The hidden death Tax:

The Secret Costs of Seeking Execution in California

A report by the ACLU of Northern California

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Executive Summary

While it is clear that California taxpayers spend hundreds of millions of dollars every year seeking execution, far more than any other state, it is unclear just how much money is being spent. Costs to state taxpayers incurred at the post-conviction level may be readily identified; but potentially millions of dollars spent by counties at the trial level remain hidden from public view. This report identifies the known costs at the state level and analyzes for the first time records of actual trial expenses, revealing some of these hidden costs to counties.

California taxpayers pay at least $117 million each year at the post-conviction level seeking execution of the people currently on death row, or $175,000 per inmate per year. The largest single expense is the extra cost of simply housing people on death row, $90,000 per year per inmate more than housing in the general prison population. Executing all of the people currently on death row or waiting for them to die naturally—which will happen first—will cost California an estimated $4 billion more than if all of the people on death row were sentenced to die of disease, injury or old age.

Much more difficult to quantify is the cost of death penalty trials to counties. Records from a sample of trials in which actual costs were recorded reveal that in one case, a death penalty trial in California cost taxpayers at least $10.9 million. These records also reveal the substantial impact death penalty cases have on local prosecutors' offices and law enforcement agencies. In one death penalty case, the staff of the District Attorney's Office spent more than 20,000 hours working on the case. District attorneys report hiring additional attorneys, investigators and support staff as a result of the increased work load. These detailed records also reveal both questionable costs (like more than $900 in dry cleaning charged to the county in one case) and efforts to reduce costs (like negotiating to pay an expert 1/5 the usual rate).

These records support the conclusion that death penalty trials cost at least $1.1 million more than non-death penalty trials. Being very conservative, California counties likely spend at least $22 million more per year seeking execution than they would seeking death in prison by other means.

In total, considering both state and county expenses, California likely spends at least $139 million each year in pursuit of execution. That money would pay the salaries of more than 2,500 experienced teachers, or 2,250 new CHP officers.

Little is currently being done to track the details of expenses at the trial level in cases seeking execution. But the records reviewed here demonstrate that the costs can be tracked and that valuable information is revealed when they are. All that is required is the will to do so.

Introduction

Comprehensive studies of the economic costs of the death penalty in other states have demonstrated again and again that state execution is substantially more expensive than sentencing people to die in prison of disease, injury or old age.[1] One of the most respected, a 1993 Duke University study, concluded that North Carolina taxpayers were paying an additional $2.16 million per execution beyond the costs of permanent imprisonment.[2] Another study found that enforcing the death penalty was costing Floridians an additional $51 million a year on average, or $24 million per execution.[3] In Texas, it has been estimated that the death penalty costs an additional $2.3 million per case.[4]

Although it is clear that California spends more on the death penalty than any other state—at least $10.9 million on one trial discussed in this report—the costs are largely hidden from public view and never have been tallied in a thorough or systematic way. California has by far the largest death row in the country. Since the death penalty was reinstated in 1977, California has sentenced more than 800 people to death.[5] Currently, there are 669 people on death row; yet, only 13 people have been executed in California since 1977.[6] More than 130 cases have been reversed in that time,[7] and six of the defendants were freed because of substantial evidence that they were in fact innocent.[8] During the same period, 59 people sentenced to execution have died of other causes, more than four times the number that have been executed.[9]

As San Francisco District Attorney Kamala Harris has said, the death penalty "drains millions of dollars from efforts that more effectively protect public safety and promote justice."[10] With limited resources to invest in public safety, it is appropriate to ask: How much are we spending in pursuit of state execution, and could that money be better spent on other public safety programs such as community policing? This inquiry is particularly critical now, as the

state faces unprecedented budgetary shortfalls, exceeding $16 billion, and as California Chief Justice Ronald George and Ninth Circuit Judge Arthur Alarcon call for even more money to be spent on California's failing death penalty.

Surprisingly, no official in the state knows how much California taxpayers spend in pursuit of execution. Some costs of California's death penalty system can be readily identified, but some remain unknown. This is particularly true for the costs of death penalty trials. No effort is currently being made to track and record those costs.

This report summarizes what is known and unknown about the costs of the death penalty to California taxpayers. **Section I** explains why state execution is so much more expensive than sentencing people to die in prison from other causes. **Section II** reviews the available research on the costs of California's death penalty. This section also reviews records of the actual costs incurred in a sample of death penalty trials in California, data not previously considered by researchers. These records, which the ACLU of Northern California obtained and analyzed, reveal the substantial impact death penalty cases have on prosecutors' offices and on law enforcement. **Section III** provides recommendations for reforms, including how other unknown costs could be consistently tracked going forward to facilitate informed policy decisions. Given that state execution is one of the most solemn and important governmental functions, and given the immense amount of money at stake, the reforms recommended in Section III are critical to ensuring that all Californians have the information they need to assess whether capital punishment is worth the costs.

Section I.

Why Does the Death Penalty Cost More?

Death penalty cases cost more than other murder cases because state execution is fundamentally different from sentencing someone to die in prison of other causes. When innocent people are executed, those mistakes cannot be remedied. More than 125 innocent people have been freed from death row across the U.S. since 1973.[11] Growing evidence suggests that several innocent people have been executed just since 1990.[12] In addition, race and poverty have significantly affected who is sentenced to execution in this country. As a result, in 1976, the United States Supreme Court specifically held that the Constitution requires additional precautions before a state may carry out an execution.[13] When the death penalty was reinstated in California in 1977, we had no idea how much those precautions would cost.

The additional expenses accrue from the beginning of the case to the end. Unlike other murder cases, death penalty cases typically have two trials: one to decide whether the defendant is innocent or guilty and one to decide whether a defendant found guilty should be executed. In addition, everyone involved in a death penalty case must be specially "qualified" as capable and experienced, including the defense attorneys, the judge and the jury. Because nearly every defendant facing the death penalty is too poor to hire his or her own attorney, taxpayers almost always end up paying for all of these added expenses.

Little attention has been given to the impact of death penalty cases on prosecutors' offices and on local law enforcement. Even Police Chief James Abbott of West Orange, N. J., who served on the New Jersey Death Penalty Study Commission, was surprised when "[t]he prosecutors who sat on the commission with [him] confirmed through direct experience that capital cases deplete their resources more than any other type of case."[14] Death penalty cases

consume much additional prosecution and law enforcement staff time because much additional work must be done. Prosecutors must investigate and prepare aggravating evidence for presentation in the sentencing phase of the trial, respond to mitigating evidence, litigate many more motions, and spend significantly more time in court than they would in a non-death penalty case. In addition to these staff costs, prosecutors, like defense attorneys, hire experts and consultants, including consultants to assist with jury selection and witness preparation. Sheriff's departments must transport defendants and must provide additional courtroom security for lengthy death penalty trials, extra expenses that add up quickly. Indeed, a study of the federal system found that prosecution costs were 67 percent higher than defense costs in death penalty cases. The same study found that defense costs in death penalty cases were four times higher than in non-death penalty cases.[15]

The records reviewed for this report, discussed in detail in Section II, vividly demonstrate how much staff time these cases take for prosecutors and law enforcement, and how that affects the other work of these offices. For example, the Scott Peterson trial consumed more than 20,000 hours of prosecutor staff time.[16] This is equivalent to nine full-time staff people for a year. In fact, 33 employees worked on the prosecution's case, including five attorneys and seven investigators. As a result of the increased workload, the county told the state it needed additional funds to hire more prosecutors and that it had already "reduced focus" on consumer fraud cases because of insufficient staff.[17] The Modesto Police also reported that the department spent so much money on staff to investigate the Peterson case that the department would have to delay the hire of 15 additional police officers unless the state provided assistance.[18]

Similarly, staff of the San Luis Obispo District Attorney's Office spent more than 8,700 hours on the death penalty trial of Rex Allen Krebs.[19] This included two attorneys, one investigator and one legal clerk working full time on the case for two years. Lake County was forced to

hire two contract attorneys to prosecute two separate death penalty trials.[20] Other counties have been forced to hire additional staff for both the district attorney's office and the sheriff's department and have incurred tens of thousands of dollars in overtime. San Bernardino County provides extra pay of $5,400 to $13,000 per year to some prosecutors handling death penalty cases.[21]

Defense costs in death penalty trials are also significantly higher than in other cases because of the greater obligations imposed on the defense. The United States Supreme Court has used the ABA Guidelines for Death Penalty Representation to establish the appropriate "standard of care" in defending death penalty cases.[22] If the guidelines are not followed, the case may be reversed later. The extent of work needed by defense attorneys to properly represent clients facing executions was not known when the death penalty was reinstated in California in 1977.

