

A capital pursuit at a deadly cost

Crime & Criminals

By MAY WONG
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EDITOR'S NOTE — This is the first of a three-part, consecutive-day series examining the death penalty.

THE PURSUIT OF DEATH doesn't come cheaply.

The prosecution of a capital case typically costs taxpayers \$1 million or more, legal experts say, and that's not counting the subsequent appeals if a death verdict is returned.

The recent trial of Matias Espinoza Soto of Watsonville is no exception. After being convicted of rape and murder in the death of 14-year-old Mariana Zavala, Soto faced the death penalty, but the jury instead decided — within four hours — to put him in prison without the possibility of parole.

He will be sentenced March 31.

Expenses for the case have exceeded \$1 million, according to county officials.

From the time of Zavala's murder in February 1992 through this month, the tab amounted to close to \$450,000 for court-appointed defense attorneys, expert witnesses, court security and other court administrative costs, according to Carol Girvetz, a principal administrative analyst for the county.

Add the time spent by prosecutors, judges, sheriff's and District Attorney's investigators, and other county employees, and the bill to taxpayers easily hits the million-dollar mark, court officials say.

Defense attorneys and prosecutors agree that's a high price for justice — one this county has paid for four times before since capital punishment was reinstated in 1978.

The county might have to pay it again as the trial dates of two more capital cases fast approach.

Defense attorneys say these cases are an expensive gamble given that in the past 20 years, every quest for a death penalty verdict tried in this county has failed, bolstering perceptions of the community's liberal bent.

That gamble should have never been taken in Soto's case, defense attorneys say. The District Attorney's Office could have saved a lot of taxpayers' money, they say, had it accepted an offer by the defense that matched what a jury later decided.

On the other hand, you cannot put a price tag on crime victims, prosecutors say. Nor can they predict what juries will do.

Not a good candidate

MARK BOYLE of Santa Cruz thinks prosecutors could have predicted the outcome in Soto's case.

Boyle, the jury foreman in the Soto trial, thinks prosecutors should have seen what he and his fellow jurors later saw — that Soto did not deserve the death penalty.

"It was not a difficult call for us to make, granted the crime was vicious," he says.

Boyle says District Attorney Art Danner made the wrong decision to refuse the offer by the defense in which Soto, 24, was prepared to take a first-degree murder conviction and a lifetime prison sentence.

In addition to money, accepting this plea bargain would also have saved the emotional toll he and others experienced during the trial.

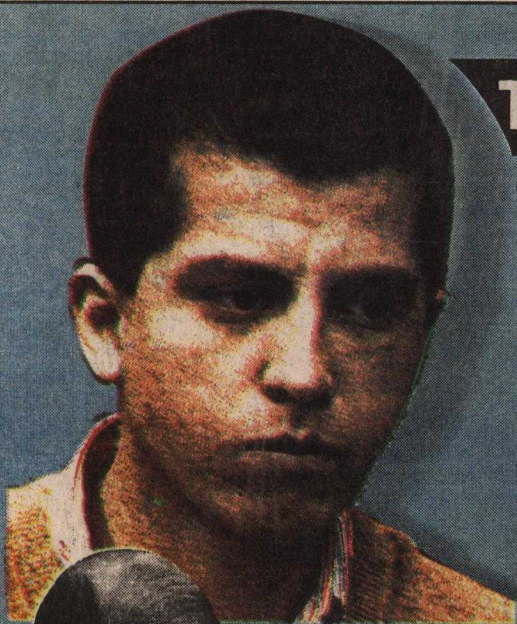
During the trial, jurors were

The death penalty in Santa Cruz County

Capital cases tried since the death penalty was reinstated in 1978

The Santa Cruz County District Attorney's Office has prosecuted five capital cases since the death penalty was reinstated in 1978. Three ended with lifetime prison sentences. Two ended with the death penalty, but were decided outside the county.

MATIAS SOTO: Convicted in the murder and rape three years ago of 14-year old Mariana Zavala of Watsonville. After four hours of deliberation, a Santa Cruz County jury this month returned a verdict of life in prison without parole. He is in county Jail awaiting his sentencing on March 31.



David Carpenter

David Carpenter also known as the 'Trailside Killer,' was sentenced to death in 1984 by a Los Angeles County jury for murdering two women, one in Big Basin State Park, the second in Henry Cowell State Park. In a separate trial afterward, he was also convicted of murdering four people along trails in Marin county. He is in San Quentin Prison. An appeal of his death sentence for the Santa Cruz killings is pending before the state Supreme Court.



