CLOSING DEATH ROW WOULD SAVE STATE $90 MILLION A YEAR

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A MATTER OF LIFE AND DEATH

Second of Three Parts

--If California's death penalty law were abolished tomorrow, taxpayers could save $90 million a year. It now costs the state much more to attempt to execute someone than to lock the person up for life without parole. If California resumed executions today at its historical rate of six a year, the total costs of having capital punishment -- defense and prosecution fees, court costs and incarceration on death row -- would come to at least $15 million per execution, according to figures compiled by The Bee.

On the other hand, it costs about $930,240 to imprison an inmate for life, based on an average life expectancy of 40 years in prison, according to figures supplied by prison officials.

Eleven years ago, California re-enacted the death penalty. Since that time, prosecutors have filed death-penalty charges against more than 2,000 defendants, according to the California Appellate Project, which finds attorneys to handle appeals for death-row clients.

But while Californians clamor for fresh executions, the state's current death-penalty law has so many protections built into it that it's nearly impossible to execute someone who has a good lawyer.

Earlier this year, 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 Howe.

But in California, the state Supreme Court spends $3.6 million a year on experienced death-penalty defense lawyers to make sure accused murderers get a fair shake.

The investment has paid off. There is no evidence that California has executed an innocent person this century, according to a recent Stanford Law Review study.

But a review of thousands of pages of court documents, coupled with dozens of interviews with prosecutors, defense attorneys, law-enforcement experts and court officials, reveals an expensive capital-punishment system clogged at every level.

Gov. Deukmejian said costs are secondary to the government's need to protect the public from murderers.

""The victim of a murder has lost everything, and his family also suffers a great loss," Deukmejian said.
"The costs of crime and the costs of punishing criminals both carry a high price tag."

To help ease the financial burden created by death penalty trials, California spends $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.

But despite this infusion of state funds, many financially strapped smaller counties still can't afford to prosecute complicated death-penalty cases, district attorneys said.

Some small counties have only one prosecutor with little or no experience in death-penalty cases; no investigators; a single Superior Court judge; and not enough unbiased people to qualify as potential jurors.

Other criminal cases are delayed for years while death-penalty cases are decided. Ironically, Sierra County has had to cut police services to pick up the tab.

For prosecutors, taking on a death-penalty case is a high-stakes gamble with low odds of success. Only one in 10 capital cases filed in California results in a death verdict, according to the California Appellate Project.

Every death verdict is automatically appealed to the California Supreme Court, which now spends more than half its time reviewing death cases, experts noted. Nearly 200 death cases are currently under review by the high court, which gets about 30 new such cases each year.

The current California Supreme Court, headed by Chief Justice Malcolm Lucas, is deciding death cases at twice the rate of the previous court headed by Rose Bird.

But even at the current court's accelerated pace, it will be impossible to erase the backlog. The Supreme Court, which has more than 400 criminal and civil cases pending, is reviewing ways to speed up its work; one proposal is to hire a pool of lawyers to work exclusively on death-penalty cases for the court.

Only 14 inmates on San Quentin's death row have had their verdicts affirmed by the California Supreme Court. Those cases have kicked around the courts for an average of eight years. They have cost the taxpayers an average of $1.7 million each, according to information compiled by San Quentin information officer Dave Langerman, and the meter is still running.

State officials said the case of Earl Lloyd Jackson, convicted of murdering two elderly Los Angeles women in 1977, has already cost more than $5 million.

"The cost of a death-penalty case could range from $750,000 to -- the sky's the limit," said Deputy Attorney General Michael Wellington. His boss, Chief Assistant Attorney General Steve White, estimated that each death-penalty case cost at least $1 million to prosecute so far at both the trial and appellate levels.

The prosecution of Robert Alton Harris -- a seemingly open-and-shut case that included six confessions -- has dragged through the court system for 10 years. Harris, considered the most likely person to be executed next in California, was convicted in 1979 of murdering two youngsters to steal their car for a robbery.

