

## **i. Cases with Detailed Accounting of Prosecution Staff Time**

Three of the cases in this sample stand out for their detailed records of prosecution staff time and salaries paid. These cases are Peterson, Krebs and Wigley.

### ***Scott Peterson***

The cost records for the Scott Peterson trial were among the most comprehensive of those reviewed. In total, the records reveal that the trial cost a minimum of \$3.2 million: \$1.8 million in costs incurred by Stanislaus County and an additional \$1.4 million in expenses to the City of Modesto.<sup>1</sup> Most defense expenses are not included because Peterson retained a private attorney. The records also do not appear to include salary and benefits for the specially assigned judge. But all other trial expenses are reflected in the records, including the full costs of the prosecution's staff time.

The prosecution kept detailed records of its expenses in the Peterson case, including the hours worked on the case by every district attorney employee.<sup>2</sup> These records reveal that prosecution expenses totaled \$1.4 million, of which more than \$700,000 covered the salaries and benefits for staff. In total, 33 employees from the prosecutor's office worked on the case: 5 attorneys, 7 investigators and 21 additional staff. More than 20,000 hours of employee time were spent on the case. The Office paid these employees almost \$600,000 for their normal salaries and benefits. In addition, the district attorney spent over \$100,000 on other staff expenses including: computer specialists, a media consultant, support staff overtime, and compensation for vacation time that was accrued but expired during the trial.<sup>3</sup> Chart 5 shows the entire prosecution staff hours and salary costs for each person who worked on the Peterson case. Chart 6 shows the total staff hours and salaries paid and the additional expenses for overtime and paid out vacation.

**Chart 5****Peterson Prosecution--Staff Time and Salaries**

<b>Position</b>	<b>Hours Worked</b>	<b>Salary &amp; Benefits</b>
<b>Attorneys</b>		
Attorney V	2,280	105,320
Attorney V	2,248	103,752
Chief Deputy District Attorney	1,496	80,610
Chief Deputy District Attorney	238	13,060
Attorney V	6	275
<b>Attorney Total</b>	<b>6,268</b>	<b>\$303,016</b>
<b>Investigators</b>		
Criminal Investigator II	2,580	81,661
Criminal Investigator II	1,555	50,067
Senior Criminal Investigator	1,199	42,587
Criminal Investigator II	938	27,821
Criminal Investigator II	79	2,495
Senior Criminal Investigator	54	1,908
Criminal Investigator II	2	63
<b>Investigator Total</b>	<b>6,407</b>	<b>\$206,602</b>
<b>Support Staff</b>		
Legal Clerk III	2,621	38,365
Temp Staff Hired for Trial	2,622	28,905
Interviewer II	861	13,375
Temp Staff Hired for Trial	252	7,365
Systems Engineer II	200	6,916
Application Specialist III	234	6,891
Manager III	182	6,318
Accounting Technician	330	6,111
Legal Clerk IV	183	3,103
Paralegal III	104	2,432
Paralegal III	99	2,233
Legal Clerk III	51	691
Interviewer II	43	671
Supervisor Legal Clerk II	21	437
Admin Clerk II	19	255
Accountant I	12	219
Paralegal III	9	193
Legal Clerk IV	9	167
Interviewer I	11	142
Legal Clerk III	2	24
<b>Support Staff Total</b>	<b>7,865</b>	<b>\$124,813</b>
<b>Victim Witness</b>		
Victim Services Coordinator	16	366
<b>Victim Witness Total</b>	<b>16</b>	<b>\$366</b>

## Chart 6

### Peterson Prosecution—Total Salaries and Additional Expenses

	Hours	Salary & Benefits
<b>Total for Prosecution Staff</b>	<b>20,556</b>	<b>\$634,797</b>
<b>Additional Salary Expenses</b>		
Paid Out Vacation for Attys	390	20,092
Total Support Staff Overtime <sup>4</sup>	2,048	52,552
<b>Total—All Salary Costs</b>	<b>22,994</b>	<b>\$707,441</b>

The records also reveal the impact of all of this work on the District Attorney’s Office. As a result of the Peterson case, the district attorney had to redistribute the full case loads of three attorneys.<sup>5</sup> As the chief executive officer of the county explained, “[t]his resulted in 79 defendants, in 43 cases, 8 charged with the death penalty, being spread among 18 available prosecutors.”<sup>6</sup> The Peterson case also caused the District Attorney’s Office to shift staff away from consumer fraud protection, “resulting in a reduced focus” on these crimes. The chief executive officer stated that reimbursements from the state for the Peterson trial expenses would be used for “[i]ncreased attorney staffing” for the District Attorney’s Office, as well as increased staffing for the Sheriff’s Department.<sup>7</sup>