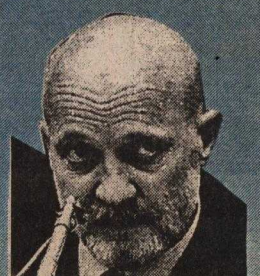
Royal Kenneth Hayes

Convicted for the murders of a San Francisco couple near the UC Santa Cruz campus. A Santa Cruz County jury hung on the death issue, but after a retrial in 1986 in Stanislaus County, he was sent to death row in San Quentin Prison. His appeal is pending before the state Supreme Court.



Mark Cunningham

Convicted in 1988 of murdering two San Francisco men and a 20-year-old Los Gatos student. After 20 minutes of deliberation, a Santa Cruz County jury decided to spare him from execution. His convictions have been upheld upon appeal and he remains in state prison without the possibility of parole.



Richard Stevens

Convicted in 1990 of murdering two Boulder Creek men, who were shot in the head at point-blank range with a sawed-off shotgun. After 20 minutes of deliberation, a Santa Cruz County jury decided to spare him from execution. His convictions have been upheld upon appeal and he remains in state prison without the possibility of parole.

Chris Carothers/Sentinel

Death penalty

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presented with graphic details on how Zavala was raped and bludgeoned to death at Freedom Elementary School in Watsonville on Feb. 9, 1992. Then during the penalty phase of the trial, the tragic childhood of Soto was revealed, how he was repeatedly abandoned and transferred from one foster home to another.

After the trial, Boyle learned that the jury's verdict mirrored a plea bargain that prosecutors rejected before the three-month trial.

He was "pretty upset."

"The money we spend prosecuting criminals should be well spent," says Boyle, "I don't think it was in this case."

As a result, Boyle has taken the unusual step of making public his concerns in a letter (see Page A6) published today in the Sentinel.

Soto was not a strong death penalty candidate, Boyle says. Though the crime was heinous and made Soto eligible for the ultimate punishment, it was not premeditated, Boyle says. In addition, Soto lacked a felony criminal record and had a troubled childhood filled with neglect.

At least two other jurors share similar concerns.

"Because they were asking for the death penalty, I thought he had a violent history and a rap sheet 10 miles long, and I was really surprised when I found he had none of that," says Rhonda Mills. "I think we could have spent the money on preventing the future Sotos of the world instead."

"My question is whether the prosecutor's office is representing the needs of the community in light of the fact that Soto was willing to take the life-in-prison sentence and (the District Attorney) refused to take that plea bargain when all of us on the jury felt this wasn't a candidate for the death penalty," says Mary Bilgere.

Soto pursuit is defended

DESPITE THE HIGH PRICE tag, prosecutors defend the decision to pursue the death penalty against Soto.

"In this case, we're not just talking about a murder — one gunshot to the chest and someone dies. Not only did he kill her, he raped her, sodomized her, and beat her, and she was only 14," says Christine McGuire, who prosecuted the Soto case. "It's the kind of case that the death penalty was written for."

District Attorney Art Danner says it's easy for critics to blame him in hindsight. But he maintains the Soto case called for the death penalty.

"To me, the sexual assault in this case alone certainly merited the ultimate penalty," Danner says. "The circumstances were so egregious. The victim was beaten into oblivion. I haven't seen a more brutal sexual assault and murder in the 25 years I've been a prosecutor."

In trying the case, there was a 50-50 chance that a jury would have voted for capital punishment, he says.

"I'm convinced there is a group of jurors who could have imposed the death penalty, it just wasn't this group," he says.

In California, capital offenses in-

Out of five capital cases, three ended with a life imprisonment sentence. In addition to Soto, those were:

- Richard Stevens, who was convicted in 1990 for the murders of two Boulder Creek men. He argued the killings were in self-defense.

- And Mark Cunningham, who was convicted in 1988 of two counts of first-degree murder in the deaths of two San Francisco men and one count of second-degree murder in the death of a 20-year-old Los Gatos student.

It took only 20 minutes for the jury to decide on the penalty in each case.

Two other convicted murderers — David Carpenter and Royal Kenneth Hayes — received the death penalty, but their verdicts were decided out of county.

Carpenter, known also as the "Trailside Killer," was sentenced to death in 1984 by a Los Angeles County jury for murdering two women, one in Big Basin State Park, the other in Henry Cowell State Park. In a separate trial, he was also convicted of murdering four people along park trails in Marin County.

Hayes was convicted for the murders of a San Francisco couple near the UC Santa Cruz campus. A Santa Cruz County jury hung on the death penalty issue, and when Danner retried the case in 1986 in Stanislaus County, a jury there returned the death verdict.

Neither has been executed. Appeals in both cases are pending before the state Supreme Court.

Four other local cases were eligible for the death penalty, but were not pursued as such for various reasons, according to Chief Deputy District Attorney Jon Hopkins. Three of them never went to trial because the District Attorney's Office accepted plea bargains.

