

# Cost of justice / District attorney's quest for the death penalty in Carpenter trial may be an expensive decision

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SANTA CRUZ — Justice at any cost?

That question has been raised in the David Carpenter murder trial, which is due to resume Tuesday in Los Angeles.

The Sentinel has learned that District Attorney Art Danner has refused a settlement in which Carpenter would plead guilty in exchange for a life sentence in prison without possibility of parole. Now, the trial will cost the county more than a half-million dollars.

Neither Danner nor Public Defenders Larry Biggam and Jerry Christensen, who represent Carpenter, will confirm or deny that the settlement has been discussed and rejected.

Besides the cost savings, the benefits to the county of such a settlement would seem to be that Carpenter, who has a prior history of sex crimes and violence, would be taken off the streets for the rest of his life. He will be 54 years old next spring.

In exchange, Santa Cruz County would give up the chance to seek the death penalty against Carpenter for the murders of two women in local state parks.

"I think we're in trouble if we let the price of the proceedings dictate justice," says Danner.

"I say 'no' to that because the people of this state voted for the death penalty and it's now the law," he says.

He says he believes if he does not pursue the death penalty against Carpenter he would be doing just what the people of the state are accusing the Supreme Court and Legislature of doing — and that's dealing away justice.

Besides, he says, "There's nothing wrong with this case. If any case is appropriate for the death penalty this is it. If this case weren't prosecuted and the death penalty

not sought, how could I ever justify seeking the death penalty?"

Biggam and Christensen will not comment on any aspect of the proposed settlement because of client considerations.

A settlement in this case would not necessarily allow Carpenter to escape the death penalty, since he faces six more counts of murder for the so-called Mt. Tamalpais killings that terrorized Marin County for 2½ years.

Marin County still would be entitled to prosecute and seek the death penalty.

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## High cost of justice

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There are those in this county who say the case belonged there in the first place. Danner says the case began in this county because there is both eyewitness and physical evidence against Carpenter.

In Marin, the evidence is mostly circumstantial. However, any eyewitness here could be subpoenaed to testify in Marin County, and physical evidence, such as bullets and weapons, could be presented in the Marin cases.

The cost and the length of time in the jury selection alone already is putting heat on both the prosecution and the defense.

Jury selection began Oct. 11 after Los Angeles Superior Court Judge Dion Morrow dictated two juries hear the case — one to decide guilt or innocence and the other to choose a life or death penalty if Carpenter is convicted.

To date neither jury has been seated.

Biggam, Christensen and Danner all are upset by a Dec. 2 Associated Press story which reported that no jurors had been chosen despite two months of questioning potential panelists.

That statement essentially is true, they say, but add that the story failed to put the matter in the context of the process which Morrow has chosen. The judge, according to the attorneys, is seeking a jury pool of 80 persons, from whom the first jury — the penalty jury — will be selected.

So far, 53 people have been qualified as potential jurors. Once 27 more are put in that pool, selection theoretically will be rapid. Each side in the case could then excuse 30 potential jurors on challenges, leaving 20 persons to fill out the 12-person jury and four alternates.

"The thing that's getting to the people here is that we've been there nine weeks and don't have any jurors. Most people are

familiar with jury selection. They've either been through it themselves or have seen it depicted on TV and can't understand why we can't find one person who satisfies both sides," says Christensen.

The difference, says Biggam, results from a Supreme Court decision in Hovey vs. Superior Court. "That decision calls for private questioning of potential jurors so people will really be honest about their feelings about capital punishment."

Also important is what is called the Witherspoon decision, which, Biggam explains, holds that a person can sit on a jury even though he or she has an opinion — one way or the other — on the death penalty issue, as long as that feeling is not irrevocable.

Danner has challenged Biggam and Christensen for spending too much time with some of the potential jurors.

He points to a transcript of one day's proceedings in which one potential juror was questioned for more than an hour, despite the man saying almost from the onset that he could not vote for the death penalty.

Christensen counters that the law does not allow for automatic exclusion, even if the man is 90 percent sure he couldn't vote for the death penalty or vice versa.

In its decision in the Hovey case, the state Supreme Court wrote, in part: "A penalty jury can speak for the community only insofar as the pool of jurors from which it is drawn represents the full range of relevant community attitudes. In Witherspoon, the Supreme Court held that those who hold scruples against capital punishment must be included within this pool so long as they are willing to 'consider' the choice of penalty provided by law and are not irrevocably committed to vote against the imposition of the death penalty regardless of the evidence. . ."

As an illustration, here is an excerpt of questioning by the judge of a potential juror in the Carpenter case, three pages into the transcript after the man says "I don't think I could vote for the death penalty:"

"THE COURT: OK. When you say, 'I don't think so,' you know, I hate to keep pushing you. Some people use, 'I don't think so,' as kind of a polite way of saying, 'no.'"

"If somebody calls me up and says, 'Do you want to go out at midnight?' I say, 'I don't think so,' when what I really mean is there is no way in the world I will go out there."

"Are you expressing a lack of conviction or is that a polite way of saying 'no'?"

The prospective juror said from the point of conscience, his answer would be "no."

The prospective juror then underwent more questioning by the judge, Christensen and Danner that took up 43 additional transcribed pages.

Says Biggam: "What (the juror) ended up saying was that he was 90 percent sure he couldn't vote for the death penalty. That is not enough. Had the judge automatically disqualified him, there would have been a reversible error (on appeal)."

All parties believe the judge in the case is being very cautious because the case is somewhat of a bellwether of new death penalty cases.

"I'm more critical of courts that go through 20 jurors per day. How can you find out anything about someone in five minutes?" asks Christensen.

"I'm not ashamed of the time it's taking. It's a very heavy-duty case and the jury must decide whether someone lives or dies."

Danner believes too much time is being taken and supports

a petition drive for an initiative which, among other things, would give a judge more control, including complete authority to question prospective jurors in certain cases.

All three attorneys agree that because of the Hovey and Witherspoon decisions, jury selection in this case would take a long time no matter where the trial were held.

The process in LA is compounded by jammed court calendars, resulting in Judge Morrow conducting this trial along with his regular caseload. The result has been half days in court.

Biggam and Christensen concede the costs in this case will be high, but they maintain the case is complicated with many novel issues to be resolved. The most obvious issue in this case is the twin jury aspect.

"We (the Public Defender's office) defend 6,000 to 7,000 cases per year. We pick juries in half a day and try those cases in a week. I think we're efficient," says Christensen.

"But, the media gives high-profile coverage to the Carpenter case. It represents one-tenth of 1 percent or less of all our cases. But the media does not cover those cases," adds Biggam. "The Carpenter case is a once-in-a-decade case."

Danner says that doesn't justify the high price tag. "The question is how much can a small county afford. If one case like this breaks the bank so to speak, what happens to the other cases?"

He concedes that changes in the law have added to the cost of murder trials. "The price tag for justice has gone way up," he says.

But, he says he doesn't believe that throwing more money at a trial makes it any more fair. "Our system has become one in pursuit of perfection rather than in pursuit of fairness."