382	5	320	08
09	1,098	558	\$983.80	372	11	151	09
10	950	521	\$877.00	344	14	65	10
11	1,352	503	\$828.00	528		512	11
12	1,522	496	\$791.00	508		582	12
13	1,698	483	\$754.00	515		661	13
14	1,774	524	\$804.00	522		681	14
15	1,851	557	\$838.00	528		729	15
16	1,929	581	\$871.00	533		768	16
17	2,008	625	\$904.00	538		808	17
18	2,084	680	\$837.00	542		844	18
19	2,162	686	\$888.00	548		882	19
20	2,240	730	\$988.00	549		921	20
21	2,318	783	\$1,030.00	552		980	21
22	2,398	801	\$1,081.00	558		1,000	22
23	2,478	838	\$1,081.00	557		1,041	23
24	2,560	874	\$1,120.00	560		1,083	24
25	2,642	911	\$1,151.00	582		1,125	25
10-25	12,281	10,573	\$15,022	8,438	14		10-25

Cumulative Totals Projected:

For FY 1995 - 2010: 1,798 8,438

12,281 10,573 \$15,022 8,438 14

REALIZED RATE OF RETURN ASSUMPTIONS:

	Nominal	Inflation	Real
FY 95:	5.49%	2.51%	3.38%
FY 96 - 99:	10.31%	4.00%	5.31%
FY 00 - 2010:	10.31%	4.00%	5.31%

* Department of Revenue Fall 1994 Low-Case Revenue Forecast.

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**** Based on capital market assumptions adopted by the Trustees in March 1994.

SENATE BILL NO. 51, BUT ASSUMES 10.31% FUTURE RATE OF RETURN AND 4% RATE OF INFLATION; IN REAL 1995 \$\$.

Constant/Real dollars

In times of high inflation, the value of the dollar erodes over time. Adjusting future nominal amounts to constant 1995 dollars removes the effects of inflation from the future projections.

SENATE COMMITTEE REPORT
First Committee of Referral

JMR DATE: 1/25/95

FURTHER: Finance

Date of 5-Day Notice: 2-9-95
 (in accordance with Uniform Rule 23)

DATE TURNED INTO OFFICE: 3-2-95

State Affairs Committee considered SENATE BILL NO. 51

"~~An Act~~ relating to income of the permanent fund; and providing for an effective date."

and recommends:

FER

- be replaced with _____ CS _____
- adopt previous _____ CS _____
- attached amendment(s)
- adopt Letter of Intent by _____ Committee
- further referral to the _____ Committee

Senate Bill:
 same title
 new title
 House Bill:
 technical change
 new: SCR# _____

SIGNING DO PASS	DP	OTHER RECOMMENDATIONS	NR	DNP	AM
		<i>Loren A. Leman</i>	✓		
		<i>(1) David J. Wiley</i>	✓		
		<i>Robert Demarest</i>	✓		
		<i>Richard E. Hood</i>	✓		
CHAIR:		<i>Best Thomas</i>	✓		

NEW FISCAL NOTE(S):

Department Date Zero Fiscal

REVENUE	3/13	✓	

PREVIOUS FISCAL NOTE(S):*

Department Date Zero Fiscal

APPROPRIATION -- no fiscal note

*include fiscal notes accompanying Governor's bill

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
Western Legislative Forestry Task Force



Senator Robin L. Taylor

State Capitol
Juneau, Alaska 99801-1182
907-465-3873
Fax: 907-465-3922

352 Front Street
Ketchikan, Alaska 99901
907-225-8088
Fax: 907-225-0713

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 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

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

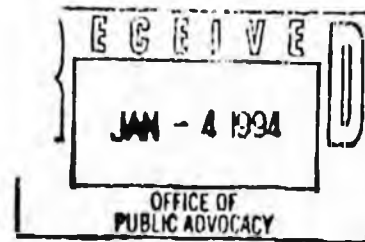
talk of capital punishment. When some of these politicians are successful, the death penalty gets implemented or expanded and the people begin to pay the high costs. Somewhere down the road there may be an execution, but the crime rate continues to increase. Politicians do the people a disservice by 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.

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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. Taking 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.

