



MONEY FOR NOTHING?

The Financial Cost of New Jersey's Death Penalty

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INTRODUCTION

Feelings toward capital punishment have varied over time. Among democratic nations, few now impose it. In the United States, 38 states have death penalty laws while 12 have rejected the ultimate punishment in favor of other strong sentences, such as life without parole. Many death penalty states, including New Jersey, rarely impose it. The death penalty is an emotional topic but apart from the moral questions the death penalty evokes, apart from questions of whether it serves as a deterrent, apart from debate over whether it has a proper role in the administration of justice, the death penalty—when everything else is stripped away—is a matter of public policy.

And, as with any public policy, questions are raised from time to time about whether capital punishment is a sensible use of tax dollars. Answering such questions, regardless of the particular policy, requires dispassionate analysis. It is the aim of this report to put aside the emotion and focus on getting a handle on the financial costs of capital punishment in the state.

It needs to be made clear at the start that the financial implications of some public policies are easier to ascertain than others. The work that went into this effort was hampered by reluctance on the part of many state officials to supply what should be fairly basic information about how money appropriated in the state budget is spent. We have, however, been able to piece together what we feel is a credible analysis by going through the phases of death penalty cases in the judicial and criminal justice systems, and looking at the various tax-funded entities that are involved in the process. We have also relied on research conducted in other states—in most cases by the states themselves.

Determining the precise financial cost of maintaining a capital punishment system requires comparing a capital trial—where the death penalty is imposed, appealed and followed either by a reversal or an eventual execution—with a non-capital murder case which goes to trial and is appealed. Few states maintain records to allow such a detailed comparison. New Jersey is no exception.

As the high stakes of having a death penalty would imply, capital punishment occupies a unique place in criminal justice. Attorneys spend long hours on capital cases, which almost always require more time than comparable non-capital murder trials. Capital cases take a disproportionate amount of court time when compared to the courts' overall caseloads. The costs to the Department of Corrections of maintaining a Capital Sentence Unit (death row) are greater than the upkeep of other prisoners. It takes longer to seat a jury in death penalty cases, and jurors spend more time in court listening to prosecution and defense arguments and deliberating than jurors in non-capital cases.

In spite of—or perhaps because of—the extensive resources allocated to maintain a capital punishment system, New Jersey has executed no one since the state re-established the death penalty in 1982.

THE DEATH PENALTY IN THE U.S.¹

Europeans brought the practice of capital punishment to the New World. By the time of the Revolutionary War, treason, rape, piracy, sodomy and some property crimes were punishable by death in many of the colonies.² The Duke's Laws of 1665 in the New York Colony made offenses such as striking one's mother or father, or denying the "true God" offenses punishable by death. At the same time, many opposed death sentences. Dr. Benjamin Rush, a signer of the Declaration of Independence and founder of the Pennsylvania Prison Society, challenged the belief that the death penalty was a deterrent. In 1794, Pennsylvania repealed the death penalty for all offenses except first degree murder.

In the early part of the 19th century, many states reduced the number of crimes punishable by death. By World War I, 13 states had abolished it altogether. But, by 1920, five states that had abolished the death penalty reinstated it. From the 1920s to the 1940s, there was a resurgence in the use of the death penalty due in part to the writings of criminologists who argued that it was a necessary social measure. Approximately 1,600 people were executed in the United States during the 1930s—more than during the two preceding centuries combined.³

In the 1950s, spurred by the civil rights movement focusing attention on the treatment of African Americans, scrutiny of the death penalty and its practice increased. Where 1,289 people were executed in the 1940s, 715 were executed in the 1950s and 191 between 1960 and 1976. A Gallup Poll in 1966 showed only 42 percent of the public supporting the death penalty.⁴

In 1972, the U.S. Supreme Court in *Furman v. Georgia* declared the death penalty as applied in Georgia unconstitutional because the law gave juries complete sentencing discretion. This, the Court felt, could result in arbitrary application of death sentences, violating the Eighth Amendment ban on “cruel and unusual” punishment. The ruling had implications far beyond Georgia. It effectively voided all state death penalty statutes that existed at the time, commuting the death sentences of hundreds of inmates across the nation. It would be up to each state to craft a death penalty statute that met the constitutional test.

In 1976, the Supreme Court upheld the constitutionality of Georgia’s revised death sentencing statute in *Gregg v. Georgia*. Georgia had changed its law in three ways. First, it narrowed the class of murderers subject to capital punishment by requiring that at least one of 10 specified statutory aggravating circumstances be proved beyond a reasonable doubt. Second, it divided capital proceedings into two separate parts: one phase to determine guilt and another where a jury would weigh aggravating evidence against mitigating evidence to determine the sentence. Third, it required an automatic appeal of each death sentence to the Georgia Supreme Court, which would be required to consider a number of factors, including whether the sentence was appropriate when compared to other cases.

U.S. Supreme Court rulings since the 1960s were part of a sustained period of fine-tuning administration of the death penalty. In *Witherspoon v. Illinois*, the Court ruled in 1968 that it is unconstitutional to dismiss potential jurors solely because they express opposition to the death penalty. In 1986, the Court banned the execution of insane defendants and required a process for determining mental competency. At about the same time, it also ruled that states cannot execute anyone who was under age 16 at the time of committing a capital crime. A 2002 ruling said that executing a mentally retarded person violates the Eighth Amendment. In 2005, the Court banned the execution of juveniles.

Of the states with death penalty statutes today, five, including New Jersey, have executed no one since reinstatement. (New Jersey’s last execution was in 1963, when Ralph J. Hudson was electrocuted for stabbing his estranged wife to death.) In 2004, courts in Kansas and New York declared the death penalty violated those states’ constitutions; other states have considered taking the same action.

As of July 1, 2005, there were more than 3,000 death row inmates in the United States. (See Table 1 on page 22.) According to the Death Penalty Information Center, since 1976, nationwide, 994 persons have been executed while 121 death row inmates have been released after evidence of their innocence was discovered (as of November 16, 2005).

Since 1999, for a variety of reasons including the growing costs of capital prosecutions, there has been a dramatic decline in death sentencing. Executions also have declined. As use of the death penalty lessens, the amount of time consumed by the typical case has increased. In 1960, the average length of time between conviction and execution was about two years; in 2000, it was eleven and a half years.⁵

THE DEATH PENALTY IN NEW JERSEY

New Jersey first adopted the death penalty in 1796. It was the mandatory punishment for capital convictions—generally murder—in New Jersey until 1916, when it was made discretionary except in cases of treason.

An attempt to abolish New Jersey’s death penalty in 1915 was defeated in the General Assembly. Numerous other unsuccessful abolition attempts followed throughout the 20th century. Interest in the abolition movement increased during the 1950s and 1960s. After the Supreme Court declared the death penalty unconstitutional in all states, the New Jersey Legislature tried four times to re-enact the death penalty between 1977 and 1979. All were thwarted by Gov. Brendan T. Byrne, who strongly opposed capital punishment.

It was not until Gov. Thomas Kean’s election that New Jersey had gubernatorial support for the death penalty; it was re-enacted in 1982. A year after the death penalty was re-instituted, the state changed its method of execution from electrocution to lethal injection. In New Jersey the minimum age for receiving a death sentence is 18. State law does not exempt the mentally retarded from death sentences, but as a practical matter they are excluded by the 2002 U.S. Supreme Court ruling.