The case "symbolizes the people's efforts over the last 15 years to establish a working, valid capital-punishment law," said Deputy Attorney General Michael Wellington. "We don't have an execution date yet. I can't even say we've got an execution date in sight."

Defenders must be paid
Prosecutors and defense attorneys alike agree that California's death penalty law, as a practical matter, doesn't work.

""You're not getting your money's worth," said Michael Millman, director of the California Appellate Project. ""It's true that the money could be spent on AIDS research or a lot of things, but the worst thing about capital punishment is that it's an irrelevant diversion from the problems of society. The ethos is, we will feel better if we kill the SOB rather than taking the money and using it to prevent the causes of violent crime."

Chief Assistant Attorney General White also expressed dissatisfaction with the capital-punishment system. ""We have the worst of all possible worlds: a society that has the death penalty as a social and moral judgment and then doesn't have the character to carry it out," he said.

Wellington favors a law that would force a defendant to make all his legal challenges at trial instead of dragging out the issues through a seemingly endless series of appeals the way Harris did. ""If you give them (Harris' attorneys) nine more years, they'll think up other issues. There's never going to be a time that imaginative defense counsel runs out of issues," said Wellington."

Gov. Deukmejian and many prosecutors claim that the removal of Chief Justice Rose Bird and Associate Justices Cruz Reynoso and Joseph Grodin in 1986 will speed a condemned man's trip to the gas chamber. But even Southern states, which have managed to sufficiently speed up the legal process so that executions now take place regularly, require an average of seven years to execute someone from the date of his arrest, Millman said.

Because ""death is a different kind of punishment from any other," in the words of the U.S. Supreme Court, death-penalty cases must be tried differently from other murder cases. In California, defendants of capital cases are entitled to not one but two defense attorneys at public expense during the trial stage. Taxpayers also pay for psychiatrists, forensic specialists and other expert witnesses for the defense.

San Francisco Public Defender Jeff Brown said a typical death-penalty defense costs an additional $25,000-$50,000 for a special investigation of the case; and $16,000 for psychiatrists or other expert witnesses."

Months -- and sometimes years -- go by before the actual trial starts. Potential jurors must be questioned individually to probe their personal biases and feelings on capital punishment. Jury selection routinely takes six weeks or more.

Death-penalty trials are often stalling by dozens of pre-trial maneuvers: a change of venue because of blanket pre-trial publicity; a community attitude survey; suppression of evidence or a confession; requests for release of additional evidence or exclusion of witnesses; motions for a dismissal or a new trial.

Michael Burt, a San Francisco deputy public defender, said defense attorneys and prosecutors battled seven months over one pre-trial motion concerning the admissibility of bloodstained evidence during a recent trial in San Diego.

Once a defendant is found guilty of murder, a special penalty trial is held to decide whether to impose death or life without possibility of parole.

The added time and expense of capital cases are enough to discourage some small counties from seeking the death penalty, said Assistant Attorney General White.

""I'm talking to district attorneys, some of them have taken the view that it is so expensive and so unlikely to get a death judgment that they will simply seek life imprisonment without possibility of parole," White said.

Marin County recently signed a novel agreement with six defense attorneys hired to represent three San
Quentin inmates accused of conspiring to murder a correctional officer -- a crime punishable by death. Each attorney will receive a flat fee of $225,000, said court administrator Howard Hanson.

Hanson acknowledged that the cap on attorney fees could jeopardize the defendants' right to a fair trial if the trial costs far exceed the cap. But Hanson said that the defendants agreed to the contract. If the trial lasts two years as projected, he said, defense attorneys will receive the equivalent of $75 an hour.

But San Francisco Deputy Public Defender Burt said that if the trial lasts longer than expected, "they could end up making $2.25 an hour."

The real battle is joined before the state Supreme Court, which routinely takes five years to uphold or overturn a death verdict. By then, virtually no defendants can afford their own lawyer, so the court assigns them a new attorney, at taxpayers' expense. A typical death-penalty appeal consumes about 1,000 attorney hours a year -- about $62,000 -- according to the California Judicial Council.