The guidelines prescribe a four-member defense team in every potential death penalty case: two attorneys and two investigators. This is twice the usual defense staffing in a murder case and is required because there may be a separate penalty phase trial. Indeed, the largest added expense for the defense team is the requirement that they thoroughly investigate their client's life to present a mitigation case at the penalty phase. The guidelines also require that attorneys and investigators be experienced and specially trained in the defense of death penalty cases. In order to find qualified attorneys and investigators willing to take on the immense burden of handling a death penalty trial, the agencies appointing the attorneys are forced to pay these professionals more than in non-death penalty cases. For example, Siskiyou County asked the state controller for permission to hire a defense attorney at $75 an hour, rather than its typical rate of $40 per hour, for a complex death penalty case.[23]

In addition, depending on the facts of the case, the defense team is required to consult professional experts, including psychologists and forensic scientists. DNA evidence that may exonerate the defendant must be analyzed by skilled forensic scientists. For example, the state Legislature authorized additional reimbursement to Siskiyou County for the Donald Bowcutt death penalty trial because the "case will rely heavily on DNA testing and expert testimony, which is very costly and time consuming."[24] Experts may also be needed to explain why mistaken eyewitness identification commonly occurs, or to explain why someone might falsely confess. If the defendant shows signs of mental illness, the defense may need to consult psychologists, neurologists and other specialists, and may need to conduct brain imaging scans to document physical injury to the brain. Modern science has greatly enhanced our ability to distinguish the innocent from the guilty and to identify the mentally ill; but all of this costs money.

The courts, too, spend more on death penalty cases, which typically take years to bring to trial and many months of court time once the trial begins. Jury selection is particularly time consuming and expensive. Jurors who are opposed to executions are not permitted to serve in death penalty trials.[25] Simply questioning jurors about their death penalty views and identifying "death qualified jurors" often takes longer than it would to try a non-death penalty case from start to finish. When substantial court resources are taken up by death penalty trials, the court cannot handle other cases. As a result, additional judges and courtroom staff may be needed. The County of Plumas rented an additional courtroom to accommodate one death penalty trial, and the County of Mariposa was forced to pay for an additional judge because of the courtroom time consumed by the Cary Stayner death penalty case.[26]

All of these factors combine to make death penalty trials much more expensive than non-death penalty homicide trials, costs that are largely borne by the county. In a 2004 letter,

Siskiyou County's auditor-controller-recorder estimated that the county would spend $19 million in just two years on four death penalty cases. As a result, she concluded, "we find ourselves in a desperate financial situation."[27]

These costs are simply for pursuing a sentence of execution at the trial level. In addition, the many years of appeals, which are longer in cases seeking execution, add to the expense. Even housing people on death row costs more than housing inmates in the general prison population.

Although we do not know exactly how much state execution costs California, there is no doubt that, system-wide, it costs hundreds of millions of dollars more than sentencing people to die in prison of other causes. Nor can these costs be substantially reduced.[28] Having state execution means paying more. The questions remain: how much more, and is it worth it?

Section II.

What is Known About the Costs of California's Death Penalty

Some costs are readily identifiable. A few researchers and reporters have also attempted to estimate the more elusive costs. The available data and research are summarized here. This report also reviews state records documenting the actual costs of some death penalty trials in California, data obtained by the American Civil Liberties Union of Northern California and not previously considered by researchers or reporters.

A. Post-Conviction Costs

In a 2005 article, the Los Angeles Times concluded that California taxpayers were spending $102.6 million per year at the state level pursuing execution after conviction and sentencing had been completed in the county criminal courts.[29] This does not include the costs of the trials or the costs of federal appeals. The costs identified by the Los Angeles Times stem from every facet of the post-conviction system. The California Department of Corrections alone incurred an additional $57.5 million in costs annually, or an extra $90,000, to incarcerate each death row inmate separately from the general prison population. The Times further reported that the California Supreme Court spent $11.8 million a year to appoint appellate defense counsel in death penalty cases and in court expenses related to these cases. The State Attorney General's Office estimated that it spent $11 million each year representing the state in death penalty cases. At that time, the Office of the State Public Defender budget totaled $11.3 million and the budget of the Habeas Corpus Resource Center amounted to $11 million. These two offices handle the bulk of the defense work after conviction and sentencing.

The ACLU of Northern California obtained current figures for each of these components of the system for 2008.[30] Chart 1 shows these current expenses compared with the 2005 expenses. The 2008 numbers reflect a 14 percent increase in costs just since 2005 and a current total of nearly $117 million a year.

Chart 1

Who Spends the Money	How Much They Spent in 2005	How Much They Will Spend in 2008
Department of Corrections	$57.5 million	$60.21 million
Attorney General	$11 million	$13 million
California Supreme Court	$11.8 million	$14.74 million
Office of the State Public Defender	$11.3 million	$14.14 million
Habeas Corpus Resource Center	$11 million	$14.90 million
Total	$102.6 million	$117 million

With 669 inmates on death row, we are currently spending an average of $175,000 every year on each case post-conviction just at the state level. More than half of those added expenses are for death row housing. We spend:

- $90,000 more to house an inmate on death row than in the general population
- $85,000 per defendant on court and attorney expenses (prosecution and defense)

These figures, however, are artificially low because more than half of death row inmates do not currently have an attorney for one of the critical phases of the process. The post-conviction process in state court involves two parts: the direct appeal of the conviction, based

only on the trial record, and the habeas corpus challenge, which brings in new information such as DNA evidence that could prove innocence.

Of the 669 people on death row, about 365 do not have attorneys for one or both of these phases. Two hundred eighty do not have attorneys to represent them in the habeas challenges to their sentences, and about 85 do not have attorneys for either habeas or direct appeal. This also means that the Attorney General's Office has not yet allocated all needed legal staff to these cases, since without a defense attorney, the case cannot proceed in court. Both the direct appeal and the habeas challenge must be completed before the execution can be carried out. Thus, California will spend even more in legal fees if we provide attorneys to all of the people who currently need them on death row. If the state managed to provide attorneys to all of the people who need them, the total costs per inmate, including prosecution, defense and court expenses, would likely rise to at least $200,000 a year. The state total for all post-conviction expenses would exceed $130 million a year.

These figures include only the state costs at the post-conviction level. They do not include the costs of federal appeals or the costs of death penalty trials. These figures also assume no increases in spending to fix the many problems with the system. For example, an additional $356 million will be needed just to build a new death row facility because the current facility is too old and unsafe to continue using.[31]

If nothing changes, California taxpayers will continue to spend well over $117 million each year at the state level seeking execution. In ten years, that number will exceed $1 billion. These expenses are likely to continue for the next four decades at least, until everyone now on death row dies of execution or another cause. By then, we will have spent more than $4 billion.[32]

What else could California do with that money? The $200,000 we spend each year on each death row inmate whose case is actively being litigated could instead pay the salaries[33] of:

- 3 new CHP officers each year; or
- 3.5 experienced teachers each year, paid through state subsidies to counties.

If everyone currently on death row were simply sentenced to die in prison of other causes and moved to general population, the state could employ:

- 1,900 new CHP officers each year; or
- 2,100 experienced teachers each year.

This, again, represents only a portion of the costs to the state of seeking execution. The additional county costs must also be considered.

B. Trial Costs

Unlike the post-conviction costs incurred at the state level, trial costs of death penalty cases are borne largely by the counties. These costs are the most difficult part of the system to identify. The information that is available and reviewed here includes previous studies that have attempted to estimate the trial level costs, as well as records of the actual costs incurred in a small number of trials.

1. Prior Studies on Trial Level Costs

Three notable but outdated studies have attempted to estimate the cost of death penalty trials in California. The oldest is a 1985 student comment in the UC Davis Law Review.[34] Nearly as old is a 1988 investigative report by the Sacramento Bee.[35] The most recent is a 1993 study by

a graduate student at the Goldman School of Public Policy at University of California, Berkeley.[36] All three studies relied substantially on secondary sources rather than actual budget data to arrive at their estimates of trial costs. These secondary sources included attorney questionnaires, interviews, information provided by the California Judicial Council and comparisons with cost studies in other states.

Margot Garey, then a law student at the University of California, Davis, wrote the 1985 paper.[37] She began her discussion of trial level costs with voir dire, determining that jury selection in death penalty cases takes 5.3 times longer than in non-death penalty cases. She concluded that this can add as much as $87,440 in courtroom costs alone, not including attorney time. Once the evidence phase of the trial has begun, Garey found that death penalty trials take 3.5 times longer than non-death penalty trials, requiring on average an additional 30 courtroom days (or six weeks of court time). This can lead to additional courtroom expenses of as much as $65,580, again excluding attorney expenses. While documenting the additional courtroom time consumed by death penalty trials, Garey's study provides little or no information about the costs of prosecution or defense and is now 25 years old.

Twenty years ago, Steve Maganini reported in the Sacramento Bee that Californians spend approximately $90 million annually to administer the death penalty, with $78 million a year going to trial expenses.[38] The Bee report found that death penalty cases were taking an average of two years from arraignment to verdict, three times longer than other cases. According to the Bee, the trials alone lasted an average of 79 days in death penalty cases, while non-death penalty trials lasted 15 days. Based on these figures, the Bee concluded that death penalty trials were six times more expensive, costing on average $592,500. Meanwhile, the Bee estimated that it cost $93,000 to try a non-death penalty case. Adjusting for inflation

to 2007 dollars, the cost of each death penalty trial would be approximately $1 million compared with $163,000 for each non-death penalty trial.[39]

Finally, an unpublished study conducted in 1993 by David Erickson, a graduate student at the Goldman School of Public Policy, concluded that a typical death penalty trial was costing nearly $1.9 million, while a non-death penalty trial was costing about $630,000.[40] These estimates considered the entire range of trial expenses as shown in Chart 2.