Since 1982, New Jersey jurors have returned death verdicts 60 times—in some cases, more than once on the same defendant. (See Table 2 on pages 23-24.) Ten of these people are now on death row. Most of the others have had their death sentences overturned and will spend the rest of their lives in prison. One died of natural causes; another was murdered by a fellow death row inmate. New Jersey’s current death row inmates—all men—are housed at the New Jersey State Prison in Trenton and are between 28 and 75 years old. Their time on death row ranges from about a year and a half to 22 years.

In January 2003, Gov. James McGreevey vetoed a bill, passed unanimously by the Senate and overwhelmingly by the Assembly, that would have studied all aspects of New Jersey’s death penalty, including cost. In contrast to the Legislature’s sentiment, he expressed the view that after having three previous death penalty study commissions in New Jersey it was unlikely new information would be brought forth. Commissions in 1905, 1964 and 1971 had studied the New Jersey death penalty—all prior to the system being re-instituted in 1982.

In February 2004, in response to a challenge to the legality of the procedures for lethal injection in New Jersey, a unanimous New Jersey Appellate Court panel suspended all executions in New Jersey.

CRIMINAL PROCESS PRIMER

There is a lot more to the death penalty than might be assumed from watching television or movies. It is arguably the most complex and nuanced aspect of the criminal justice system, requiring serious effort even for legal practitioners and law enforcement

personnel to fully understand. But a working knowledge of the process and the players is essential to grasp the financial aspects of the system.

Criminal cases in New Jersey are prosecuted at the county level, in Superior Court. County prosecutors (in most states elected, but in New Jersey appointed by the Governor though their offices are funded by local property taxes) represent the state in trying to prove that the defendant committed a crime. Guilt or innocence is for the most part decided by a jury of 12 citizens who listen to the evidence presented by both sides.

If the jurors are all convinced of the defendant's guilt, he or she is convicted. The judge then imposes a sentence, such as a term in prison. If the jurors cannot reach a conclusion, the judge can declare a mistrial and hold a new trial with different jurors. Many cases do not involve a trial, resolved instead by a plea bargain where the defendant admits to guilt and in return receives a less severe sentence than might have been handed down after a jury trial.

About 90 percent of defendants in New Jersey are represented not by private attorneys but by someone assigned by the state Office of the Public Defender. Since creation of the office in 1967, the Public Defender's attorneys and staff have supported indigent defendants through trials and the appeal process.

DEATH IS DIFFERENT: THE CAPITAL PROCESS

Prosecuting a criminal case where the death penalty is sought is different in many ways from non-capital cases, stemming in large measure from the potential punishment itself. A death sentence, once carried out, cannot be undone. Recognizing that death is different than any other punishment, the courts have mandated special procedures for capital cases. New Jersey's death penalty statute mirrors what Georgia adopted to meet U.S. Supreme Court mandates. Because of its complexity, the New Jersey statute, like other state statutes, has been interpreted many times by state and federal courts as each death penalty decision is reviewed.

Everything changes from the moment the decision is made to seek the death penalty for a crime where death is one of the punishments allowed by law. With someone's life at stake, the process becomes more deliberate, complicated, time consuming—and expensive.

Capital trials in New Jersey and elsewhere in the United States must take place in two parts: a trial by jury to determine whether the defendant is guilty, then a separate trial by jury to determine whether to impose the death penalty. Before a case can be tried capitally, the prosecution must convince a grand jury that an aggravating factor exists which would allow it to seek the death penalty.

Examples of some aggravating factors that subject a defendant to the death penalty include: an earlier conviction for murder; either hiring or being hired to commit murder; killing a public servant or a child under the age of 14.

Once a determination of guilt has been made, these aggravating factors are subjectively weighed against any mitigating factors that might make a jury inclined to spare the defendant's life. Some of the mitigating factors often considered are the age of the defendant, the evidence of no prior criminal activity and whether the defendant is mentally retarded.

If a defendant has been found guilty in the first phase of a capital trial, three sentencing options exist: death; life in prison without the possibility of parole; or a term of 30 years to life. The first two sentencing options need no explanation. The third option is more complicated. A person sentenced to a term of 30 years to life must serve at least 30 years of the term. If he or she is sentenced to more than 30 years, he or she must serve 85 percent of the term. Based on a life expectancy of 75 years, someone sentenced to life in prison will be incarcerated for at least $63 \frac{3}{4}$ years (85 percent of 75 years). The sentence imposed is determined by the circumstances of the case.

One complication arising from a prosecutor's decision to seek the death penalty is that it is less likely the case will result in a plea bargain. Plea bargains avoid all or part of a trial, so they generally cost taxpayers less money.

Death-sentenced defendants in New Jersey have an automatic right of direct appeal to the state Supreme Court. On appeal, the Supreme Court reviews the facts of the case and takes into account how it compares to other similar cases. The purpose of the comparison process is to determine whether the sentence in one case is proportionate to that imposed in similar cases. As part of this exercise, the Supreme Court issues reports called proportionality reviews which apply various types of statistical analyses to data in order to tell whether the death penalty has inappropriately targeted minorities or others who are disadvantaged.

The Supreme Court, on appeal, also determines whether errors have taken place. Errors that have overturned a sentence in New Jersey are improper instructions to the jury and inappropriate use of evidence by the defense or prosecutor. If the Court finds error in the guilt phase of the trial, a new trial is ordered. If the error was in the penalty phase, a new sentencing hearing is ordered. If the Court finds no error, the defendant has the right to appeal to the United States Supreme Court. If the Supreme Court declines to hear the case, a defendant's direct appeals are exhausted.

In addition to direct appeals on matters of law in the case, a defendant also has the right to challenge the constitutionality of his or her conviction under state and federal habeas corpus review.

In April 2004, a federal court set aside Robert Marshall's 1986 death sentence and ordered a new penalty phase trial on grounds that enough questions were raised by the way Marshall's private attorney handled the penalty phase of his trial that the lower court should review it. Marshall has since been represented in his appeals process by public

defenders. The decision to reverse Marshall's death sentence was upheld by the Third Circuit Court of Appeals on November 2, 2005.

The final stage of review for every death row inmate is executive clemency. In many states, a governor may: grant the convicted murderer a reprieve where the sentence is withdrawn for a period of time; commute the sentence by substituting a lesser sentence; or pardon the defendant entirely. No case in New Jersey has reached a point yet where executive clemency would be sought.

From the beginning of the 20th century through the *Furman* case, clemency is estimated to have been granted in more than 25 percent of capital cases nationally. Between 1977 and 2000, juries and judges nationwide returned some 6,500 death sentences and executive clemency was granted 87 times. In 43 of these cases, governors said they were granting clemency to avoid the financial cost of retrying a defendant.⁶

An especially noteworthy exercise of clemency occurred in January 2000, when Illinois Gov. George Ryan, in his last act before leaving office, commuted the sentences of all 156 of the state's death row inmates who remain in prison without the possibility of parole. Ryan explained that he had concerns about the manner in which the Illinois death penalty was implemented and was not satisfied that an innocent person would not be executed.