Other states have decided that the expense of the death penalty outweighs any benefits. Last year, the Kansas Legislature voted down the death penalty -- even though Gov. Mike Hayden campaigned on a promise to bring it back and polls indicated that 80 percent of the population supports it.

A coalition of Kansas death-penalty opponents estimated that capital punishment would cost Kansas taxpayers in excess of $50 million by the time a 100-inmate death row had been built and the first person was executed.

Imperial County's lesson

In California, county officials who balk at the high price of capital trials could learn a lesson from Imperial County, which in 1982 refused to pay $13,000 for the defense of a man it was trying to send to the gas chamber.

Instead of saving money, Imperial County ended up spending $500,000, only to see accused murderer Robert "King Kong" Corenevsky go free more than five years after he was arrested and charged with the murder and robbery of a Manhattan Beach jeweler in a Calexico motel room.

The county budget officer also spent three days in jail for refusing to pay the bill.

Imperial County supervisors argued at the time that the Corenevsky case could bankrupt the county and said they'd "be damned" if they'd pay for a murderer's defense. (Corenevsky's past included a murder conviction in Mexico).

This brazen policy ended up costing Imperial a bundle. Superior Court Judge William Lehnhardt reduced the charges and took away the county's right to seek the death penalty -- which meant the state no longer had to reimburse the county for defense costs.

The case went all the way to the California Supreme Court, which threatened to send troops to the county auditor's office to collect.

Corenevsky's lawyer, Stephen Feldman, said the case "is an allegory for what happens in a system that doesn't fairly deliver services to a man the state is trying to kill. This innocent man could have been killed because the state illegally refused to pay for his defense."

County Supervisor James Bucher, a former judge, agreed that the death penalty system is a failure, but for different reasons: "I don't believe justice has much to do with the court system any more; it's all dollars and cents and gamesmanship. There should be limits on what people are expected to pay for these bastards who get themselves in trouble. We pay for his doctors, his housing, his attorney and he's a
goddamned convicted killer."

Corenevsky commented, ""If you believe they should have the death penalty in California, you believe in Santa Claus. It's never gonna happen because it's never gonna be fair. Jesus Christ himself couldn't have had a fair trial in Imperial County."

LEGAL TIME IS MONEY Death-penalty trials take an average of two years from arraignment to verdict -- three times longer than other murder cases, The Bee found. And the longer the case, the more margin for error and grounds for appeal, said prosecutors and defense lawyers.

Deaths-penalty trials cost an average of six times more than other murder trials -- $592,500 compared to $93,000, based on an analysis of average daily court costs.

There are 328 capital trials in progress in California. If the cases follow the normal course, approximately 175 of them will be decided by juries, 70 will result in life in prison or death for the defendant and 35 defendants will wind up on death row.

Since death-penalty trials cost more and last longer than standard murder cases -- about $7,500 a day for 79 days instead of $6,200 a day for 15 days for a standard murder case -- California taxpayers spend an extra $78 million a year on death-penalty trials.

Additionally, each year the state spends an extra $2.8 million for special housing of death-row inmates, another $1.8 million to prosecute death row inmates on appeal, and yet another $7.6 million defending condemned prisoners on appeal.

Add it all up and you get $90 million a year spent on the death penalty.

This doesn't include the cost of federal appeals. ""The first federal appeal and the first habeas corpus petition consume an average of 1,000 hours of attorney time, or $75,000 to the taxpayers,"" Millman said.

No one knows how many people will be executed in California in a given year, but when the state was executing inmates, it averaged about six per year.

In Texas, where more murderers are executed than in any other state, about five inmates have been given lethal injections each year since 1982.

Thus, if California continues as expected to pursue the death penalty at a cost of $90 million per year -- and if the state moves at its historical rate of six per year -- it will cost taxpayers about $1.5 million per execution.

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