In the cases against Richard Harrison and Daniel Salcedo, prosecutors accepted guilty pleas for life prison terms without parole. Prosecutors had concluded that no reasonable jury would have returned a death penalty verdict because the defendants each had significant brain damage.

Harrison pleaded guilty in 1991 to the murders of a 62-year-old Santa Cruz woman and a 30-year-old Scotts Valley man, and Salcedo pleaded no contest in 1992 to strangling a common-law wife. Twelve years earlier, Salcedo had been convicted of second-degree murder in the stabbing death of another common-law wife in Fresno.

Both men agreed to give up their rights to appeal.

Prosecutors could have also sought the death penalty against Edward Bowman, who bludgeoned and stabbed to death a Greek Orthodox priest. But because prosecutors felt it would have been difficult to convince a jury beyond a reasonable doubt that the murder was committed during a burglary, they dropped the special circumstances and took his plea of no contest to first-degree murder in 1988. He received a 25-year-to-life sentence.

Four of the five teen-agers accused in the 1980 slayings of two Watsonville teens on Mount Madonna could have faced capital punishment. But shortly before the trial, Danner dropped the special

Words from a jury foreman

EDITOR'S NOTE: Mark D. Boyle, foreman on the Matias Soto trial, wrote this letter to the Sentinel.

I served on the jury, and as foreman, in the People vs. Soto trial in Santa Cruz. Many people may be familiar with this prominent case because the D.A. sought the death penalty for Matias Soto. The crimes he committed certainly were heinous and inexcusable, and we found him guilty on all but one charge. However, his lack of a prior violent history, coupled with an abundance of evidence, especially relating to his traumatic childhood and his generally successful attempts to overcome those traumas, indicated clearly to us that he did not deserve the death penalty.

I believe that a line must be drawn, beyond which a guilty person has shown himself to be unredeemed and unredeemable, and warranted of the death penalty. However, this line, delineated by the law, seemed to exist well clear of Mr. Soto. This conclusion took us less than four hours of deliberation to reach — we were obviously very much in agreement on this point. Consequently, Mr. Soto was condemned to life in prison without the possibility of parole. He will never walk as a free man again.

The fact that disturbs me now only came to light after the end of the trial. I have learned that the defense attorneys representing Mr. Soto, on his behalf, offered to our D.A. a guilty plea and acceptance of a sentence identical to the one we the jury arrived at after almost three months of court proceedings: life without the possibility of parole. These proceedings were extremely expensive to the taxpayers of this county — published estimates range in excess of \$400,000 for attorneys, experts, etc. Also, now Mr. Soto may be able to obtain an appeal at additional cost (unknown but also likely to be expensive) and could even receive a new trial if problems are found with this original trial. Almost all of this time and expense (and subsequent appeals) could have been prevented if the D.A. had accepted what is, after an informed analysis within the law, a just punishment for Mr. Soto.

It seems to me that if a jury of 12 citizens could arrive at such a clear consensus so quickly on this issue, surely the professionals in the D.A.'s office should have been able to do the same. Although the choice of a trial vs. a plea bargain could be seen as a political Catch-22 — damned if you do, damned if you don't — this is precisely where we as citizens should expect to see real leadership from the D.A. — deciding on an enlightened course of action most beneficial to the community within a commitment to see that justice is done. Or is there some other formula, equation, or agenda at work here?

This trial has been a very emotionally difficult experience for all involved, and now it raises new questions for me. In this era of dwindling resources — budget cuts in the very areas of spending that might prevent future Matias Sotos from becoming reality: education, nutritional programs, AFDC, libraries, etc. — is our official response going to be more of this kind, and too late? After the fact?

Maybe a little more time, money and emotion spent to make sure our children don't fall through the looking glass to begin with would help us all to see more clearly in that mirror each morning.

sider that," says Lisa Wochos, one of the two defense attorneys who represented Soto.

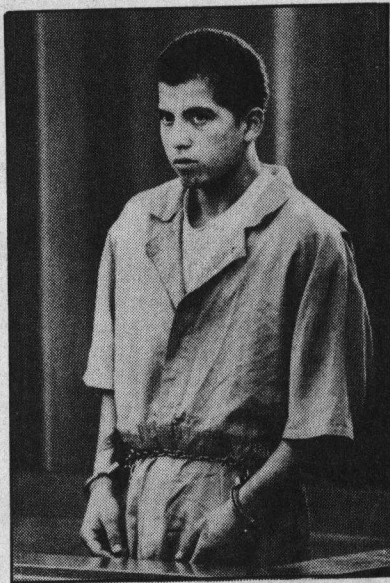
Prosecutors refute the notion that the Santa Cruz community is as liberal as their critics make it out to be.