DEATH IS DIFFERENT: APPLYING THE DEATH PENALTY

As noted earlier, capital defendants receive due process guarantees that inevitably increase the expense of a trial. These constitutional safeguards exceed the rights given to non-capital defendants because capital punishment is considered unique due to its severity and finality. They also make the process more complicated—and more costly.

One example of a factor that makes a death penalty trial more complicated and more expensive involves the selection of jurors. No one can sit on the jury in a capital case without being “death-qualified,” meaning he or she neither adamantly opposes or favors the death penalty and would be willing under some circumstances to vote to sentence someone to death. Because of the nature of determining potential jurors' beliefs and because a significant percentage of citizens in New Jersey strongly oppose capital punishment⁷, it is more difficult to seat death-qualified juries and it takes longer than in other cases.

Nationally, just over one percent of homicides each year—about 250 cases—result in a death sentence.⁸ Many more, however, are tried as capital cases with all the associated complications and extra costs, but end up with a lesser sentence being handed down or the death sentence being overturned.

Since 1982 in New Jersey, 518 death-eligible cases have been identified by the Administrative Office of the Courts (AOC). Of these, 197 resulted in capital trials and 155—about 30 percent—got to the penalty stage. Fifty-four of these cases resulted in a

death sentence.⁹ Between 1982 and 1991, 37 persons were sentenced to death in New Jersey. The State Supreme Court overturned 27 of these sentences. It was not until January 1991 that the Court upheld its first death sentence, in the case of Robert Marshall.

According to the proportionality reviews prepared by the AOC for the New Jersey Supreme Court over the past four years, on average 25 to 35 murder cases a year in New Jersey were eligible for the death penalty. In that time, just nine cases reached the penalty trial stage and one person received a death sentence.

CAPITAL COSTS

While more evidence was available to analyze costs incurred by the defense and the state Corrections Department, information on expenses for the other aspects of a capital case—courts and prosecution—is included in this report to the degree possible. In order to develop the most accurate possible estimate of costs, this report also draws on the analogous experience of other states. No attempt has been made to quantify the cost of a capital trial to either the victim’s family or the defendant’s family. These costs can be substantial.

Pre-Trial and Trial: Defense

There is a perception that the biggest cost in a death penalty case is incurred by the defense. Most studies of the death penalty refute this claim, stating that prosecutors spend many times more than what the defense spends. This report begins with the costs reported by the Public Defender because it is the only cost center in this process that apparently attempts to keep an accurate account of what it spends on capital cases.

The Public Defender’s office in New Jersey represents about 90 percent of persons accused of a capital offense. Its funding comes from regular yearly appropriations in the state budget. In Fiscal Year 2005, the state appropriated about \$87.3 million for legal services to indigents. Of that, 66 percent paid the salaries of just under 1,000 attorneys and other staff. Another 24 percent was used to pay for private attorneys who are sometimes used instead of those on the Public Defender’s staff and to pay expert witnesses.

Since 1985, the budget of the Office of the Public Defender has included a special appropriation for death penalty work, though the money no longer is broken out separately in the state budget document. The sum has ranged between \$2.3 million and \$2.6 million. It can be ascertained that the money is for capital cases because a fiscal note (a document prepared by the state Office of Legislative Services that explains how much a piece of legislation will cost) for Assembly Bill 1435 in 2004 said that the state could save \$2.3 million each year on defense costs by abolishing the death penalty. No similar estimate was given for prosecutors’ costs or court costs.

The Public Defender estimates that to defend indigents charged with capital crimes, it spends \$509,765 on salaries, \$126,959 on court reporters, \$761,376 on mitigation specialists and jury experts, \$21,758 on litigation support and \$891,094 for pool attorneys who are hired to represent defendants when the Public Defender uses outside representation. Pool attorneys in capital cases are paid \$75 an hour—between \$15 and \$25 more than attorneys in non-capital cases.

Nine out of 10 non-capital cases are resolved by plea negotiations, avoiding the cost of a trial. Because few capital defendants enter guilty pleas, the decision to seek the death penalty all but assures that a trial will take place. Because of the complexity of capital cases, the Public Defender always assigns two lawyers to each defendant. Generally in non-capital cases, one lawyer is assigned.

The pre-trial process is longer and more complicated in capital cases. For example, the Southern Poverty Law Center estimates that 10 to 25 pre-trial motions are required in a typical capital case, compared to between five and seven in a non-capital case.¹⁰ The capital case requires not only motions with regard to the underlying crime, but motions attacking the death penalty itself, its constitutionality or the sufficiency of evidence to support the alleged aggravating factors. Capital cases also generate motions to appoint experts and employ investigators; and the notoriety of capital cases can prompt change-of-venue and sequestration motions. As the number of motions increases, so does the court time necessary to hear them and time that lawyers on each side need to prepare the motions and respond to them.

In August 2005, a New Jersey appeals court issued a ruling that directed the state on how to proceed in a case involving mental retardation. The lawyer for Porfirio Jimenez, accused of the 2001 molestation and murder of a 10-year-old boy, argued at a pre-trial hearing that the defendant should not be subject to capital prosecution because he is mentally retarded. The lawyer said that a judge should be able to determine this before the trial, making a capital trial unnecessary. Jimenez's IQ was measured at 68 by the defense and 69 by the prosecution. The American Psychiatric Association's definition of retardation requires an IQ of 70 or lower. Were the death penalty not an option in this case, Jimenez might already be incarcerated for life. With the death penalty, significant sums of money have been spent by the defense and the prosecution to support their positions—and the trial has not even started.

Even a “normal” capital case requires longer and more expensive pre-trial preparation. The state Public Defender's Office has estimated that an additional year of pre-trial preparation—with both defense attorneys working full time to prepare for the capital trial—is standard. The defense attorney's pre-trial investigation is approximately three to five times longer in a capital case than in a non-capital case.¹¹ In the Jimenez case, it has been four years since the crime was committed and the case has yet to come to trial.

As mentioned earlier, a capital trial involves more than determining whether the defendant committed the crime. The prosecution must establish sufficient evidence to prove the aggravating factors necessary for imposing the death penalty. The defense

presents mitigating evidence aimed at convincing a jury not to impose the death penalty. Because factors dating from the defendant's birth to the present time can be considered a mitigating factor, substantial investigation of the defendant's personal, medical and social history is customary in most capital cases. Investigators for the defense interview relatives, teachers, childhood friends, co-workers and neighbors in order to humanize the defendant in the quest to have his or her life spared. Since the prosecution must respond to this evidence, it conducts its own investigations and interviews.

Much of the expense accumulated during the guilt phase may be duplicated in the penalty phase. And while evidence of mitigating factors can only be introduced at penalty phase, preparation to do so must take place before a guilty verdict is reached. This work is done whether the case reaches the penalty phase or not.