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.	Offense	Charge	Arrest	Convict	Probation	Parole	Life	Death	Total
102044	DROPPED	187a	1	1	10	0	2	0	13
	10 penalty	211	1	1	10	0	2	0	13
100821	DROPPED	187(a)	2	2	23	0	2	0	27
		044-811	2	2	23	0	2	0	27
		211	1	1	0	0	0	0	2
180783	DROPPED	187a	1	1	16	40	19	2	78
		408	1	1	0	0	0	0	2
		211	1	1	0	0	0	0	2
173659	DROPPED	187a	1	1	12	24	0	4	41
		261(D)	1	1	12	24	0	4	41
		288(C)	1	1	0	0	0	0	2
188418	DROPPED	187a	1	1	13	17	0	12	42
		044-211	1	1	13	17	0	12	42
188348	DROPPED	187a	2	2	18	14	3	4	39
		209B	1	1	18	14	3	4	39
		207a	1	1	0	0	0	0	2
		211	1	1	0	0	0	0	2
		207a	1	1	0	0	0	0	2
		207a	1	1	0	0	0	0	2
187887	DROPPED	187a	2	2	32	36	8	17	93
		188,1	1	1	32	36	8	17	93
420010	DROPPED	187a	2	2	32	30	21	7	92
		211	2	2	32	30	21	7	92
187891			1,4	1,1	19,6	28,5	0,0	0,0	48,1
			1,4	1,1	19,6	28,5	0,0	0,0	48,1
									\$163,490.21
									\$160,958

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	\$73,250.00
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 No.	Offense	Victim	Perpetrator	Arrested	Convicted	Years in Prison	Years on Parole	Years on Probation	Years on Community Control	Years on House Arrest	Years on Intensive Supervision	Years on Electronic Monitoring	Years on Restorative Justice	Years on Other	Total Years	Cost
9448	DROPPED	Thompson, Rodney	1878	1	1	19	14	14	10	6					64	\$44,180.00
		Whitehurst, Randy	644-211	1	1											
			211	1	1											
8348	DROPPED	Quint, Guile	1878	1	1	38	13	14	2	6					73	\$228,411.62
		Amundson, Buena	2078	1	1											
			2078	1	1											
			211	1	1											
			2074	1	1											
			2078	1	1											
32841	DROPPED	Washington, Frank	1878	1	1	22	6	10	1	2					41	\$28,607.90
		James	811	1	1											
7487	DROPPED	Perduway, Urubce	1878	1	1	48	32	29	8	17					134	\$87,273.87
			182.1	1	1											
8018	DROPPED	Fordus, Arden	1878	2	2	18	32	20	21	7					100	\$183,490.21
			211	2	2											
121887	DROPPED	Sims, Mark	1878	1	1	18	10	18	18	5					79	\$100,844.26
			211	2	2											
			644-211	1	1											
			644-1878	1	1											
23724	DROPPED	Morales, Orman	1878	2	2	25	18	46	4	6					101	\$140,920.68
			644-1878	1	1											
18728	DROPPED	Turner, Robert	1878	1	1	13	18	40	18	2					91	
			488	1	1											
			311	1	1											
20721	DROPPED	Andrews, Charles	1878	1	1	27	12	24	0	4					47	
		Kernesh	261(2)	1	1											
			268(C)	1	1											
1748	DROPPED			1.4	1.1	28.7	17.8	30.8	9.9	8.0				95.9	\$78,273.00	

418 Criminal Court Numbers 1878 = conspiracy, 1878 = in dog murder, 207 = attempted kidnap, 208 = kidnap for ransom, 211 = robbery, 244 = assault w/ deadly weapon, 248 = assault, 261 = rape, 267 = forcible rape, 268 = attempted X

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 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

STATE OF ALASKA
1996 LEGISLATIVE SESSION

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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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)	SUBTOTAL	<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	53.6
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	\$ <u>18.0</u>
	SUBTOTAL FY 99	\$ 672.0
	FY 99 CONTINUING COSTS	<u>\$1020.2</u>
	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

FISCAL NOTE

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1996 LEGISLATIVE SESSION

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

STATE OF ALASKA
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(JUD)
 (S) Publish Date: 3/28/96

Revision Date: March 18, 1996 Dept. Affected: Public Safety
 Title: Capital Punishment for Murder BRU: Alaska State Troopers
 Component: Detachments
 Sponsor: Senator Taylor
 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)					
	FY 97	FY 98	FY 99	FY 00	FY 01	FY 02
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	FY 97	FY 98	FY 99	FY 00	FY 01	FY 02
Full-Time						
Part-Time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

No fiscal impact.

Prepared by: C. S. Christensen III, Staff Counsel *CS* Phone: 264-8228
 Agency: Alaska Court System Date: 03/25/96
 Approved by: Arthur H. Snowden, II, Administrative Director *AS* 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 ()					
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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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