“Death Row Often Means a Long Life; California condemns many murderers, but few are ever executed;”
[HOME EDITION]
by Rone Tempest
Los Angeles Times. Los Angeles, Calif.:
Mar 6, 2005. pg. B.1

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When prison guards strapped nervous three-time killer Donald Beardslee to a gurney and administered a lethal injection just after midnight here Jan. 19, it was the first California execution in more than three years.

Beardslee, who in 1981 brutally murdered two young San Francisco- area women after he was paroled from a Missouri prison on another murder conviction, waited 21 years for his day of reckoning. He was 61 and had been on death row longer than the entire life span of one of his victims.

In the quarter century since Californians voted overwhelmingly to restore the death penalty, county prosecutors and juries have put more condemned murderers on death row in this state than in any other except Texas.

Despite the public's willingness to hand out death sentences, California is one of the more hesitant among the 38 capital punishment states to use the penalty, causing some to question if the enormous ongoing cost of capital punishment is worth the relatively few executions it produces.

California has 640 inmates on death row, about 20% of the nation's total. But the state has accounted for only 1% of the nation's executions -- or 11 deaths -- since 1978, when the death penalty was restored.

"What we are paying for at such great cost," said UC Berkeley law professor Frank Zimring, "is essentially our own ambivalence about capital punishment. We try to maintain the apparatus of state killing and another apparatus that almost guarantees that it won't happen. The public pays for both sides."

According to state and federal records obtained by The Times, maintaining the California death penalty system costs taxpayers more than $114 million a year beyond the cost of simply keeping the convicts

locked up for life and not counting the millions more in court costs needed to prosecute capital cases and hold post- conviction hearings in state and federal courts.

With 11 executions spread over 27 years, on a per-execution basis, California and federal taxpayers have paid more than a quarter of a billion dollars for each life taken at state hands.

Capital punishment advocates argue that the death penalty saves money by eliminating state costs of housing the executed inmates. The rare California executions do produce some savings for the state. For example, had Beardsley lived to age 77, the average life expectancy for California males, it would have cost the state an additional $2 million to house him. But these kinds of savings make only a small dent in the overall sums needed to maintain the system.

Former California Atty. Gen. Dan Lungren, now a Republican member of Congress from Sacramento, accuses capital punishment opponents of conducting a "war of attrition" against the death penalty, jacking up the cost and greatly prolonging appeals with the intent of making the process too expensive to keep up.

"I don't think society ought to be forced to give up the death penalty just because of actions by those who have been ratcheting up the costs," said Lungren, who helped write a 1996 federal law attempting to speed up capital case appeals. "It is very difficult to calculate the human costs or even the economic costs of those who are not killed because of the deterrence of capital punishment."

Other states execute much more rapidly than California. Eleven Southern states -- led by Texas (337 executions), Virginia (94) and Oklahoma (75) -- account for 90% of all executions in the last 27 years. This is partly because California, similar to other non- Southern capital punishment states, dedicates much more time and money to state and federal appeals.

Another important factor is that the U.S. 9th Circuit Court of Appeals, serving California and consisting largely of Democratic appointees, is more likely to hear death penalty petitions than the more conservative appeals courts serving Texas (5th Circuit) and Virginia (4th Circuit).

"We don't turn them [executions] out the way a lot of Southern states do," California Chief Justice Ronald M. George said in an interview. "The virtue of our system is also its vice. We go to such lengths to minimize the possibility of error, and we've built in a lot of delay.

"The part I find most dysfunctional is that we have a delay of three to four years between the time the death penalty judgment is imposed by the trial court and the time the defendant is appointed counsel."

George said that 115 death row inmates still have not been appointed lawyers for the first direct appeal to the state Supreme Court that is mandated by state law. And 149 lack lawyers for state habeas corpus and executive clemency petitions.

In recent years, both state and federal courts have increased the incentives for qualified defense attorneys to take death penalty cases. The state Supreme Court offers $125 an hour or fixed fees ranging from $135,000 to $314,000 for capital case defense representation. The federal courts recently increased their hourly rate to $150 for defense lawyers in capital cases.

But even at those rates, only a relative handful of attorneys from the 200,000 licensed to practice in California are willing to devote the years of work and vast number of filings a typical capital case can take.