An example of this cost structure can be seen in the 1983 trial of Thomas Ramseur. Of the \$296,449.41 the Public Defender's Office spent to defend him at trial, the largest portion—\$191,881—went to psychiatrists. In addition, the Public Defender spent more than \$75,000 successfully attacking the makeup of grand and petit juries in Atlantic County. Steep investigation expenses are not limited to the defense side. The cost of the prosecutor's investigation of the Robert Marshall case alone was more than \$200,000.¹²

In addition to paying lawyers, there are costs for medical examiners, polygraph experts, expert witnesses concerning eyewitness identification, DNA specialists, psychiatrists and others. No expense is spared in the investigation because the evidence presented will be scrutinized carefully by both sides. Margot Garey of the University of California, Davis estimated that it cost between \$700 and \$1,000 a day to hire a medical examiner and between \$200 and \$300 a day for a polygraph expert's testimony—and this was in 1985. Experienced investigators typically charge between \$500 to \$1,500 a day. During the multi-phase capital trial, an average of 49 witnesses testify, compared to 26 in a single-phase, non-capital trial.¹³

Pre-trial and Trial: Jury Selection

Generally in New Jersey, the same jury determines outcomes of both the guilt phase and the penalty phase of a trial. There is provision to allow selection of a second jury if necessary. The determination of whether the trial will need one jury or two is made through mutual consent of the judge, prosecutor and defense attorneys.

In criminal cases, a panel of prospective jurors is drawn randomly from a list of residents in the county where the crime occurred. The prosecutor, defense attorney and judge then examine panelists' ability to serve on the jury. The judge can eliminate someone "for cause" if he or she is unable to be impartial in the case. The lawyers, meanwhile, can use their limited preemptory challenges based on their feeling that a potential juror might not be favorable to their case. It takes longer in death penalty cases to pick a jury because no one becomes a capital juror without first being questioned about his or her views toward the death penalty. Only panelists willing to impose a death sentence are selected for death penalty cases.

Selection of an impartial jury can be complicated by pre-trial publicity that often surrounds a capital case. And with each side granted more preemptory challenges than in a non-capital murder case, a larger juror pool is needed.

In a public hearing in 1986 before the State Senate Judiciary Committee on Capital Punishment Procedures, Superior Court Judge John P. Arnone said it takes five and a half days to empanel a jury in a capital case compared to between a half-hour and two hours in a non-capital case. Judge Arnone went on to explain, “In a non-capital case, the jury is questioned collectively whereas in this case, they had to be questioned individually, so that is what took the time. I had probably over 60 questions and then each of the attorneys questioned the jury with respect to the death phase of it. A number of their questions depended on the answers that were given by the prospective juror as to how many questions they might ask.”

According to testimony during that same hearing, it took five days to select a jury for the trial of Richard Biegenwald in the early 1980s, but three weeks in the Ramsey case. Potential jurors in the Ramsey case were questioned about their opinion on psychiatry, psychomotor seizures and epilepsy as part of jury selection.

More recently a newspaper story in Cumberland County suggested that it could take six to eight weeks to select a jury from a pool of 180 people for a crime committed in January 2002.¹⁴ “In Cumberland County, New Jersey, seven death penalty cases are pending. For the first of these seven trials, more than 180 people—three times the normal jury pool for a criminal trial—were called on August 15, 2005 to see if they could serve on a death penalty jury for a crime committed on January 10, 2002 in Cumberland County....If the defendant is convicted of murder, a second jury—with an equal number of potential candidates—will be selected to see if the defendant should face the death penalty or life without parole.”¹⁵

Pre-Trial and Trial: Prosecution

County prosecutors in New Jersey decide what charges to bring against a defendant. In Fiscal Year 2004 counties collected \$234.7 million in property taxes to support the budgets of the 21 county prosecutors.¹⁶ On average, the county prosecutor’s budget amounts to about five percent of a county’s total budget. Essex County, which is second in population and has the highest crime rate in the state, had the largest county prosecutor’s budget at \$28.7 million in 2004. Salem, with the state’s lowest population, had the smallest prosecutor’s budget at \$2.6 million.

The combined budget of the 21 county prosecutors is 2.7 times larger than the Public Defender’s budget. When the \$236.3 million Law Enforcement part of the state Department of Law and Public Safety’s budget is included, the Public Defender’s office is outspent by a ratio of 6.4 to one by county and state prosecutors. While it is true that not all of that money goes to prosecute criminal offenses, there still are more than 960 deputy attorneys general who could be involved. Considering the State Police, medical

examiner, lawyers, investigators and support positions, the prosecutors' resources can be as much as 8.5 times larger than the Public Defender's staff.

The 2004 legislation that assigned a figure to how much money would be saved by the Public Defender's Office if the death penalty were abolished did not include such information with regard to the county prosecutors' offices or the Department of Law and Public Safety. The explanation given as part of the research for this report was that because attorneys and staff are not specifically assigned to cover death penalty cases, they would simply be reassigned to other work.

But a former county prosecutor interviewed for this report offered the opinion that prosecutors routinely spend three times as much on a capital case as the Public Defender's Office. If this is so, eliminating the death penalty could save counties and the state between \$4.6 million and \$7.8 million a year in prosecution costs.

There is some indication that the prosecutors might even invest more resources. According to testimony to the Joint Committee on Criminal Justice in Massachusetts, Richard C. Dieter, Executive Director of the Death Penalty Information Center, reported that during the preparation of its 1,181-page brief for one particular capital case, the Brooklyn District Attorney's office was assisted by prosecutors in eight other counties.¹⁷

If a prosecutor or judge works longer on a case because it is a death penalty case, those hours are not available for other work. Without these time-consuming cases, fewer resources might be needed. Alternatively, if capital punishment were abolished but resources were not reduced, it is conceivable that other criminal cases could be brought to trial more quickly, more criminals might be convicted and fewer crimes would go unsolved.

The number of capital cases prosecuted can increase a county budget significantly. As of November 1, 2005, the Public Defender's Office is representing 19 defendants in capital cases. Five are in Cumberland County. Two other cases in Cumberland County where the prosecutor had sought the death penalty recently were resolved: one resulted in a plea bargain and life in prison; the other in a jury verdict of life in prison. Prosecuting these seven cases has caused such financial strain on the county prosecutor's budget that he filed an application with a state administrative law judge who agreed to order that additional money be appropriated from the county budget to the prosecutor's office. The Cumberland County prosecutor's budget shows a 70 percent increase in 2005 because he needed more money—at least in part to pursue death penalty costs.

In New Jersey the county prosecutor can decide whether to continue to pursue a capital case through the appeals process or let the state Attorney General's office handle it. If the county follows the case through the appeals process, the costs will be reflected in the county budget; if the state follows the case, it will be a state cost.

Post-conviction Appeal: Courts, Prosecution, and Defense

In the post-conviction phase, capital cases consume even more financial resources. With New Jersey's capital punishment statute requiring automatic review of all death sentences by the state Supreme Court, two additional clerks have been needed almost full time to assist the justices with research on the capital cases. Death penalty reviews represent nearly 25 percent of the New Jersey Supreme Court's decisional work product.¹⁸

The number of hours required by defense lawyers for a state-level capital appeal is between 500 and 1,000. In addition, the defense might spend up to \$30,000 just to purchase transcripts of the guilt and penalty phases of a trial.¹⁹ A study by the New York State Defenders Association concluded that a direct appeal to the state Court of Appeals (the highest level of the judiciary in that state) would cost at minimum \$160,000—exclusive of court and correctional costs.

If the death penalty is affirmed on appeal, New Jersey law requires that a proportionality review be conducted to examine the appropriateness of the death sentence in a particular case. The first proportionality review in Robert Marshall's case was completed in 1991 at an estimated cost of \$300,000, not including attorney fees.²⁰ Recent proportionality reviews are part of the direct appeal process and are less expensive but still require court resources.