Chart 2

	Defense Attorneys	Defense Investigation	Prosecution Attorneys	Prosecution Investigation	Court	Jail Costs	Total Cost
Death Penalty	$386,000	$49,000	$772,000	$49,000	$506,000	$137,000	$1,898,000
Non-Death Penalty	$160,000	$5,000	$320,000	$5,000	$82,000	$55,000	$627,000

Erickson, like other researchers, examined the length and complexity of death penalty trials, finding that death penalty cases were taking substantially more court time, requiring many more days for jury selection, and involving many more trial motions. Erickson concluded that death penalty trials consumed at least six times as much court time as non-death penalty trials. Adjusting for inflation, Erickson's estimate of trial costs grows from $1.9 million to $2.7 million for each death penalty case and from $630,000 to $900,000 for each non-death penalty case, a difference of more than $1.8 million.

Much has changed to affect the cost of death penalty trials in the years since these studies were completed. The most significant change has been technological: Prosecutors now seek convictions based on sophisticated scientific evidence such as DNA, and defense attorneys must prepare to challenge that evidence. Advances in medical research have also revealed that many psychological problems are tied to physical brain damage. This means that in addition to expert psychologists and medical examiners, defense attorneys now have to hire

expert forensic scientists and neurologists to interpret complex scientific evidence and to testify at trial. These changes, along with the more advanced understanding of the work defense counsel must do to defend properly a death penalty case, add costs.

2. Records of Actual Trial Expenses

In an effort to identify the costs of death penalty trials, the ACLU of Northern California requested and reviewed state records of payments made by the California state controller to small counties to cover the costs of homicide trials. While these data do not provide a comprehensive answer to the question of how much death penalty trials cost California taxpayers, they do contain several examples of extensive and nearly complete accounting of the actual costs in death penalty and non-death penalty trials.

Three conclusions may be drawn from the data. First, large sums are at stake. One death penalty trial, that of Charles Ng in Calaveras County, cost California taxpayers more than $10.9 million. Records from several other cases reveal actual costs in the multiple millions of dollars. Second, many costs of death penalty trials remain hidden; only more comprehensive accounting practices statewide and greater disclosure will develop the complete picture. Third, the records demonstrate the feasibility of tracking most trial level costs in death penalty cases. All that is required is the will to do so.

a. Brief Explanation of Records Reviewed and the Funding Process

California law provides that the state shall assist small counties with the costs of expensive homicide trials.[41] When the costs to a county of one or more homicide trials exceed a threshold level based on the county's tax income, the county may request reimbursement as well as advanced funds for future costs related to the trial. Each county usually is required to

pay initially for some portion of the costs of homicide trials, depending on the income level of the county, though in some cases, the state Legislature has passed special legislation exempting a county from its share of expenses.[42]

The statute specifically provides that reimbursable expenses include: [43]

- investigation costs;
- witness fees and expenses;
- court reporter fees and costs in preparing transcripts;
- overtime and fringe benefits for county employees "directly attributable to the case";
- sheriff costs "over and above regular personnel costs"; and
- travel expenses and necessary supplies.

The regulations specifically *exclude* in virtually all cases "normal salaries and expenses, incurred by the district attorney," the sheriff and public defenders for most counties. [44] But for very small counties, those with populations of less than 200,000, even normal salaries and overhead are reimbursable;[45] and in some cases, the Legislature has passed special statutes expanding the reimbursable expenses to include salaries and related staff expenses.[46]

To obtain reimbursement, a county must submit a standard Claim for Payment form, which is prescribed by the State Controller's Office.[47] The claim must be "supported by adequate documentation."[48] In addition, counties with populations of less than 150,000 may apply for advance payments from the state to cover the costs of providing essential civic services.[49] After the trial, the county must return to the state any excess funds advanced. The state controller sometimes audits the counties following the conclusion of the trial to ensure that all advanced funds were properly used.[50]

b. The Data: PRA Requests and Responses

Through a series of Public Records Act requests, the ACLU of Northern California obtained from the state controller and Department of Finance all documents pertaining to reimbursements, advancement of funds and audits related to state funding for county homicide trials for a ten- year period, fiscal years 1996-1997 through 2005-2006. Documents received included three complete audits, claims for payment, applications for advance payment, supporting documentation, and communications between the state and county officials.[51]

The records encompass claims submitted by 20 counties in 21 identifiable homicide trials and 317 unidentified trials and hearings.[52] Of the identifiable trials, the cases ranged from low-profile, non-capital cases such as the "Jarvis Homicide Trial" in Trinity County, to the notorious death penalty trials of Charles Chitat Ng, Scott Peterson, Richard Allen Davis and Cary Stayner.

The types of records the ACLU of Northern California received varied significantly from county to county. All included a Claim for Payment and/or Application for Advance Payment form. But even these forms varied according to the accounting methods used by each county and the level of supporting documentation provided. While some counties provided receipts, bills and detailed spreadsheets, others provided just summaries of their expenses by category. Finally, there was variation between counties in the kinds of expenses included or omitted.

c. Overall Figures

During fiscal years 1996-1997 through 2005-2006, the state paid a total of $45.8 million to 20 counties under the state reimbursement scheme.[53] The total payouts to individual counties for the ten year period ranged from a low of $45,700 paid to Lassen County to a high of $8.9 million paid to Calaveras County. The top 10 counties received together $43.6 million, or 95 percent of the total. The top five counties alone accounted for $32 million or 70 percent of the total.

Chart 3

Top Ten Counties in Cost to State, FY 1996-1997 to 2005-2006

County	Total Amount Reimbursed
1. Calaveras	$8.9 million
2. Siskiyou	$6.6 million
3. Shasta	$6.3 million
4. Mendocino	$5.3 million
5. Mariposa	$4.9 million
6. San Luis Obispo	$2.8 million
7. Lake	$2.7 million
8. Sonoma	$2.3 million
9. Stanislaus	$2.0 million
10. Placer	$1.8 million

Of the 21 identifiable trials included in the records we received, ten cases stood out for having relatively comprehensive cost accounting for trials involving a single defendant.[54] In none of these cases was every trial expense recorded—some excluded prosecutor salaries and some excluded court costs. But in all of these cases, significant trial expenses qualified for reimbursement and the counties, therefore, had a special incentive to keep track of the costs. Chart 4 lists all ten trials and the trial costs. All of these cost figures are based on actual costs incurred as a result of the trial, with the single exception of the Donald Bowcutt case. The records provided for the Bowcutt trial include only the applications for advanced payment, reflecting an anticipated cost of $5 million, though the actual costs are not documented.[55]

Chart 4

Individual Trials With Most Comprehensive Accounting

Name of Trial	County	Costs Claimed for Reimbursement	Costs Borne by County	Total Costs	Death Penalty
Charles Chitat Ng	Calaveras	$10.9 million	N/A	$10.9 million	Y
Donald Bowcutt	Siskiyou	$5 million	N/A	$5 million	Y
Scott Peterson	Stanislaus	$3.2 million	N/A	$3.2 million	Y
Rex Allen Krebs	San Luis Obispo	$2.8 million	N/A	$2.8 million	Y
Cary Stayner	Mariposa	$2 million	$368,000	$2.4 million	Y
Richard Allen Davis	Sonoma	$2.3 million	N/A	$2.3 million	Y
Charles Craft	Lake	$1.8 million	$300,000	$2.1 million	Y
Arturo Juarez Suarez	Placer	$1.8 million	N/A	$1.8 million	Y
Michael Franklin	Plumas	$486,000	$175,000	$661,000	N
Robert Wigley	Del Norte	$348,000	$68,000	$454,000	N

Based on the records of actual expenses, the three most expensive cases overall were the Charles Ng trial at $10.9 million,[56] the Scott Peterson trial at $3.2 million,[57] and the Rex Allen Krebs trial at $2.8 million.[58] In eight of the 10 cases identified here, the prosecution sought the death penalty at trial; the cost differential from the non-death penalty cases is staggering. Two of the eight death penalty cases did not in fact result in sentences of execution. A more detailed review of the records reveals the reasons for the added costs in death penalty trials, the many costs not included in these figures, and how more comprehensive cost accounting could be accomplished in the future.

d. Case Studies

i. Cases with Detailed Accounting of Prosecution Staff Time

Three of the cases in this sample stand out for their detailed records of prosecution staff time and salaries paid. These cases are Scott Peterson, Rex Allen Krebs and Robert Wigley.

Scott Peterson

The cost records for the Scott Peterson trial were among the most comprehensive of those reviewed. In total, the records reveal that the trial cost a minimum of $3.2 million: $1.8 million in costs incurred by Stanislaus County and an additional $1.4 million in expenses to the City of Modesto.[59] Most defense expenses are not included because Peterson retained a private attorney. The records also do not appear to include salary and benefits for the specially assigned judge. But all other trial expenses are reflected in the records, including the full costs of the prosecution's staff time.

