

Death penalty

Trailside Killer case illustrates its costs

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STAFF WRITER

"Trailside Killer" David Carpenter, convicted Tuesday of five murders in Marin County, now finds himself eligible for the gas chamber twice over.

Carpenter, 58, was convicted and sentenced to death in 1984 for two 1981 killings that occurred in remote areas of Santa Cruz County.

That trial took place in Los Angeles because of fears it would not be possible to seat an unbiased jury in Santa Cruz County. It cost Santa Cruz

County three-quarters of a million dollars to try the case.

Sentenced to the gas chamber and waiting on death row in San Quentin for that conviction, Carpenter was tried in San Diego (at an expense of well over \$1 million) for five Marin County murders committed within months of the Santa Cruz killings. The San Diego jury pronounced him guilty Tuesday, and will reconvene next week to decide whether to recommend a second death penalty or life imprisonment without possibility of parole.

The second trial raises the question: Is it worth a million

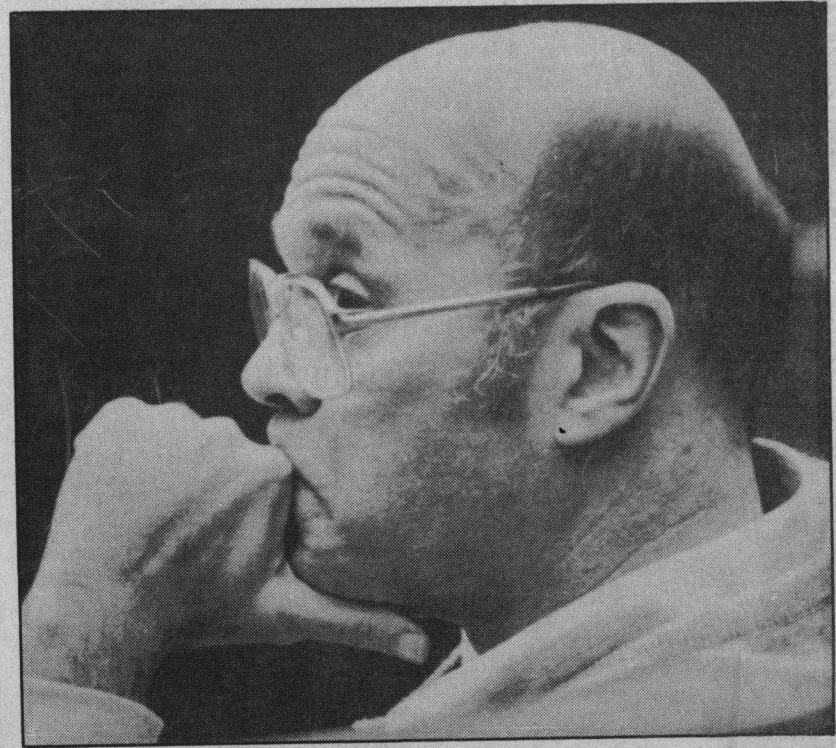
dollars to sentence someone to death who is already awaiting execution on Death Row? In a criminal-justice system so strapped for cash that 90 percent of those accused of crimes are processed through the system without the benefit of a trial, and jails and prisons are packed beyond their capacity, isn't there an alternative to this kind of "overkill"?

Santa Cruz County District Attorney Art Danner, who prosecuted Carpenter for the murders in this county, talked this week about the unusual situation.

Cases that warrant the death

penalty as a rule cost extravagant sums to prosecute, even if they are tried in only one county, he pointed out. The massive burden of proof leads to extra effort and expense at every step of the way, from the investigation to the preliminary hearing to jury selection and the trial itself, followed by an elaborate appeals process that takes years.

Add to this in the Carpenter case the problems that occur when a man is arrested for a string of capital crimes that occurred in more than one



DAVID CAPRENTER — During his LA trial.

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county. There is no mechanism in the law, Danner said, that allows two counties to combine their resources and prosecute the suspect jointly.

So in 1981, when Carpenter was identified as the prime suspect in the Santa Cruz County murders, and ballistics tests linked the murder weapon used in those killings to that used in the five Marin County killings, Danner was faced with a difficult choice.

The DA had the only eyewitness to any of the killings — UC-Davis student Steve Haertle, who had been hiking in Henry Cowell Redwoods State Park in March 1981 with his girlfriend, 20-year-old fellow student Ellen Marie Hansen, when the gunman confronted them on the trail.

After announcing that he intended to rape the woman, the man shot them both repeatedly at close range when they tried to resist. A severely wounded Haertle was able to drag himself down the trail to a park ranger and later identify Carpenter as his assailant.

Since there were no eyewitnesses to the Marin County killings, the ball was in Danner's court, he said. He could accept the plea bargain offered by defense attorneys Larry Biggam and Jerry Christensen — a guilty plea in exchange for a guarantee that the death penalty would not be imposed.

One argument advanced for this at the time was that a plea bargain would send the case to Marin County at minimal cost to Santa Cruz County, with Carpenter's guilt in the Santa Cruz killings already established and admissible as evidence at the second trial.

Since multiple murder is one of the special circumstances that warrant the death penalty, the argument went, Marin would be in a strong position to sentence Carpenter to die, and Santa Cruz would have saved a bundle.



Kurt Ellison

DA Art Danner

Such an argument, Danner said, is "specious."

"If I settled, I would have been creating the incentive for the Marin prosecutor to do the same," Danner said. "They could have said, 'Santa Cruz settled, and they were the ones with the stronger evidence.'"

To have forgone the death penalty completely would have been an abandonment of his responsibilities as an elected official, Danner argued, because "if there was ever a case for the death penalty, this was it."

The question, Danner said, comes down to this: Can one put cost ahead of the will of the people, who had overwhelmingly reinstated the death penalty in the 1970s, specifically for cases such as this?

"To do otherwise" than seek the maximum sentence, Danner said, "would have meant I was legislating. If I decide to take away the death penalty here, I've decided we don't have a death penalty law at all."

The problem, as Danner sees it, lay not in his choosing to prosecute to the full extent granted him by law, or even in

the Marin prosecutor following suit.

"I wouldn't want to second-guess the Marin prosecutor," Danner said. When the Marin prosecutor decided to bring Carpenter to trial, it was 1985 and the state Supreme Court, under Rose Bird, was still overturning one death sentence after another, so prosecutors could perhaps be justified in wanting an "insurance verdict."

The problem, Danner said, lay in California law, including a provision of the state Constitution which prevented both cases from being tried together. Separate trials, Danner said, "make no sense," but his efforts to have the cases tried together ran up against insurmountable difficulties.

Not all participants have been as reluctant as Danner to criticize the Marin prosecutors, or Danner's zeal in pursuing a death-penalty conviction. Biggam and Christensen, Carpenter's attorneys during the Santa Cruz proceedings, in an interview yesterday made no bones about calling the second trial "a waste of everybody's time and money," a "public morality play" motivated by personal ambition rather than any high notions of justice.

The Marin trial, they estimated, cost well over \$2 million, all of it urgently needed for other state programs. By comparison, estimates of the cost of keeping someone in prison for life don't run much above half a million.

"These phrases about 'you can't put a price tag on justice' do a disservice to everybody," Christensen said.

"Sure," he said, "when you ask most people, 'Would you rather Carpenter got the death penalty or life without parole?' most would go for death."

But, he said, "I think the question needs to be rephrased: 'Which would you prefer: life without parole, or the death penalty and a million-dollar price tag?' Then you might see a different answer."