Because of the long appeals process, the delay between sentencing and execution in California averages nearly 20 years. As a result, there is a general graying of the population on death row. According to Department of Corrections statistics, 180 death row inmates are older than 50; 42 are older than 60.

Prison records show that California death row inmates are far more likely to die of natural causes than they are at the hands of the executioner. Since 1978, during the same period that 11 inmates were put to death, 28 died naturally, 12 committed suicide and two were killed in incidents on the San Quentin exercise yard.

"The leading cause of death on death row," George said, "is old age."

Capital punishment California style has become a small industry. Every February, organizers with the California Attorneys for Criminal Justice and

California Public Defenders Assn. host a conference on death penalty issues in Monterey, Calif.

This year's convention, titled "Executing Justice, not People," was held at a cost of $300 a head. More than 1,500 participants attended workshops on topics that included "What the Enemy Is Doing" and "Sexual Abuse of Our Clients When They Were Young."

Among the tactics routinely discussed by attendees is how to prolong appeals.

The public cost of maintaining the death penalty, meanwhile, continues to mount. The annual bill breaks down like this:

* According to Corrections Department spokeswoman Margot Bach, it costs $90,000 more a year to house an inmate on death row, where each person has a private cell and extra guards, than in the general prison population. That accounts for $57.5 million annually.

* Atty. Gen. Bill Lockyer, whose deputies represent the counties during appeals, estimates that he devotes about 15% of his criminal division budget to capital cases, or about $11 million annually.

* The California Supreme Court, which is required by law to review every death penalty case, spends $11.8 million annually for court-appointed defense counsel.

* The Office of the State Public Defender, which represents some death row inmates, has an annual budget of $11.3 million. The San Francisco-based Habeas Corpus Resource Center, another state-funded office, represents inmates and trains death penalty attorneys on a budget of $11 million.

* Finally, federal public defenders offices in Los Angeles and Sacramento, and private attorneys appointed by the federal court system for California cases, receive about $12 million annually.

The resulting $114-million annual cost does not include the substantial extra funds needed to try the complicated capital cases in county courts.

Research by the UC Berkeley School of Public Policy in 1993, the most recent study of its type available, showed that in Los Angeles County, a

capital murder trial costs three times more to try than a noncapital murder case, $1.9 million compared to $630,000. One reason for the extra costs is that capital cases require a jury trial for sentencing after guilt has been determined in the first trial.

Typically, capital cases have four times as many pretrial motions, more investigators and expert testimony and much more exhaustive jury selection.

Other spending not included in the total are courtroom, staff and filing costs at the California Supreme Court, four federal district courts and the U.S. 9th Circuit Court of Appeals.

In an interview, George estimated that the state's highest court spends about 20% of its time and resources on death penalty cases alone. Federal habeas corpus appeals in death cases are so expensive that the 9th Circuit assigns a U.S. district judge just to review the budgets of each capital case.

For the present, activists both for and against the death penalty are unhappy.

"When we reinstated the death penalty, I don't think anyone believed it would look like it does today," said Dane Gillette, a senior assistant attorney general who overseas the state's death penalty cases. "The system is twisted and corrupted in ways that were not anticipated."

Michael Laurence, director of the Habeas Corpus Resource Center and one of the state's leading capital defense lawyers, sees the whole process as an enormous misuse of resources.

"We put all these resources into litigation where we end up killing one person every two or three years," said Laurence. "What if just a small portion of the money we spent on these cases went for the prevention of child abuse? From my experience, this would have done far more to prevent murders than anything we have done with capital punishment."

Possibly as a result of the high costs and bottleneck on death row, there has been a marked decline in death sentences in recent years. In 1999, juries imposed 42 death sentences. In 2004, the number dropped to nine.

But the numbers fluctuate, and new admissions to California's death row continue to exceed by many times the number of executions.

USC law professor Michael J. Brennan said he and a co-counsel, Los Angeles lawyer Phillip A. Trevino, have represented two California death row inmates on federal appeals for the last 12 years, for which Brennan estimates they have been paid $250,000.

Brennan said that when he debates the issue with death penalty supporters, he no longer bothers with the ethical and moral issues.

"I had a conversation with someone recently who admitted to being sort of a redneck on the death penalty," Brennan said recently. "But when I said, 'Let's talk about how much it costs,' I suddenly got his attention."