The prosecution kept detailed records of its expenses in the Peterson case, including the hours worked on the case by every district attorney employee.[60] These records reveal that prosecution expenses totaled $1.4 million, of which more than $700,000 covered the salaries and benefits for staff. In total, 33 employees from the prosecutor's office worked on the case: 5 attorneys, 7 investigators and 21 additional staff. More than 20,000 hours of employee time were spent on the case. The office paid these employees almost $600,000 for their normal salaries and benefits. In addition, the district attorney spent more than $100,000 on other staff expenses including: computer specialists, a media consultant, support staff overtime, and compensation for vacation time that was accrued but expired during the trial.[61] Chart 5 shows the entire prosecution staff hours and salary costs for each person who worked on the Peterson case. Chart 6 shows the total staff hours and salaries paid and the additional expenses for overtime and paid out vacation.

Chart 5

Peterson Prosecution--Staff Time and Salaries

Position	Hours Worked	Salary & Benefits
Attorneys		
Attorney V	2,280	105,320
Attorney V	2,248	103,752
Chief Deputy District Attorney	1,496	80,610
Chief Deputy District Attorney	238	13,060
Attorney V	6	275
Attorney Total	**6,268**	**$303,016**
Investigators		
Criminal Investigator II	2,580	81,661
Criminal Investigator II	1,555	50,067
Senior Criminal Investigator	1,199	42,587
Criminal Investigator II	938	27,821
Criminal Investigator II	79	2,495
Senior Criminal Investigator	54	1,908
Criminal Investigator II	2	63
Investigator Total	**6,407**	**$206,602**
Support Staff		
Legal Clerk III	2,621	38,365
Temp Staff Hired for Trial	2,622	28,905
Interviewer II	861	13,375
Temp Staff Hired for Trial	252	7,365
Systems Engineer II	200	6,916
Application Specialist III	234	6,891
Manager III	182	6,318
Accounting Technician	330	6,111
Legal Clerk IV	183	3,103
Paralegal III	104	2,432
Paralegal III	99	2,233
Legal Clerk III	51	691
Interviewer II	43	671
Supervisor Legal Clerk II	21	437
Admin Clerk II	19	255
Accountant I	12	219
Paralegal III	9	193
Legal Clerk IV	9	167
Interviewer I	11	142
Legal Clerk III	2	24
Support Staff Total	**7,865**	**$124,813**
Victim Witness		
Victim Services Coordinator	16	366
Victim Witness Total	**16**	**$366**

Chart 6

Peterson Prosecution—Total Salaries and Additional Expenses

	Hours	Salary & Benefits
Total for Prosecution Staff	**20,556**	**$634,797**
Additional Salary Expenses		
Paid Out Vacation for Attys	390	20,092
Total Support Staff Overtime[62]	2,048	52,552
Total—All Staff Hours & Costs	**22,994**	**$707,441**

The records also reveal the impact of all of this work on the District Attorney's Office. As a result of the Peterson case, the district attorney had to redistribute the full case loads of three attorneys.[63] As the chief executive officer of the county explained, "[t]his resulted in 79 defendants, in 43 cases, 8 charged with the death penalty, being spread among 18 available prosecutors."[64] The Peterson case also caused the District Attorney's Office to shift staff away from consumer fraud protection, "resulting in a reduced focus" on these crimes. The chief executive officer stated that reimbursements from the state for the Peterson trial expenses would be used for "[i]ncreased attorney staffing" for the District Attorney's Office, as well as increased staffing for the Sheriff's Department.[65]

The remaining $675,000 in prosecution costs covered attorney travel and lodging, supplies, equipment, expert witnesses, trial consultants and other trial costs.[66] For example, the prosecution paid $102,000 for three trial consultants: Ebbe Ebbesen, a psychology professor; Phillip Trompetter, a psychologist; and the Varinsky Association. The records reveal that that Ebbesen was paid more than $5,000 for witness preparation and to assist with change of venue research; that Trompetter charges $1,000 per session for "team consultation"; and that Varinsky Association charges $125 an hour for jury selection research.[67] The Peterson prosecution records also reveal some questionable costs.

For example, the state reimbursed the prosecution for the following items: [68]

- a 13" television ($86);
- a "boombox" ($108);
- a "[c]compact refrigerator for space in San Mateo courthouse occupied by Peterson trial team for lunch storage" ($127);
- two "padded chairs" for the courtroom ($271);
- 4 laptop computers (pro-rated);
- 6 desktop computers (pro-rated);
- dry cleaning expenses ($937.45); and
- oil changes, car washes and smog check ($387).

The Peterson records also shed light on the costs of a death penalty trial to local law enforcement and the extensive work that police do for prosecutors in these cases. Death penalty cases take more time from local police because of the additional investigation required. The City of Modesto submitted its own Claim for Payment and accompanying documentation to the state. In support of this claim, the county auditor-controller stated that the District Attorney's Office "directed" the investigation conducted by the Modesto Police and that "[i]t would be impossible to separate the efforts of the Modesto Police Department from those of the Stanislaus County District Attorney during the pendency of this case," [emphasis in original].[69]

Specifically, the police department assigned two detectives and one police clerk to investigate the Peterson case for the duration of the trial, at a cost of $85,000 a year per detective and $50,000 a year for the clerk.[70] Over two years, just this aspect of the investigation cost Modesto $440,000. This is apart from the extensive staff that Modesto employed for the search for the bodies. In the city's words, "$440,000 is a very conservative estimate of the . . .

on-duty time devoted to this case."[71] In addition to on-duty wages, Modesto also incurred $360,000 in police department overtime. Moreover, "overtime generated throughout the department (minimum staffing requirements, transfer of workload, etc.) that may have been an indirect affect [sic] of this case was not included in the overtime reimbursement amount requested."[72] These costs incurred by the Modesto Police are in addition to staff time spent on the case by Sheriff's Department employees, which totaled over $11,000.[73]

In sum, Modesto's additional personnel costs reached $1.2 million and the additional work created by the case made it difficult for city departments—including the police—to handle other matters. Indeed, Modesto Police Chief Roy Wasden claimed that if he did not receive additional funds to cover the costs of the Peterson case, he would not be able to hire 15 police officers as he had previously planned.[74] On the other hand, the records of the Modesto Police do reveal some questionable costs, including a new laptop purchased for the department and $53.75 spent on a "tape dispenser."[75]

The unusually comprehensive records in this case included spreadsheets with individual line items for actual expenses, the date of each expense, a description of the expense, the amount incurred and by whom, and detailed time records for staff. This information, valuable in itself, also demonstrates that it is possible, without any extraordinary effort, to account in minute detail for trial expenses in homicide cases, including prosecution and police expenses.

Rex Allen Krebs

The records maintained by San Luis Obispo County for the prosecution of Rex Allen Krebs are equally comprehensive. The records document that the trial cost a minimum of $2.8 million.[76] The most significant cost missing from these records is court costs. Thus, even this figure underestimates the true costs of the case.

The prosecution in the Krebs case also kept detailed records of the costs of the trial, including staff time. These records reveal that of the total $1.174 million spent by the prosecution over the course of four years, the majority was spent on staff salaries and benefits, more than $700,000.[77] Chart 7, on the following page, provides details of the staff hours spent on the case and salaries paid.

These staff records reveal that two attorneys in the office worked full time on the case for two years (logging more than 1,700 hours of work a year). In addition, one investigator and one legal clerk worked nearly full time on the case for a year.

The prosecution kept meticulous records of its expenses.[78] The records document spending on supplies such as files and "press on labels," and even include individual receipts for supplies costing less than $5. Unlike in the Peterson case, the Krebs records also reflect the district attorney's efforts to keep costs manageable. The records indicate, for example, that the prosecution retained forensic psychologists at a rate of $100 per hour, even though the firm normally charges $500 per hour. The experts' final bill at their regular rate would have been $56,792, but the prosecution paid $14,303.[79]

Chart 7

Krebs Prosecution--Staff Time and Salaries

Position	Hours Worked	Salaries & Benefits
Attorneys		
Deputy DA	4,036	356,169
Deputy DA	4,003	351,971
District Attorney	180	20,702
Chief Prosecutor	120	10,811
Deputy DA	50	4,258
Principal Deputy DA	40	3,398
Attorney Total	**4,393**	**$391,140**
Investigators		
Supervising DA Investigator	2,132	165,026
Supervising DA Investigator	1,079	80,260
DA Investigator III	192	12,527
DA Investigator III	115	6,747
Chief DA Investigator	80	6,174
DA Investigator	58	4,941
DA Investigator II	70	4,345
DA Investigator	51	4,230
Investigator Total	**3,726**	**$280,019**
Support Staff		
Legal Clerk	1,918	61,285
Legal Clerk	139	4,367
Legal Assistant	81	2,784
Legal Clerk	15	327
Automation Specialist	25	1,117
Legal Clerk Trainees	30	508
Supervising Legal Clerk	8	294
Legal Clerk	7	179
Legal Clerk	7	166
Legal Clerk	1	25
Support Staff Total	**312**	**$9,768**
Victim Witness Staff		
Victim Witness Coordinator	280	20,434
Senior VW Asst Coordinator	60	2,505
Victim Witness Total	**340**	**$22,939**
Prosecution Total	**8,771**	**$703,866**

Finally, the Krebs records reveal that, as with the prosecution, the greatest expense to the Sheriff's Department was in staff costs. The Sheriff's Department paid $20,857 in salaries and benefits for work related to the case. This represents nearly two thirds of the total costs incurred by the department.[80]

As with the Peterson case, the Krebs records reveal that detailed accounting of homicide trial costs is feasible, even in relatively small counties and departments. These records also show what useful information may be revealed to taxpayers, including both questionable expenditures and admirable efforts to control costs.

