
Can We Afford Justice?

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Problem with Existing Cost Studies

- Status quo or with reforms?
 - Long death row incarceration is cost of obstruction, not cost of death penalty
 - DC Sniper – 5½ years, not unusual in Virginia
 - Apples and oranges
 - Escalating cost of health care for elderly inmates
 - The plea bargain effect
 - The deterrent effect
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Sources of Information

- Contract researchers (e.g., RAND)
 - Permanent government analyst offices
 - Nonprofit organizations
 - Ad hoc commissions
 - Need balanced composition, staff
 - Beware of faux “supporters”
 - Affirmative outreach for pro side
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Reforms

- Limit number of reviews
 - One appeal, one collateral
 - Further reviews for innocence and *nothing* else
 - No blank checks
 - Sixth Amendment requires reasonable competence
 - It does not require unlimited resources
 - Qualify for federal fast track
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Costs and Guilt

- “Super Due Process”? – Not for guilt phase
 - 2 lawyers? – policy, not mandate
 - Justified spending less for LWOP?
 - Extra cost is mostly in penalty phase
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Diminishing Returns in Penalty Phase

- Circumstances of crime – no add'l cost
 - Criminal record (or lack) – little cost
 - Severe mental disorder – incurred anyway
 - Extra expense for capital case?
 - “Character and background” evidence
 - Marginal mental issues
 - Greatest expense for least probative value
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The Lockett Problem

- Supreme Court 1978 – proffer any circumstance in mitigation
 - Seemed harmless at the time
 - Grown to consume far more resources than it is worth
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What to do?

- Supreme Court changes Eighth Amendment
 - Looks to state legislatures for national consensus
 - Need mechanism to go the other way
 - Enact resolutions
 - “Anything goes” rule is to conform, not state policy
 - Exclude evidence if cost outweighs probative value
 - Call on Court to restore legislative authority
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Can We Afford Justice?

- Consider reform first
 - Look critically and skeptically at claims
 - Costs can and should be reduced below their present level
 - Remaining cost differential does not warrant sacrifice of justice
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