The Appeal of Death Row

AS AN ORANGE COUNTY jury debated in 2009 whether the white supremacist Billy Joe Johnson should live or die for murdering a fellow gang member, he asked to be sent to death row. Not because he felt any sudden remorse for the five people he’d killed over the years—"I commit crimes when people piss me off," he once explained, matter-of-factly—but because Johnson believed he’d have better living conditions, including liberal phone privileges, a bigger cell, and daily human interaction, at San Quentin’s death row than he would at Pelican Bay, one of the state’s toughest maximum-security prisons, where he was serving a 46-year-to-life sentence, primarily in solitary confinement.

He also knew that the odds were good that he might never be executed. Bogged down by constitutional challenges and appeals, California’s system takes an average of 20 years to move a prisoner from conviction to execution.

Experts on both sides of the death-penalty debate have long agreed that California’s system is the nation’s costliest and least efficient. This June, a landmark report by Paula M. Mitchell, a professor at Loyola Law School, and Arthur L. Alarcón, a senior judge on the Ninth Circuit Court of Appeals, unearthed new data that reveal just how bad the system is.

Their report showed that since the current death-penalty statute was enacted in 1978, taxpayers have spent more than $4 billion on only 13 executions, or roughly $308 million per execution. As of 2009, prosecuting death-penalty cases cost upwards of $184 million more each year than life-without-parole cases. Housing, health care, and legal representation for California’s current death-row population of 714—the largest in the country—account for $1.44 million in annual extra costs. If juries continue to send an average of 20 convicts to San Quentin’s death row each year, and executions continue at the present rate, by 2030 the ranks of the condemned will have swelled to more than 1,000, and California’s taxpayers will have spent $9 billion to execute a total of 23 inmates.
“I was stunned by the report,” said Loni Hancock, a Democratic state senator from Oakland and a member of the senate budget committee. Hancock had spent the previous five months agonizing over deep cuts to California’s general budget, and “it broke my heart,” she said. “That’s when I decided the time had come for Californians to reconsider the death penalty.”

In late June, Hancock introduced SB 490, the first bill to propose replacing death sentences with no-parole life imprisonment, only to withdraw it eight weeks later when she realized she didn’t have the votes to get it out of committee. Now anti-death-penalty activists are taking their case to the people. Buoyed by the Alarcón-Mitchell report and the media coverage it garnered, California Taxpayers for Justice kicked off a ballot-initiative drive in October to get the required 504,760 voter signatures in time for the 2012 general election.

Law-enforcement groups want to keep the penalty in place. “We share the frustration of death-penalty opponents,” says Cory Salzillo, the legislative director of the California District Attorneys Association. “But we should pursue remedies to fix the problems rather than repeal it altogether.” (Hancock’s own stepson, Casey Bates, is known as an aggressive prosecutor in Alameda County’s District Attorney’s office, with several murder convictions under his belt. He declined to comment on SB 490, but Hancock told me: “We haven’t talked about it.”) To many advocates for victims, the initiatives are an insult. “You can’t take justice away from the victims’ families, not after everything they’ve gone through,” contends Harriet Salarno, the president of Crime Victims United of California, which she founded after her daughter’s murder. “No-parole life sentences will never give them the closure they seek. Sure, the death penalty is costly, but that’s because it’s not executed efficiently. Look at Texas and Virginia. They limit the years of appeals. We should copy them.”

In Texas, where the appeals process has been streamlined, nine executions were carried out in the first eight months of this year, and in Virginia, it took a relatively speedy seven years from the arrest of the Beltway sniper John Allen Muhammad to his execution in 2009. Other states—Colorado, Kansas, Maryland, and Montana—have been struggling to reform or abolish their capital-punishment systems.

Historically, polls show that Californians’ support for capital punishment mirrors the nation’s, with more than 60 percent in favor of it. “Proponents of repealing the death penalty start at a disadvantage,” says Robert Stern, the president of the Center for Governmental Studies. “They will need the endorsement of the state’s top Democrats. If Jerry Brown and particularly Dianne Feinstein were to support a repeal, it would have a better chance of passing. If either opposes, then I doubt the voters would pass it.” And what California does will doubtless shape the behavior of other states.

For the time being, Governor Brown has no comment on this issue, says a spokesman. As governor in 1977, he vetoed a pro-death-penalty bill, and last April, he stopped a $356 million expansion of San Quentin’s death row, calling the cost “unconscionable” in a time of deep budget cuts to education and social services.

State Senator Hancock says she may reintroduce her life-imprisonment bill in January, when voters will start to feel California’s most recent round of budget cuts. “But let’s first see how the voter drive goes,” she told me. Billy Joe Johnson, meanwhile, got his wish—sort of. He’s on death row, alone in a cell with a TV that his lawyer bought for him. But a few months ago, after hurling threats at guards, he became a Grade B prisoner, which means his life must now seem almost not worth living. He lost all his phone privileges and physical-contact visits and is nearly back to the conditions he came from, with 24-hour lockdown, strictly limited human interaction, and only three outdoor walks a week, by himself, in a
wire-fenced yard the length of two small cars.

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