Robert Wigley

Of the records reviewed here, only one other case included prosecution staff hours, the Del Norte prosecution of Robert Wigley. The county reported total costs for the trial of $454,000.[81] However, the county recorded only costs for prosecution, defense and sheriff. No costs were reported for court expenses or jury and witness expenses. The figure does, however, include the full costs of the prosecution staff time, as shown in Chart 8.[82] The contrast between this non-death penalty prosecution and the Peterson case is stark.

Chart 8

Wigley Prosecution--Staff Time and Salaries

Prosecution	Hours Worked	Salaries & Benefits
Attorneys		
District Attorney	671	36,305
District Attorney	91	4,464
Attorney Total	**762**	**$40,769**
Investigators		
DA Investigator	400	12,379
DA Investigator	257	8,320
DA Investigator	265	7,614
Investigator Total	**922**	**$28,313**
Support Staff		
Clerk	9	1,380
Support Staff Total	**9**	**$1,380**
Prosecution Total	**1,692**	**$70,462**

The Peterson prosecution team logged more than ten times as many hours as did the Wigley prosecution team. Although not nearly as high profile, the Wigley case was not a simple prosecution. In fact, Wigley's case was one of the first cold-hit DNA prosecutions in the state, involving the brutal rape and murder of a young woman.[83]

ii. Case With Detailed Accounting of Court Costs

Richard Allen Davis

Unlike the records in Peterson, Krebs and Wigley, the records from the Richard Allen Davis case do not include every cost of the prosecution, only the "extraordinary" costs. These records are unusual, however, in that they reflect the substantial costs to the court, which are paid by the state and its taxpayers rather than the by the counties. The total cost for the

Davis trial was a minimum of $2.3 million.[84] Of that amount, $287,000 in costs were incurred by the court. Chart 9 shows the known overall costs of the trial by category.

Chart 9

Davis Trial Costs

Court	$287,000
Jury and Witness	$174,000
Prosecution	$212,000
Defense	$1 million
Sheriff	$509,000
Other-Santa Clara Costs	$86,000

The court costs include more than $66,000 in salaries and benefits, more than $68,000 in trial transcripts, and nearly $19,000 to maintain a courtroom for the trial.[85]

The Davis records encompass only extraordinary county prosecution and law enforcement costs for overtime and additional staff. As a result of the Davis case, the Sonoma County District Attorney's Office was forced to spend nearly $90,000 on additional staff and nearly $20,000 in overtime.[86] Likewise, the Sonoma County Sheriff' Department spent nearly $60,000 on overtime and extra help.[87] Regular salary expenses are not included in these calculations.

iii. The Most Expensive Trial and the Worst Record-Keeping

Charles Chitat Ng

The Charles Ng trial, costing a minimum of $10.9 million, appears to be the most expensive single trial in California history.[88] The records reveal actual trial expenses as follows:

Chart 10

Ng Trial Costs

Court	$1.24 million
Jury and Witness	Unknown
Prosecution	$2.22 million
Defense	$6.42 million
Sheriff	$560,000
Other	$420,000

Even this enormous tally does not include all trial expenses. Jury and witness costs are notably absent and the court costs reported here include very few of the actual court expenses. Further, the prosecution staff costs appear to cover only "replacement staff," the additional staff hired by the district attorney to handle the increased workload caused by the case (one attorney, one investigator and one support staff).[89] All prosecution staff time, however, does not appear to be included. Thus, $10.9 million does not even encompass all of the costs of the trial.

But California taxpayers will never know the full costs of this trial because the record-keeping in the Ng case was abysmal. Indeed, after an audit in 2006, the state required Calaveras County to return $14.9 million of the $19 million it received in advanced payment for the case, in part because the county did not adequately support its claims.[90] The records provided by the state controller to the ACLU of Northern California were incomplete and largely incoherent, with little documentation to support or explain the charges claimed. The ACLU of Northern California also obtained records directly from the county. The expenses recorded on the county's own spreadsheets rarely correlated with those submitted on the Claim for Payment forms and, indeed, showed the county spent in excess of $11.5 million on the case.[91] Ultimately, little of substance can be garnered from the Ng trial records. Given the incredible amount of money spent on this one trial, this is disturbing. California taxpayers should not have to guess where $11 million in public funds went.

e. Conclusion of Analysis of Actual Trial Accounting Records

Three conclusions may be drawn from the records reviewed here. First, death penalty trials are enormously expensive to California counties, and they significantly affect local prosecutors and law enforcement. All of the death penalty trials with relatively comprehensive records in this sample cost California taxpayers multiple millions of dollars. The two non-death penalty cases with relatively comprehensive records cost a fraction of that amount. While the high profile nature of some of these cases explains some of the added expense, other death penalty trials in this sample attracted little public attention and still cost substantially more than the non-death penalty trials. Because there is no consistent or comprehensive tracking of trial level costs across the state and so many costs are hidden, it is impossible to say for certain how much more counties are spending in pursuit of execution.

Comparing the least expensive death penalty trial with the most expensive non-death penalty trial in this sample supports the conclusion that a death penalty trial cost at least $1.1 million more at the county level. California currently sends about 20 people to death row a year. Considering just those trials that actually end in a sentence of execution, we can estimate that California counties spend at least $22 million more each year seeking execution than they would for trials seeking permanent incarceration. For $22 million, California could employ:

- 358 new police officers each year (at the starting salary for CHP officers); or
- 395 experienced teachers each year.

Second, many of the costs of death penalty trials remain hidden. None of the records in this sample included every possible cost of trial and many failed to include court costs or some prosecution costs. Only the Peterson records reveal the costs incurred by local police, not

just the sheriff. Further, records such as these exist for only a tiny fraction of all homicide trials in the state. All of the records reviewed here likely account for fewer than 2 percent of the homicide trials in the state during the ten-year time period.[92] The costs in the vast majority of death penalty trials occurring in high population counties will remain unknown and unknowable unless new accounting and disclosure practices are adopted. This is particularly disturbing given the large sums of taxpayer money in play. At minimum, California taxpayers spent $45.8 million on the trials and hearings covered by all the records reviewed for this report.[93] If this figure accounts for fewer than 2 percent of all homicide trials from fiscal year 1996-1997 through 2005-2006, then potentially billions in taxpayer costs remain unexplained.

Third, the records reviewed here demonstrate that it is feasible to track most trial level costs in death penalty cases. Even small counties like San Luis Obispo and Del Norte have the capacity to track expenses. The records from the Peterson and Krebs cases further demonstrate that when they want to, prosecutors and police can effectively track the amount of time they spend on individual cases. The state could easily develop a system to track and disclose the money and resources spent on death penalty cases at the trial level.

Section III.

Recommendations for Reform: Revealing the Hidden Costs

We know that California taxpayers spend an extra $117 million each year at the state level pursuing execution of the individuals already on death row. Based on the studies that have been done and the actual costs recorded in death penalty cases, we can conservatively estimate that a trial seeking a sentence of execution costs at least $1.1 million more than a non-death penalty trial. On an annual basis, that likely costs California taxpayers at least $22 million more. Totaling the state and county costs, we see that Californians are spending at least $139 million each year on seeking execution, beyond what we would pay if we instead simply sentenced defendants to die in prison from illness, injury or old age.

But we also know that our trial level cost estimates are conservative. The actual costs may be much higher. At least one death penalty trial cost the state more than $10.9 million; several other cases have also cost multiple millions of dollars. Many of the costs of the death penalty to California counties remain hidden. Given the large sums of taxpayer money at stake, this critical information should be tracked and made available to the public.

The state of California should institute a system to track actual costs of homicide cases at the trial level. This system should record all costs in any homicide case with special circumstances charged. This will allow for a meaningful comparison between cases that end in a sentence of execution and other homicide cases where the sentence of death in prison by other means is pursued. Limiting the tracking requirement to cases with special circumstances charged will minimize the burden to participants in the system. The records for each case must also reflect whether the prosecution ever considered seeking execution and when the final decision about what sentence to seek was made. This information is critical to assessing the impact of the sentence sought on the costs.

A model tracking system already exists in the procedures currently used by the state controller to reimburse counties for the costs of some homicide trials.[94] Applying this system statewide, the following costs could be routinely tracked:

- Court: All expenses incurred by the court, including salaries and benefits, transcripts, and the cost of using a courtroom. The Judicial Council can facilitate such record-keeping by making available estimates of the daily costs of running a courtroom in the county.
- Jury and Witness: Fees paid to jurors and witnesses, and related expenses such as parking, food and travel.
- Prosecution: The time spent working on the case by all attorneys, investigators and support staff, as well as expert expenses, travel costs, and other ancillary expenses. Records would show the amount paid, to whom and the reason, supported with receipts or invoices.
- Defense: Because the Constitution mandates that some defense expenses must be kept confidential, a cost tracking system could identify an aggregate total for defense costs for the case. This would protect the defense from disclosing privileged information about experts consulted or investigations undertaken, while also providing taxpayers with the information they should have.
- Sheriff: The additional costs incurred by sheriffs, including housing, transportation, and extra security for the courtroom.
- Other: Any other unusual costs.