"Certainly our community is different from Fresno," McGuire says. "But I think our community is just as incensed about rape and murder as any other community. When it comes down to those types of crimes, I think they feel the same way."

Also, Danner says, more than 60 percent of the voters in Santa Cruz County joined others throughout the state in affirming their support for capital punishment.

And in 1975, in the "heyday of liberal times," Danner says a jury in this county returned death verdicts for Vincent Regan and Orrin "Buzz" Carr, who were convicted of stalking, raping then murdering a Santa Cruz woman. Their sentences were commuted to life in prison, however, after the state's death penalty statute was temporarily overturned because the U.S. Supreme Court ruled it was unconstitutional.

Though defense attorneys would argue for life imprisonment over an execution anytime, they recog-



Shmuel Thaler/Sentinel file

Matias Soto enters a Santa Cruz courtroom in 1992.

berment of his lover, whose body parts were found in the Monterey Bay on Sept. 25, 1992.

- Glenn Harris is charged with killing a local auto dealer in 1991 for financial gain. Michael Hennessey is charged with aiding Harris in the murder.

might have voted for capital punishment, he says.

"I'm convinced there is a group of jurors who could have imposed the death penalty, it just wasn't this group," he says.

In California, capital offenses include treason, homicide by a prisoner serving a life term, first-degree murder with special circumstances, train wrecking, and perjury causing execution.

In such cases, however, the district attorney could decide against pursuing the death penalty and seek only life imprisonment without the possibility of parole.

If the death penalty option is imposed, by law the jury must find that the so-called aggravating factors outweigh the mitigating ones.

Aggravating factors include the circumstances of the crime itself as well as the defendant's age and criminal history. Mitigating factors could include any psychological problems.

"We look at the case to see if a reasonable group of people can return a death verdict," Danner says, "and my job under the law is to submit it to them to decide."

Tough audience in SC County

SINCE CAPITAL punishment in California was reinstated in 1978, not one jury in this county has returned a death penalty verdict when asked.

tence.

Four of the five teen-agers accused in the 1980 slayings of two Watsonville teens on Mount Madonna could have faced capital punishment. But shortly before the trial, Danner dropped the special allegations.

The ages of the defendants as well as an agreement by defense attorneys to drop their efforts to move the case out of the county were primary factors in that decision, Hopkins says.

In the end, a jury convicted all five teens. Two were sentenced to life in prison, a third to 15-year-to-life in prison, and two others to the California Youth Authority.

"So our track record shows a balanced approach," Danner says. "We've saved hundreds of thousands of dollars in taking pleas in cases where we've felt it was fair."

How liberal is SC County?

NOT SURPRISINGLY, local defense attorneys have long been critical of Danner's pursuit of the death penalty.

They cite not only the high costs but also what they perceive to be a liberal-minded community.

"I think Santa Cruz is a community that is not inclined to readily mete out the death penalty and I think (prosecutors) ought to con-

death penalty rarely overturned because the U.S. Supreme Court ruled it was unconstitutional.

Though defense attorneys would argue for life imprisonment over an execution anytime, they recognize that prosecutors will be compelled as well as obligated under the law to seek the death penalty in certain cases.

It "made sense" for prosecutors to ask for the death penalty in the Carpenter case, says attorney Ben Rice.

The so-called "Trailside Killer" was considered a classic serial killer by authorities. He also had an extensive history of sexual offenses dating back to his early teens, including molesting two sisters and violently attacking at least eight women.

Rice says prosecutors should reserve the death penalty option for cases that unlike Soto's case are "more clearly" suitable for it.

"They have a tendency to pursue it in minimal cases where it technically meets the criteria but where it's not a capital defendant," Wochos says. "We're not talking serial killers here."

Meanwhile, the county is bracing for two more capital cases that are set to go to trial in March and April:

● Steven Trujillo is charged with the torture, murder, and dismem-

Bay on Sept. 25, 1992.

● Glenn Harris is charged with killing a local auto dealer in 1991 for financial gain. Michael Hennessey is charged with aiding Harris in the murder.

So far, the Harris and Hennessey case has racked up \$300,000 in court-appointed defense fees, county analyst Girvetz says. In the Trujillo case, there has been very little additional costs to the county because he has a private attorney, she says.

The county must draw from the general fund to finish paying off the \$450,000 in bills from the Soto case, she says. That amount stems mainly from defense costs because prosecution costs are already accounted for under regular departmental budgets.

"That's a tremendous amount of money even over a three-year period of time, and the county's budget is very very limited to pay for anything over the budgeted expenditures," Girvetz says.

"Definitely, the death penalty cases are the most expensive ones."