If the state Supreme Court fails to reverse the judgment, the defense has other levels of appeal it can pursue at the federal level. One official estimates that a "clean case"—one in which every possible appeal is exhausted—would take at least eight years before a criminal would be executed. The New York State Defenders Association study concluded that, exclusive of court and correctional costs, U. S. Supreme Court review of a capital case would total at least \$170,000.

A capital case in New Jersey can consume the equivalent of 16 years in attorney time. Approximately 900 attorney hours are required per appeal at the federal level. In New Jersey, two appellate attorneys will typically spend two years preparing a single appeal and the prosecution would spend at least as much or more time. Every death-sentenced offender is entitled to a direct appeal. Those mandatory reviews for defense alone cost an average of \$37,740. Studies show that the prosecution matches these defense attorney costs dollar-for-dollar. The length of the pre-trial and trial proceedings also means voluminous transcripts must be prepared for appeal.²¹

Court Costs

In 1995, the state took over from county governments the cost of administering the court system. In Fiscal Year 2005, the state spent \$552.3 million for this purpose. Of that, \$243.5 million was spent either directly or indirectly on the criminal courts. Twenty percent of the state judiciary's resources are spent to administer its criminal courts, 3.5 percent for the Appellate Division of Superior Court and one percent on the Supreme Court. Although there is no way to separate out what is spent on capital cases, clearly

these cases use substantial court time. Everything from pre-trial motions to jury selection to the two trials required for the convicted offenders' appeals—relates to court time.

Capital punishment places a comparable burden on the entire judicial system. Plea bargaining, an effective measure in reducing the court's workload, is almost never used in capital cases. The prosecution avoids making bargains with the defense in capital cases because doing so would make the case non-capital. Similarly, a capital defendant would almost never admit guilt because that would mean automatically losing the benefit of reasonable doubt.

While all capital cases in New Jersey go to trial, 85 to 90 percent of non-capital homicide defendants enter a guilty plea at arraignment and, in doing so, substantially reduce court time. The likelihood that a jury trial will be necessary is 10 times greater for a capital case.²²

Once a trial begins, the cost of the court's operations mount. Because capital trials generally last longer than non-capital trials, trial costs for a capital case exceed those of a non-capital case. In court fees alone, the financial differential between the two is almost \$66,000. Moreover, between 850 to 1,000 hours of attorney time are consumed in a typical capital trial resulting in larger lawyers' expenses.²³

The post-conviction costs of death penalty cases consume more of the Supreme Court's time than life-in-prison cases. Law clerks in North Carolina averaged about 60 hours for life cases compared to 74 hours for adjudication on direct appeal, while justices averaged 12 hours for life cases and almost 20 hours for death cases. Lengthier appellate briefs, proportionality reviews and certain issues, such as death qualified juries, are not subject to review where the defendant receives a life sentence.²⁴

While it is unlikely that trying fewer capital cases would result in courtrooms lying empty, the tradeoff is that, since non-capital cases take less time, more cases could be adjudicated for the same amount of money. A courtroom that cost about \$2,186 a day in the mid-1980s²⁵ would now cost about \$3,880 a day based on average inflation over the last 20 years. The average capital trial lasts about 42 days, compared to 12 for a non-capital trial.²⁶ Extrapolating from these data, the average capital trial today would cost \$162,960 in court time compared to \$46,560 for a non-capital trial.

The Supreme Court faces higher costs from capital cases as well because it automatically reviews every death row sentence for procedure and for whether the sentence is appropriate compared to similar cases.

Department of Corrections Costs

From arrest until the conclusion of trial, and throughout all appeals, capital offenders are provided with more security than in non-capital crimes. Upon being sentenced to death, for example, an offender is housed in a special maximum security facility at New Jersey State Prison in Trenton called the Capital Sentence Unit (CSU). It is more commonly

referred to as death row. New Jersey's CSU is connected to a maximum security facility, part of which was remodeled and expanded to accommodate condemned prisoners.

In 1986, when the CSU had 22 male prisoners and one female, Corrections Commissioner William H. Fauver in a report to Governor Kean estimated that the total personnel cost of operating the CSU was \$465,355 a year. This included the cost of someone holding the rank of Sergeant or Lieutenant and 16 senior corrections officers. In addition, a support staff of a chaplain, head nurse, clinical psychologist and social worker is assigned to the unit. They devote 10 percent of their time to the service of the CSU. If it were not a Capital Sentence Unit and instead housed 24 general population inmates, the custody team would consist of a superior officer and 11 officers, and the support team would devote only five percent of its time to the Unit. In that case, the cost of operating the Unit would have been \$328,444, a difference of \$136,911.²⁷

Today, the Department of Corrections estimates that it costs \$34,805 a year to maintain a non-death row prisoner at New Jersey State Prison in Trenton, but \$58,526 to maintain an inmate in the CSU. That is \$23,721 more per year. This figure is based on the ratio of custody officers to the number of inmates within this unit (1:1.2) compared to the ratio in the general population (1:2.9). The ratio of custody officers to inmates is higher because of the extra caution exercised to keep inmates from harming each other or themselves. Additional costs also are incurred because condemned prisoners do not share a cell with another inmate and they are not allowed to offset the cost of confinement by working in prison.

The current annual savings from closing the CSU would be 10 times \$23,721, or \$237,210 (although for much of 2005 there were 11 inmates in the CSU, so the savings in this year would have been \$260,935). These savings are predicated on the assumption that the current inmates in the CSU would be reassigned to the general population or to one of the existing specialized units.

WHO BEARS THE COST?

While more of the costs of a capital trial fall on the state, some costs are borne entirely by county residents. As it stands now, a crime committed in Bridgeton, Cumberland County, is much more likely to be pursued as a capital case than if it were committed in either Newark (Essex) or Camden (Camden County). There are various factors that cause county disparity including differences from county to county in the probability of a jury returning a death sentence and the high cost of capitally prosecuting a murder case.

Some counties seek capital convictions much more than others. Currently Cumberland County is pursuing more capital cases than any other county. Information from the Public Defender's Office shows that in November 2005, nine of the state's 21 counties were pursuing capital cases. Seven are in Cumberland County; three each in Camden and Morris Counties; two each in Burlington and Union Counties; and one each in Hudson, Middlesex, Monmouth and Sussex Counties.

The severity of the crimes committed in capital cases often results in higher bail, which many defendants are unable to pay. Defendants in capital crimes also are more likely to be denied bail. This adds to county costs because defendants in murder cases are kept in county jails during the course of their trial. This cost to the county is likely to be higher with a capital case because the pre-trial and trial periods are longer. In a non-capital case, the likelihood is that the defendant might be sent to a state prison a year or two earlier, which would transfer the costs to the state as well.

SUMMARY OF COSTS

As the table below shows, the costs of the death penalty are spread throughout the justice system, with the greatest costs incurred by the prosecution.

Cost Unit	Annual Costs	Total Costs since 1982
Public Defender	\$2,608,696	\$60,000,000
County Prosecutor/Attorney General	7,826,087	180,000,000
Identified Court Costs	282,609	6,500,000
Department of Corrections Costs	295,652	6,800,000
Total Identified Costs	\$11,013,043	\$253,300,000

Note: The above cost analysis does not include the additional costs for jury selection or the larger costs for the jury due to longer trials because not enough information is available. The costs associated with the Department of Corrections are the net additional costs of maintaining a prisoner on death row instead of simply in a maximum security prison.