Time-tracking and accounting software can greatly minimize the work needed to keep detailed records such as these.

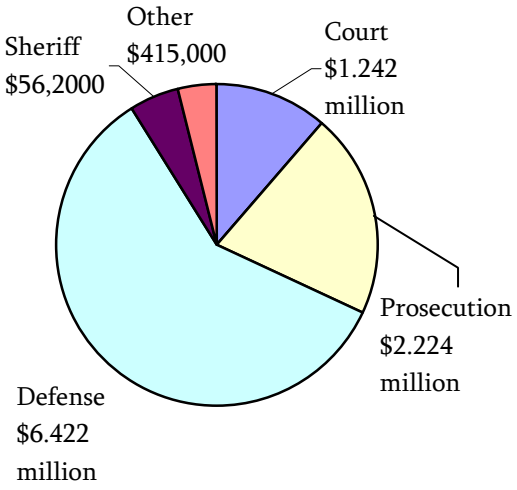
Most of these costs fall on the local counties. Prior to annual budgeting decisions, the actual local costs of death penalty cases should be reported to the Board of Supervisors and the public so they may assess whether, in light of other county needs, this use of resources makes sense.

The above tracking and accounting system would not cover every expense associated with a death penalty trial. Most notably, it would not capture the time and resources expended by local police. It would, however, capture most of the costs and, most important, it would capture the types of expenses that are likely to be higher in a case seeking execution. It would provide the public with the information needed to truly assess whether execution is worth the hefty price we are paying for it. If they knew the true costs of seeking executions, most California taxpayers would probably agree with Norm Stamper, a 35-year veteran of the San Diego Police Department, who recently concluded, "[o]ur communities would be exponentially better off by reinvesting the time, money and resources we spend on trying to get a few people executed into crime prevention measures that work."[95]

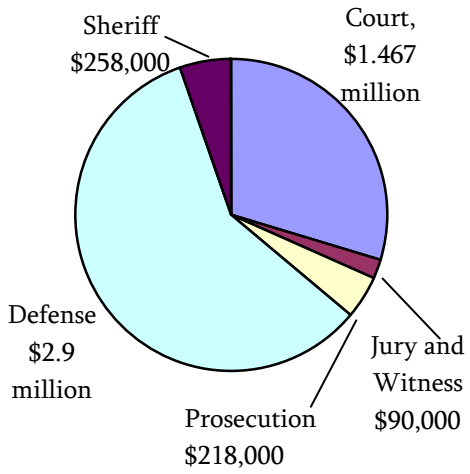
Appendix: Cost Breakdown for Trials with Most Comprehensive Accounting

These numbers are based on actual costs reported for the trials, except for the Bowcutt numbers which are based on projected costs. In some of these cases the prosecution, court or jury and witness fees are underrepresented because not all of these costs were tracked.

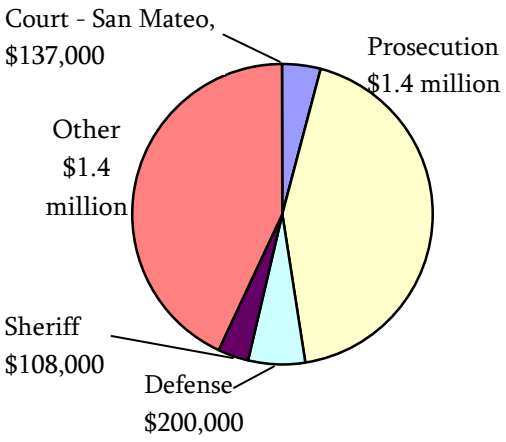
Ng Trial Costs	
Court	$1,242,000
Jury and Witness	0
Prosecution	$2,224,000
Defense	$6,422,000
Sheriff	$562,000
Other	$415,000
Total	$10.9 million



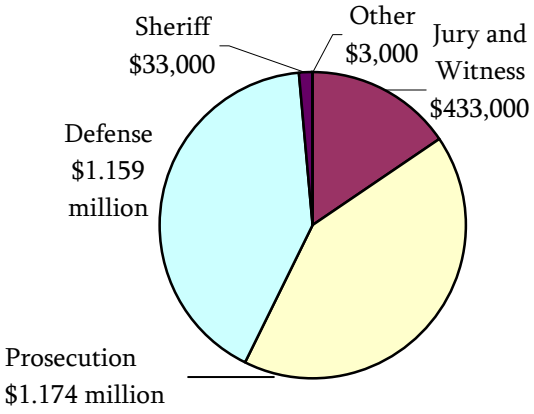
Bowcutt Trial Costs	
Court	$1,467,000
Jury and Witness	$90,000
Prosecution	$218,000
Defense	$2,900,000
Sheriff	$258,000
Other	0
Total	$5 million



Peterson Trial Costs	
Court – San Mateo Costs	$137,000
Jury and Witness	Unknown
Prosecution	$1,400,000
Defense	$200,000
Sheriff – San Mateo and Stanislaus	$108,000
Other - Modesto	$1,400,000
Total	$3.2 million

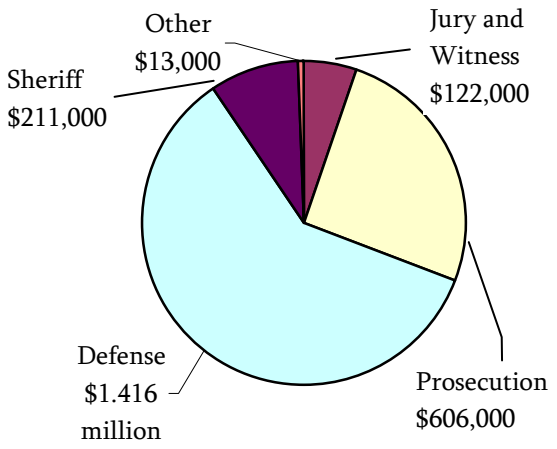


Krebs Trial Costs	
Court	Unknown
Jury and Witness	$433,000
Prosecution	$1,174,000
Defense	$1,159,000
Sheriff	$33,000
Other	$3,000
Total	$2.8 million

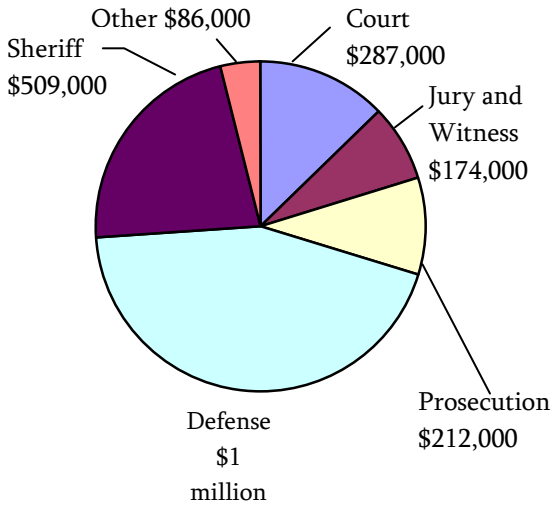


Appendix: Cost Breakdown for Trials with Most Comprehensive Accounting

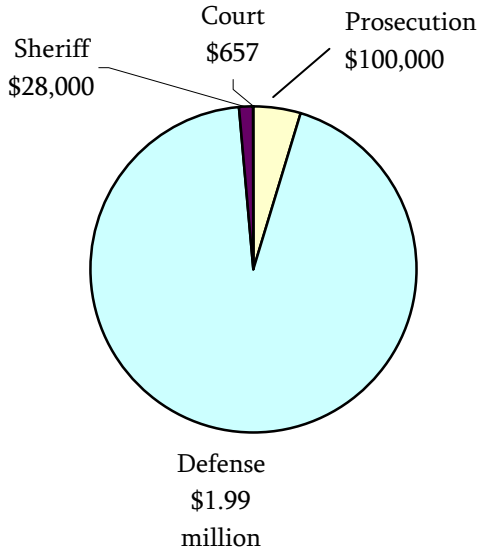
Stayner Trial Costs	
Court	Unknown
Jury and Witness	$122,000
Prosecution	$606,000
Defense	$1,416,000
Sheriff	$211,000
Other	$13,000
Total	$2.368 million



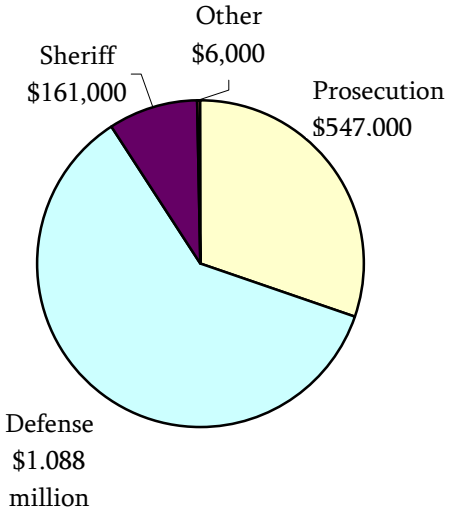
Davis Trial Costs	
Court	$287,000
Jury and Witness	$174,000
Prosecution	$212,000
Defense	$1,000,000
Sheriff	$509,000
Other-Santa Clara Costs	$86,000
Total	$2.3 million



Craft Trial Costs	
Court	$657
Jury and Witness	Unknown
Prosecution	$100,000
Defense	$1,990,000
Sheriff	$28,000
Other	0
Total	$2.1 million

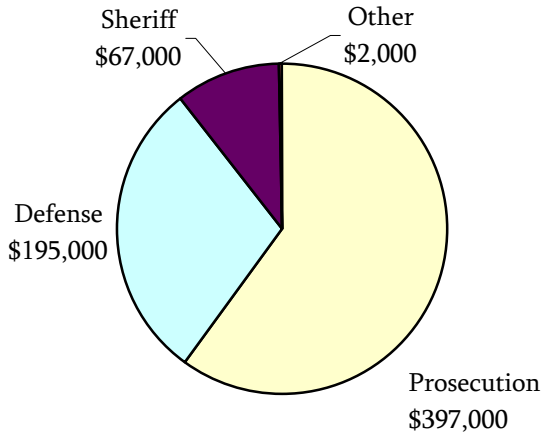


Suarez Trial Costs	
Court	Unknown
Jury and Witness	Unknown
Prosecution	$547,000
Defense	$1,088,000
Sheriff	$161,000
Other	$6,000
Total	$1.8 million

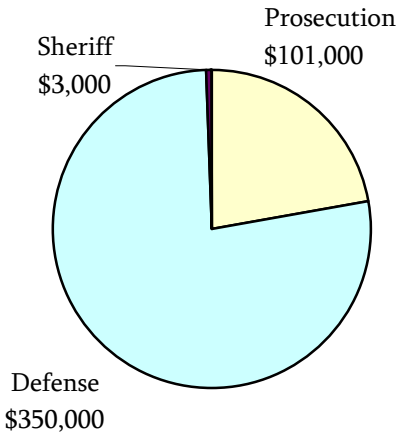


Appendix: Cost Breakdown for Trials with Most Comprehensive Accounting

Franklin Trial Costs	
Court	Unknown
Jury and Witness	Unknown
Prosecution	$397,000
Defense	$195,000
Sheriff	$67,000
Other	$2,000
Total	$661,000



Wigley Trial Costs	
Court	Unknown
Jury and Witness	Unknown
Prosecution	$101,000
Defense	$350,000
Sheriff	$3,000
Other	0
Total	$454,000



End Notes

[1] *See*, *e.g.*, *Understanding Capital Punishment: A Guide Through the Death Penalty Debate*, Death Penalty Information Center (Washington D.C., March 2003), pp. 48-54 (discussing studies of costs in North Carolina, Indiana, Florida, Texas, New York, Kansas, New Jersey, Nebraska, and at the Federal level).
[2] Phillip Cook, et al., The Costs of Processing Murder Cases in North Carolina, Terry Sanford Institute for Public Policy, Duke University (May 1993), available at http://www.deathpenaltyinfo.org/northcarolina.pdf (viewed March 15, 2008).
[3] *Understanding Capital* Punishment, *supra* note 1. p. 48 (citing an article by the Palm Beach Post, Jan 4, 2000).
[4] Testimony by Richard C. Dieter, Executive Director, Death Penalty Information Center, Colorado Senate Judiciary Committee (Feb. 7, 2007), available at http://deathpenaltyinfo.org/COcosttestimony.pdf (viewed March 15, 2008).
[5] Ellen Kreitzberg, A Review of Special Circumstances in California Death Penalty Cases: Special Report to the California Commission on the Fair Administration of Justice (Jan. 7, 2008), available at http://ccfaj.org/documents/reports/dp/expert/Kreitzberg.pdf (viewed March 15, 2008).
[6] California Department of Corrections and Rehabilitation (CDCR), Report: Number of Executions, 1893 to Present, available at http://www.cdcr.ca.gov/Reports_Research/Number_Executions.html; Condemned Inmate Summary List, available at http://www.cdcr.ca.gov/Reports_Research/docs/CondemnedInmateSummary.pdf (both viewed March 15, 2008).
[7] Database of Capital Case Reversals, on file with ACLU-NC; see also Howard Mintz, *Death Sentence Reversals Cast Doubt on System: Courtroom Mistakes Put Executions on Hold*, San Jose Mercury News, Apr. 14, 2002. The total of cases reversed, people currently on death row, and people who have died exceeds 800 because several reversed cases have been re-tried and/or the defendants remain on death row awaiting further action.
[8] See Death Penalty Focus: California Exonerations, available at http://www.deathpenalty.org/article.php?id=49 (viewed March 15, 2008).
[9] CDCR, Report: Condemned Inmates Who Have Died Since 1978, available at http://www.cdcr.ca.gov/Reports_Research/docs/CIWHD.pdf (viewed March 15, 2008).
[10] Kamala Harris, *Justice for Officer Espinoza, Peace for the City*, San Francisco Chronicle, April 24, 2003.
[11] Death Penalty Information Center, Innocence List, available at http://deathpenaltyinfo.org/article.php?did=412&scid=6 (viewed March 20, 2008).
[12] *See Shouting from the Roof Tops*, National Coalition to Abolish the Death Penalty (2007), available at http://www.innocentandexecuted.org (viewed March 20, 2008).
[13] *Furman v. Georgia*, 408 U.S. 238 (1972).
[14] James Abbott, *Less Money, More Pain and Injustice*, Fort Worth Star Telegram, January 20, 2008.
[15] Subcommittee on Federal Death Penalty Cases of the Committee on Defender Services of the Judicial Conference of the United States, Federal Death Penalty Cases: Recommendations Concerning the Cost and Quality of Defense Representation (May 1998), available at http://www.uscourts.gov/dpenalty/1COVER.htm (viewed March 15, 2008).
[16] Stanislaus County, People versus Peterson CHT Trial Costs, District Attorney Salary Costs—All FYS; Spreadsheet with Stanislaus County District Attorney Staff Hours Worked on Peterson Case (both on file with ACLU-NC).
[17] Letter of Richard Robinson, Chief Executive Officer of Stanislaus County, to Steve Westly, State Controller, dated Feb. 22, 2005 (on file with ACLU-NC).
[18] Eric Sternbee, *Rocha Joins Call for Case Funds*, Modesto Bee, Apr. 20, 2005.
[19] San Luis Obispo Claim for Reimbursement for Homicide Trial Costs, dated Apr. 3, 2002, attachments documenting hours and salaries for San Luis Obispo District Attorney's Office staff related to Krebs case, FY 1998-1999 through FY 2001-2002 (on file with ACLU-NC).

[20] Memorandum from Jeff Rein, Lake County Administrator, to Tom Lutzenberger, Office of Wes Chesboro, Dated Feb 19, 1999 (on file with ACLU-NC).
[21] Greg Watson, *Salary Names Under Wraps: 17 Prosecutors Earn Extra Pay*, San Bernardino Sun, Dec. 22, 2007.
[22] See ABA Guidelines for the Appointment and Performance of Defense Counsel in Death Penalty Cases, revised 2003; *Rompilla v. Beard*, 545 U.S. 374 (2005).
[23] Letter of Leanna Dancer, Auditor-Controller of Siskiyou County, to Jeff Yee of State Controller's Office, dated May 31, 1995 (on file with ACLU-NC).
[24] California Senate Judiciary Committee Analysis of AB 2232, 1995-96 Legislative Session (on file with ACLU-NC).
[25] *See Darden v. Wainwright*, 477 U.S. 168 (1986).
[26] Letter of Paige Vorhies, Chief of Bureau of Payments, State Controller, to Mike Tedrick, Plumas County Courthouse, dated July 7, 2000 (on file with ACLU-NC).
[27] Letter of Leanna Dancer, the County Auditor-Controller-Recorder of Siskiyou, to Assembly Member Doug LaMalfa, dated June 17, 2004 (on file with ACLU-NC).
[28] Dieter, *supra* note 4.
[29] Rone Tempest, *Death Row Often Means a Long Life; California Condemns Many Murderers, But Few Are Ever Executed*, The Los Angeles Times, March 6, 2005.
[30] Estimates for California Supreme Court Costs: Email from Robert E. Fleshman, Finance Division, Administrative Office of the Courts, to Andrew Ziaja and Natasha Minsker, dated Feb 26, 2008 (on file with ACLU-NC); Estimate for Attorney General Expenses: Telephone conversation between Deputy Attorney General Jim Humes and Mike Farrell in Jan. 2008; 2008 Budget of Habeas Corpus Resource Center, available at http://www.ebudget.ca.gov/StateAgencyBudgets/0010/0250/department.html#MPC (viewed March 15, 2008); 2008 Budget for Office of the State Public Defender, available at http://www.ebudget.ca.gov/StateAgencyBudgets/8000/8140/department.html (viewed March 15, 2008); Estimate for Department of Corrections based on 2005 estimate of $90,000 in additional costs per inmate, multiplied by 669 (current population of death row). CDCR failed to respond to numerous requests for an updated estimate.
[31] Richard Halstead, *$136 Million Requested for New Death Row at San Quentin*, Marin Independent Journal, Jan. 10, 2008.
[32] See Spreadsheet Calculating Life Expectancy Current Death Row Population, on file with ACLU-NC.
[33] The starting salary for a CHP officer is CHP officer base salary is currently $61,452, see http://www.chp.ca.gov/recruiting/osalary.html (viewed March 19, 2008); the average salary for a mid-range teacher in a mid-size school district in California is $55,680, see http://www.cde.ca.gov/ta/ac/sa/salaries0203.asp (viewed March 19, 2008).
[34] Margot Garey, *The Cost of Taking a Life: Dollars and Sense of the Death Penalty*, 18 UC Davis L. Rev. 1221 (1984-1985).
[35] Steve Maganini, *Closing Death Row Would Save $90 Million a Year, Sacramento Bee*, March 28, 1988.
[36] David Erickson, Capital Punishment at What Price, Spring 1993 (on file with the ACLU-NC), available at http://death.live.radicaldesigns.org//downloads/Erickson1993COSTSTUDY.pdf (viewed March 15, 2008).
[37] Gary, *supra* note 33.
[38] Maganini, *supra* note 34.
[39] Adjustment for inflation calculated with the U.S. Department of Labor inflation calculator, available at http://data.bls.gov/cgi-bin/cpicalc.pl (viewed March 16, 2008).
[40] Erickson, *supra* note 35.
[41] Cal. Govt. Code § 15202; 2 Cal. Code Reg. § 1021.7, et seq.
[42] *See e.g.,* State Budget Bill 8180-101-0001-Item 3 (1998) [providing 100% reimbursement for extraordinary costs from the Davis trial]; Chapter 1262, Statutes 1992 [providing 100% reimbursement for all costs of "MacCarlie" trial].