Each death sentence, on average, has cost New Jersey taxpayers \$4.2 million.

This analysis does not include estimates for the actual cost of an execution, since New Jersey has no experience in this area. However, evidence from other states indicates the costs may be substantial. Georgia, for instance, spent more than \$250,000 for the anticipated but aborted execution of one inmate in 1980. Incidental costs such as special telephone lines between the prison and the United States Supreme Court and Governor's office were considered necessary, as were costs for extra police personnel for crowd control, security, and the shutdown of federal airspace over the prison.

Obviously a capital trial also means potentially high financial costs for the victim's family members. They might lose wages while attending a lengthy trial, and other costs might involve paying for travel and child care. Costs to the defendant's family might be similar. These are not discussed here because this report deals with governmental costs.

Public Defender:

\$53-\$60 million since 1982

- Every year since the supplemental appropriation in Fiscal Year 1983, the state has appropriated between \$2.3 million and \$2.6 million to the Public Defender for death penalty trials and appeals.

- This appropriation supports two attorneys for every death penalty trial and through every stage of appeal. In non-capital cases, only one lawyer usually is assigned to a defendant.
- In certain circumstances, the Public Defender appoints outside counsel at \$75 per hour instead of the regular \$50 or \$60 (depending on the type of work) per hour rate. This happens in cases involving a conflict, for instance in cases with more than one defendant.

County Prosecutor/Attorney General:

\$160-\$180 million since 1982

- It is estimated that prosecutors spend about three times as much on death penalty cases as the Public Defender. This is supported by research in other states.
- Total county and state prosecutor resources were \$471 million in Fiscal Year 2004, with county governments supporting \$234.7 million for the county prosecutors' offices. When the State Attorney General's \$236.3 budget is included, state and county prosecutors outspend the Public Defender by a ratio of 6.4 to one.
- Money to pay trial costs of the county prosecutor come from the county through local property taxes; money for post-conviction appeals either come from the county prosecutor's office if the county prosecutor continues to be involved or from the Attorney General's budget.
- If the county and state prosecutors spend at twice the rate of the Public Defender's Office annually, each county prosecutor would have spent between \$6.9 million and \$7.8 million a year prosecuting capital cases. Given the relative resources of the prosecutor to the public defender, it is likely this is a low estimate.

Court Costs:

At least \$6.5 million since 1982

- In a Fiscal Note to Assembly Bill 1435 in 2004, the Administrative Office of the Courts stated that abolishing the death penalty would result in no cost savings to the court system in New Jersey. This, however, is not possible.
- In Fiscal Year 2005, the state spent \$243.5 million either directly or indirectly on the criminal courts. Prior to 1995, county courts were financed through local property taxes.
- Among quantifiable changes in court operations for capital cases are the cost of hiring special clerks in the Supreme Court to handle the mandatory direct appeals to that Court and the cost of the required proportionality studies.
- Costs of hiring two special clerks and a Special Master is about \$300,000 a year. Since 1982, these costs alone have been about \$5 million.
- The cost of the first proportionality study is said to have been about \$300,000. Since that time there have been three studies at an estimated cost of about \$50,000 each. The state has hired academics from the University of Maryland to perform these statistical analyses. Since 1982, these costs have been about \$450,000.

- It is more difficult to seat a jury for a capital case because jurors have to be death-qualified. It requires more time (weeks rather than days) and a larger pool to get the required 12 jurors plus two alternates.
- Once a jury is selected, the cost of reimbursing jurors is more. Jurors receive \$5 a day for each day of service for the first four days. But the fifth day and all that follow are reimbursed at \$40 a day. Since it is unlikely that a capital case will be resolved in five days, the cost of paying 14 jurors rises to \$560 on day five, from \$70.
- There is often extra security needed in a capital trial and this is a cost to the court.

Department of Corrections:

At least \$6.8 million since 1982

- In Fiscal Year 2006, the Department of Corrections estimates it will spend an additional \$261,000 to maintain death row, more than \$26,000 per inmate over the typical cost.
- Since the first death sentence under the reinstated law was handed down in 1983, the state has spent an additional \$4.3 million to house 52 inmates who spent varying amounts of time on death row. There are currently 10 inmates on death row.
- In 1966, death row was expanded to house 26 inmates. The cost was approximately \$2 million.
- In 1983, the state changed its method of execution from the electric chair to lethal injection. The cost to the Corrections Department was \$500,000. This report does not include the costs involved in the state's response to the legal challenge to the procedures for lethal injection or the costs involved in revising those procedures as a result of the court's decision in the case.

CONCLUSION

Having the death penalty on the books has cost the State of New Jersey more than \$250 million since capital punishment was reinstated in 1982. That is, at best, a very conservative estimate. Given the difficulty in obtaining precise information from the various state and county entities that play a role in capital cases—and what appear to be decisions by those entities not to keep track—there is considerable reason to believe the figure is higher.

In many areas of government finances there are debates about whether a program or service could be maintained for less money. The likelihood seems remote, however, that serious proposals could be put forward for streamlining or spending less on this system of punishment. Built into the system is a complex, expensive and reasonable network of checks, balances and protection of rights that does not lend itself to comparison with other government activities. Nothing else that state and county government do has as the ultimate aim taking someone's life.

From a strictly financial perspective, it is hard to reach a conclusion other than this: New Jersey taxpayers over the past 23 years have paid more than a quarter of a billion dollars on a capital punishment system that has executed no one.

APPENDIX

OTHER STATES' EXPERIENCES

A review of cost estimates across the country in the past decade shows that the trial, incarceration and execution of a capital case costs between 2.5 and 5 times as much as a non-capital case.

Over the past 20 or so years some states have done studies that try to quantify the costs of the death penalty to taxpayers. In every instance, the studies have dealt with the additional time and resources necessary to sentence an individual to death. In every instance the studies have confirmed that it is more expensive to sentence someone to death than it is to maintain that person in a maximum security prison for the rest of his or her life.

California

In Los Angeles County, the total cost of sentencing someone to death is \$2,087,926—31 percent greater than the \$1,448,935 its costs to sentence someone to life in prison without the possibility of parole. The \$1,448,935 includes \$627,322 for the cost of the trial and \$821,613 for imprisonment.²⁸

A former administrator of the California Youth and Adult Corrections Agency, Richard McGee, concluded: “Just on the basis of prison costs alone, it would be cheaper to do away with the death penalty.”²⁹

Connecticut

The State of Connecticut Commission on the Death Penalty estimated that the defense costs for cases resulting in a sentence of life imprisonment without parole ranged from \$85,540 to \$320,580 and averaged \$202,365. Of the seven men on death row, the defense costs ranged from \$101,870 to \$1,073,922 with an average cost of \$380,000 per case. The defense costs for capital felony cases were, on average 88 percent higher than the defense costs incurred for life without parole.³⁰

The report further stated that the cost to support each death row inmate was \$46,942—the same amount spent for each of the inmates at Northern Correctional Institution, which is Connecticut’s most expensive prison on a cost per prisoner basis. Connecticut was unable to calculate other costs.³¹

Florida

According to an article in the *Palm Beach Post*, enforcing the death penalty costs Florida \$51 million a year above what it would cost to punish all first-degree murderers with life in prison without parole. Based on the 44 executions Florida has carried out since 1976, that amounts to a cost of \$24 million for each execution.³²

Indiana

A study published in 2003 by a gubernatorial commission in Indiana, concluded that in present values, the costs in death penalty cases exceed the total price of life without parole by more than a third.³³

Kansas

Kansas officials estimated that the cost of maintaining a separate death row facility would be \$922,682 in 1987 when the state was proposing to reinstate the death penalty.