[43] 2 Cal. Code Reg. § 1021.1 to 1021.8.
[44] 2 Cal. Code Reg. § 1021.7.
[45] Cal. Govt. Code § 15202(b).
[46] *See e.g.,* State Budget Bill 8180-101-0001-Item 3 (1998) [providing 100% reimbursement for extraordinary costs from the Davis trial].
[47] 2 Cal. Code Reg. § 1023.3.
[48] 2 Cal. Code Reg. § 1023.1.
[49] Cal. Govt. Code § 11019.
[50] 2 Cal. Code Reg. § 1020.2.
[51] The Public Record Act requests and all documents received on file with ACLU-NC.
[52] Many hearings and trials could not be identified because three counties sought reimbursement for multiple trials and hearings at once and identified each case only by date of filing and case number.
[53] Item 1: State Controller's Office, Division of Accounting and Reporting, Payments by Fiscal Year for Homicide Trial Costs (FY 1996-97 through 2006-07), Government Code Sections 15200-15204 and 11019.5 (on file with ACLU-NC) (hereinafter "Item 1").
[54] The records also include some multi-defendant trials with fairly comprehensive accounting. For example, the records for the nine defendant trial called the "MacCarlie Trial" in Trinity County included most trial expenses, totaling nearly $4 million. *See* Trinity County Revised Audit Report, Criminal Homicide Trial Costs Program, July 1, 1991, through June 30, 2005, State Controller (Dated May 2007). However, multi-defendant cases such as these have not been included in the analysis because it is impossible to discern how much was spent on each defendant.
[55] Application for Advance Payments for Cost of Homicide Trial, Siskiyou County, dated May 14, 1997; Application for Advance Payments for Cost of Homicide Trial, Siskiyou County, dated Aug. 26, 1996. The records received do not include any final Claims for Payment, audits or other documentation reconciling the actual costs with the projected costs for the Bowcutt trial.

[56] Calaveras County, Revised Audit Report, Criminal Homicide Trial Costs, July 1, 1991, through June 30, 2001, prepared by State Controller, May 2006 (on file with ACLU-NC).
[57] Claim for Payment for Reimbursement of the Cost of Homicide Trial, Stanislaus County, dated Aug. 5, 2005; Claim for Payment for Reimbursement of the Cost of Homicide Trial, Modesto, dated July 29, 2005 (both on file with ACLU-NC).
[58] Claim for Payment for Reimbursement of the Cost of Homicide Trial, San Luis Obispo, dated Apr. 3, 2002 (on file with ACLU-NC).
[59] Claim for Payment, Stanislaus, *supra* note 54; Claim for Payment, Modesto, *supra* note 54.
[60] Stanislaus County District Attorney Staff Hours, *supra* note 14.
[61] *Id.*
[62] "Support staff overtime" is listed as a separate item on the document entitled Stanislaus County District Attorney Staff Hours, *supra* note 14, in addition to the staff hours claimed as "normal salaries." The spreadsheet detailing the time spent on the case by all staff employees only reflects the hours claimed under the normal salary expenditures, not these overtime hours.
[63] Letter of Richard Robinson, Chief Executive Officer of Stanislaus County, to Steve Westly, State Controller, dated Feb. 22, 2005.
[64] *Id.*
[65] *Id.*
[66] *Id.*
[67] Stanislaus County, People versus Peterson CHT Trial Costs, District Attorney Services and Supplies Costs, FY 2002-2003 to FY 2004-2005 (on file with ACLU-NC).
[68] *Id.*

[69] Letter of Larry Haugh, Auditor-Controller of Stanislaus County, to Steve Westly, State Controller, dated September 14, 2005 (on file with the ACLU-NC).
[70] Letter from Larry Haugh to Ginny Brummels, Subject: City of Modesto – Scott Peterson Case (July 29, 2005), attachment "Explanation of Reimbursement Request" (on file with the ACLU-NC).
[71] *Id.*
[72] *Id.*
[73] Stanislaus County District Attorney Services and Supplies Costs, *supra* note 65.
[74] Sternbee, *supra* note 16.
[75] Modesto Police Department, Peterson Case Costs, December 24, 2002 through April 5, 2005 (on file with the ACLU-NC).
[76] Claim for Payment, San Luis Obispo, *supra* note 55.
[77] District Attorney Summary Attached to Claim for Payment, San Luis Obispo, *supra* note 55 (on file with the ACLU-NC).
[78] District Attorney Office's Expenses—Salaries and Benefits, Attached to Claim for Payment, San Luis Obispo, *supra* note 55 (on file with the ACLU-NC).
[79] District Attorney Office's Expenses—Receipts, Attached to Claim for Payment, San Luis Obispo, *supra* note 55 (on file with the ACLU-NC).
[80] San Luis Obispo Sheriff's Department, Krebs Trial Court Reimbursement, Salary & Benefits and Services & Supplies, dated Oct 12, 2001 (on file with the ACLU-NC).
[81] Claim for Payment for Reimbursement of the Cost of Homicide Trial, Del Norte, dated Sept. 23, 2004 (on file with the ACLU-NC).
[82] Cost Report (FAM-34), Del Norte County District Attorney, Costs Incurred between 12/4/2001 and 11/20/2003, attached to Claim for Payment for Del Norte, *supra* note 79 (on file with the ACLU-NC).
[83] Jim Sanders, *DNA Effort Pays off in Crime Fight*, Sacramento Bee, Dec. 17, 2001.
[84] Claim for Payment for Reimbursement for Homicide Trials, Sonoma County, Claim #1, dated Dec. 17, 1996, Claim #2 dated Apr. 28, 1997, Claim # 3 dated March 31, 1998; Claim for Payment for Reimbursement for Homicide Trials—Reimbursement for Change of Venue, Sonoma County, Claim #1, dated Dec. 17, 1996, Claim #2 dated Apr. 28, 1997, Claim # 3 dated Mar. 31, 1998,
[85] Memorandum from William Parsons, Director of Finance for Santa Clara County Superior Court to Joseph Torretto, Fiscal Officer, dated July 1, 1997 (on file with the ACLU-NC).
[86] Sonoma County District Attorney Summary of Expenses Richard Allen Davis Case (on file with the ACLU-NC).
[87] Sonoma County Sheriff-Corner Summary of Expenses Richard Allen Davis Case (on file with the ACLU-NC).
[88] Calaveras County, Revised Audit Report, *supra* note 53.
[89] *See* Email correspondence from Stephanie Woo, State Controller's Office, to Jim Spano, dated Oct 8, 2004; Letter from Brent Herrington, County Administrator of Calaveras, to Clint Armstrong, State Controller's Office, dated May 13, 1991 (on file with the ACLU-NC).
[90] Calaveras County, Revised Audit Report, *supra* note 53. Of the $14,875,984 the county had to return, the State allowed the county to temporarily retain $2,015,185 in confidential defense costs until confidentiality was no longer an issue and another audit of those costs could be performed.
[91] Expenditures 00-01: County of Calaveras, Ng Expenditures, 6/1/85 to 06/30/01 (on file with the ACLU-NC).
[92] Number of homicides in ten year period based on data from Office of the Attorney General, Criminal Justice Statistics Center, available at http://ag.ca.gov/cjsc/pubs.php#homicide (viewed March 19, 2008).
[93] *See* Item 1, *supra* note 51.
[94] *See* Advance Payments and Reimbursements for the Costs of Homicide Trials, the instruction manual produced by the California State Controller.
[95] Norm Stamper, *Death Penalty Wastes Money, While Failing to Reduce Crime*, San Jose Mercury News, November 19, 2007.