A Legislative audit in December 2003 estimated that the median cost of a case in which the death penalty was given was \$1.2 million, compared to the same estimated costs for a non-death penalty case of about \$740,000. The state will bear 85 percent of the total estimated and projected costs for the 14 cases in which the death penalty was sought.³⁴

According to the report, Kansas has tried to save money in its implementation of the death penalty by not requiring a grand jury indictment, not sequestering juries and not conducting proportionality reviews.

New York

A 1982 study by the New York State Defenders Association determined the costs of a capital trial to be divided in the following manner:

- \$176,350 for investigators, expert witnesses and defense attorney fees
- \$845,400 for prosecution costs
- \$300,000 for court costs³⁵

The study concluded that, "...some of the costs of the first three stages [trial, appeal, Supreme Court] of capital litigation will total no less than \$1,828,100. By the time the first 40 New York death cases have been tried to verdict, over \$59 million will have been expended."³⁶

North Carolina

A 1993 study in North Carolina estimated "the extra cost per death penalty imposed is over a quarter of a million dollars and per execution exceeds \$2 million."³⁷

Tennessee

A report from the Comptroller of the Treasury³⁸ tracked cases through every stage in Tennessee's adjudication process and included the costs to local, state and federal government entities as well as to private individuals. Death penalty (capital) trials cost an average of \$46,791, life in prison without the possibility of parole cost \$31,494, and life with possibility of parole cost \$31,662. The life without parole average does not include defense attorney costs.

Texas

In Texas, a death penalty case costs taxpayers an average of \$2.3 million, about three times the cost of imprisoning someone in a single cell at the highest security level for 40 years. (This assumes a cost of just over \$19,000 a year for incarceration.)³⁹

Washington

In a review of capital cases from 1999 to 2003⁴⁰, the Washington Death Penalty Assistance Center estimated that a death penalty trial cost more than double the amount spent on non-death penalty trial. The report found that Washington counties sought nearly \$35 million from a state fund established under the Extraordinary Criminal Justice Costs Act, adopted in 1999 to alleviate some of the burden on county budgets.

Nearly 50 percent of the total money requested for reimbursement was from death penalty cases—which make up 21 percent of all cases. The report estimated that if the sentence of death was not an option, the state could have allocated the \$5.3 million for other uses.

On average, the report found, a non-death penalty trial lasted 15 months compared to 20 months for a death penalty trial. It further found that appellate review for non-death penalty cases lasted an average of two years compared to seven for a death penalty case.

Table 1: Death Penalty by State

State	Date Death Penalty Reenacted	Death Row Population	Executions Since 1976
Alabama	3/5/76	191	34
Arizona	8/8/73	128	22
Arkansas	3/23/73	38	26
California	1/1/74	648	11
Colorado	1/1/75	3	1
Connecticut	10/1/73	8	1
Delaware	3/29/74	19	14
Florida	12/8/72	388	60
Georgia	3/23/73	112	39
Idaho	7/1/73	21	1
Illinois	7/1/74	10	12
Indiana	5/1/73	30	16
Kansas	4/22/94	7	0
Kentucky	1/1/75	37	2
Louisiana	7/2/75	89	27
Maryland	7/1/75	9	4
Mississippi	4/23/74	70	6
Missouri	9/23/75	55	66
Montana	3/11/74	4	2
Nebraska	4/20/73	10	3
Nevada	7/1/73	85	11
New Hampshire	1/1/91	0	0
New Jersey	8/6/82	10	0
New Mexico	7/1/79	2	1
New York	9/1/95	2	0
North Carolina	6/1/77	192	37
Ohio	1/1/74	196	18
Oklahoma	5/17/73	97	79
Oregon	12/7/78	32	2
Pennsylvania	3/26/74	233	3
South Carolina	7/2/74	77	34
South Dakota	1/1/79	4	0
Tennessee	2/27/74	108	1
Texas	1/1/74	414	353
Utah	7/1/73	10	6
Virginia	10/1/75	23	94
Washington	11/4/75	10	4
Wyoming	2/28/77	2	1
US Govt		36	3
Military		8	
Total		3,418	994

Source: Death Penalty Information Center, November 16, 2005.

Table 2: Death Row Inmates in New Jersey since 1982

Defendant	County Where Convicted	Date of Conviction	Status of Sentence	Status Date
Ramseur, Thomas	Essex	5/17/1983	Reduced	3/5/1987
Biegenwald, Richard	Monmouth	12/8/1983	Vacated	3/5/1987
Bey I, Marko *	Monmouth	12/15/1983	Conviction Reversed	8/2/1988
Williams, James	Mercer	2/11/1984	Conviction Reversed	12/8/1988
Hunt, James I.	Camden	2/21/1984	Reduced	6/9/1989
Gerald, Walter	Atlantic	5/19/1984	Conviction Reversed	10/25/1988
Zola, James Edward	Mercer	6/6/1984	Vacated	8/16/1988
Lodato, Benjamin	Ocean	7/12/1984	Reduced	4/16/1987
Bey, Marko *	Monmouth	9/28/1984	Vacated	8/2/1988
Koedatich, James	Morris	10/29/1984	Vacated	8/3/1988
Moore, Marie	Passaic	11/19/1984	Conviction Reversed	10/26/1988
Savage, Roy	Essex	1/28/1985	Conviction Reversed	7/19/1990
Pitts, Daryl	Camden	2/22/1985	Vacated	6/21/1989
Coyle, Bryan	Middlesex	3/19/1985	Conviction Reversed	6/21/1990
Davis, Steven R.	Atlantic	5/10/1985	Conviction Reversed	8/3/1989
Rose, Teddy	Essex	6/12/1985	Vacated	9/22/1988
Johnson, Walter	Gloucester	8/16/1985	Conviction Reversed	7/19/1990
Long, Ronald E.	Atlantic	10/24/1985	Conviction Reversed	6/21/1990
Marshall, Robert O.	Ocean	3/5/1986	Affirmed	1/24/1991
Ogelsby, Walter	Camden	3/18/1986	Conviction Reversed	1/23/1991
McDougald, Anthony	Essex	4/4/1986	Vacated	7/12/1990
Clausell, James D.	Burlington	4/21/1986	Conviction Reversed	8/30/1990
Harvey, Nathaniel *	Middlesex	10/17/1986	Conviction Reversed	10/17/1990
Hightower, Jacinto	Burlington	11/10/1986	Vacated	7/12/1990
Dixon, Philip	Camden	2/3/1987	Reduced	7/25/1991
Jackson, Kevin	Ocean	2/7/1987	Conviction Reversed	4/18/1990
Kise, Raymond	Warren	3/3/1987	New Sentence	4/27/1987
Perry, Arthur	Camden	5/22/1987	Reduced	5/20/1991
Schiavo, Domenic	Gloucester	5/28/1987	Died	1/5/1989
Pennington, Frank	Bergen	6/15/1987	Conviction Reversed	6/21/1990
Moore, Samuel Leon	Essex	6/30/1987	Conviction Reversed	1/23/1991
Erazo, Samuel	Essex	10/21/1987	Conviction Reversed	8/8/1991
DiFrisco, Anthony *	Essex	1/25/1988	Vacated	3/12/1990
Biegenwald, Richard	Monmouth	1/23/1989	Conviction Reversed	8/8/1991
Purnell, Braynard	Camden	2/21/1990	Conviction Reversed	1/15/1992
Bey, Marko *	Monmouth	9/11/1990	Affirmed	7/28/1992
Martini, John *	Bergen	12/12/1990	Affirmed	2/9/1993
Brown, Bobby Lee	Warren	1/14/1993	Conviction Reversed	12/21/1994
DiFrisco, Anthony *	Essex	2/5/1993	Affirmed	7/27/1994
Mejia, Rigoberto	Monmouth	5/25/1993	Conviction Reversed	7/12/1995
Harris, Joseph	Morris	5/28/1993	Affirmed	7/12/1995

Defendant	County Where Convicted	Date of Conviction	Status of Sentence	Status Date
Hightower, Jacinto	Burlington	11/2/1994	Vacated	8/8/1996
Loftin, Donald *	Mercer	12/6/1994	Affirmed	8/8/1996
Harvey, Nathaniel *	Middlesex	12/16/1994	Affirmed	7/30/1997
Cooper, David	Monmouth	5/17/1995	Affirmed	8/20/1997
Chew, John	Middlesex	6/22/1995	Affirmed	6/26/1997
Harris, Ambrose *	Mercer	3/1/1996	Affirmed	7/30/1998
Kenney, Sean (Richard Feaster) *	Gloucester	3/27/1996	Affirmed	7/30/1998
Harris, Joseph	Bergen	5/4/1996	Died	9/24/1996
Morton, Robert	Burlington	7/1/1996	Affirmed	7/30/1998
Simon, Robert	Gloucester	4/2/1997	Affirmed	8/11/1999
Nelson, Leslie Ann	Camden	5/13/1997	Vacated	7/30/1998
Timmendequas, Jesse *	Mercer	6/20/1997	Affirmed	8/11/1999
Papasavvas, Peter	Middlesex	10/9/1998	Affirmed	5/16/2000
Koskovich, Thomas	Sussex	5/7/1999	Vacated	6/7/2001
Josephs, Daron	Camden	4/6/2000	Vacated	6/7/2001
Fortin, Steven *	Middlesex	2/26/2001	Conviction Reversed	2/3/2004
Nelson, Leslie	Camden	3/31/2001	Vacated	7/30/2002
Reddish, Charles	Camden	6/26/2002	Conviction Reversed	11/10/2004
Wakefield, Brian *	Atlantic	3/4/2004		

* indicates current death row inmates.

Some names appear more than once because of changes in sentence status.

Source: New Jersey Administrative Office of the Courts, October 2005.

END NOTES

¹ Much of this information comes from The Death Penalty Information Center (www.deathpenaltyinfo.org), a non-profit organization that provides analyses and information on issues concerning capital punishment.

² Mandery, Evan J. *Capital Punishment: A Balanced Examination*, Sudbury, Massachusetts: Jones and Bartlett Publishers, 2005, p. xxii.

³ *Ibid*, p. xxiii.

⁴ www.deathpenaltyinfo.org, October, 2005.

⁵ *Ibid*, p. 579.

⁶ *Ibid*. p. 600.

⁷ A May 2002 *Star-Ledger/Eagleton* Poll of New Jersey residents revealed that when given the option of life without the possibility of parole as a sentencing alternative, 48 percent of New Jerseyans support a life sentence while 36 percent support capital punishment.

⁸ *Ibid*, p. 533.

⁹ The Systemic Proportionality Review Report for Court Year 2004, dated September 28, 2004.

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¹¹ Weller-Polley, Jennifer, "Dollars and Sentences: The High Cost of Capital Punishment," *Policy Conference Final Report: A Decade of Capital Punishment in New Jersey*, Woodrow Wilson School of Public and International Affairs, Presented to the New Jersey Assembly Judiciary Committee at the Public Hearing on ACR No. 20, March 16, 1992, p. 5.

¹² www.njadp.org.

¹³ Weller-Polley, p. 4

¹⁴ Jackson, Miles, "180 summoned to court for jury duty in Severs' trial," *The Daily Journal*, August 15, 2005.

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- ¹⁶ Office of Legislative Services, Legislative Budget and Finance Office, August 2005.
- ¹⁷ Testimony of Richard C. Dieter to the Joint Committee on Criminal Justice, Legislature of Massachusetts, March 27, 2003, p. 5.
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- ²⁰ Ibid. p. 7.
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- ²⁶ Weller-Polley, p. 6.
- ²⁷ "Commissioner's Report To The Legislature On Capital Sentence Legislation," William H. Fauver, February 1986, p. 4.
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- ³⁰ State of Connecticut Commission on the Death Penalty, *Study Pursuant to Public Act No. 01-151 of the Imposition of the Death Penalty in Connecticut*, Submitted to the Connecticut General Assembly, January 8, 2003, p.14.
- ³¹ Ibid, p.15.
- ³² *Palm Beach Post*, January 2, 2000.
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- ³⁴ "Legislative Performance Audit Report – Costs Incurred for Death Penalty Cases: A K-GOAL Audit of the Department of Corrections." (December 2003).
- ³⁵ New York State Defenders Association, Inc., p. 18.
- ³⁶ Ibid, p. 26.
- ³⁷ Cook, Philip J. and Donna B. Slawson, *The Costs of Processing Murder Cases in North Carolina*, Terry Sanford Institute of Public Policy, Duke University, May 1993.
- ³⁸ John G. Morgan, Comptroller of the Treasury, Office of Research, *Tennessee's Death Penalty: Costs and Consequences* (July 2004).
- ³⁹ Mandery p. 117.
- ⁴⁰ Washington Death Penalty Assistance Center, "Washington's Death Penalty System: A Review of the Costs, Length and Results of Capital Cases in Washington State," September 2004.

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The song is about the music industry, and specifically about MTV being an easy way for people to make money. It's been suggested that Mark Knopfler (lead singer of Dire Straits) was unhappy that people could become famous and rich just by having a music video on MTV. A number of words in the lyrics used have been inferred as being directed at artists of the time. As for the references to 'having to shift these microwave ovens', this was to do with the fact that Knopfler got the inspiration for the lyrics while in an appliance store.

"Money For Nothing" lyrics. Dire Straits Lyrics. "Money For Nothing". I want my "I want my MTV [4x]. He didn't want the credit, but his record company demanded it, thus exemplifying the perfect "money for nothing" case. This song became the first song played on MTV Europe when it began airing because of "I want my MTV" line at the beginning. The music video for this song was one of the first to use the computer-generated imagery of human characters. It won Video of the Year at the 1986 MTV Video Awards. The lead character in "Money for Nothing" is a guy who works in the hardware department in a television/custom kitchen/refrigerator/microwave appliance store. He's singing the song. I wrote the song when I was actually in the store.