The remaining \$675,000 in prosecution costs covered attorney travel and lodging, supplies, equipment, expert witnesses, trial consultants and other trial costs.<sup>8</sup> For example, the prosecution paid \$102,000 for three trial consultants: Ebbe Ebbesen, a psychology professor, Phillip Trompetter, a psychologist, and the Varinsky Association. The records reveal that that Ebbesen was paid more than \$5,000 for witness preparation and to assist with change of venue research; that Trompetter charges \$1,000 per session for “team consultation”; and that Varinsky Association charges \$125 an hour for jury selection research.<sup>9</sup> The Peterson prosecution records also reveal some questionable costs.

For example, the state reimbursed the prosecution for the following items:<sup>10</sup>

- a 13” television (\$86);
- a “boombox” (\$108);
- a “[c]ompact refrigerator for space in San Mateo courthouse occupied by Peterson trial team for lunch storage” (\$127);
- two “padded chairs” for the courtroom (\$271);
- 4 laptop computers (pro-rated);
- 6 desktop computers (pro-rated);
- dry cleaning expenses (\$937.45); and
- oil changes, car washes and smog check (\$387).

The Peterson records also shed light on the costs of a death penalty trial to local law enforcement and the extensive work that police do for prosecutors in these cases. Death penalty cases take more time from local police because of the additional investigation required. The City of Modesto submitted its own Claim for Payment and accompanying documentation to the state. In support of this claim, the county auditor-controller stated that the District Attorney’s Office “directed” the investigation conducted by the Modesto Police and that “[i]t would be impossible to separate the efforts of the Modesto Police Department from those of the Stanislaus County District Attorney during the pendency of this case,” [emphasis in original].<sup>11</sup>

Specifically, the police department assigned two detectives and one police clerk to investigate the Peterson case for the duration of the trial, at a cost of \$85,000 a year per detective and \$50,000 a year for the clerk.<sup>12</sup> Over two years, just this aspect of the investigation cost Modesto \$440,000. This is apart from the extensive staff that Modesto employed for the search for the bodies. In the city’s words “\$400,000 is a very conservative estimate of the . . . on-duty time devoted to this case.”<sup>13</sup> In addition to on-duty wages, Modesto also incurred

\$360,000 in police department overtime salaries. Moreover, “overtime generated throughout the department (minimum staffing requirements, transfer of workload, etc.) that may have been an indirect affect [sic] of this case was not included in the overtime reimbursement amount requested.”<sup>14</sup> These costs incurred by the Modesto Police are in addition to staff time spent on the case by Sheriff’s Department employees, which totaled over \$11,000.<sup>15</sup>

In sum, Modesto’s additional personnel costs reached \$1.2 million and the additional work created by the case made it difficult for city departments—including the police—to handle other matters. Indeed, Modesto Police Chief Roy Wasden claimed that if he did not receive additional funds to cover the costs of the Peterson case, he would not be able to hire 15 police officers as he had previously planned.<sup>16</sup> On the other hand, the records of the Modesto Police do reveal some questionable costs, including a new laptop purchased for the department and \$53.75 spent on a “tape dispenser.”<sup>17</sup>

The unusually comprehensive records in this case included spreadsheets with individual line items for actual expenses, the date of each expense, a description of the expense, the amount incurred and by whom, and detailed time records for staff. This information, valuable in itself, also demonstrates that it is possible, without any extraordinary effort, to account in minute detail for trial expenses in homicide cases, including prosecution and police expenses.

### ***Rex Allan Krebs***

The records maintained by San Luis Obispo County for the prosecution of Rex Allan Krebs are equally comprehensive. The records document that the trial cost a minimum of \$2.8 million.<sup>18</sup> The most significant cost missing from these records is court costs. Thus, even this figure underestimates the true costs of the case.

The prosecution in the Krebs case also kept detailed records of the costs of the trial, including staff time. These records reveal that of the total \$1.174 million spent by the prosecution over the course of four years, the majority was spent on staff salaries and benefits, more than \$700,000.<sup>19</sup> Chart 7, on the following page, provides details of the staff hours spent on the case and salaries paid.

These staff records reveal that two attorneys in the office worked full time on the case for two years (logging more than 1,700 hours of work a year). In addition, one investigator and one legal clerk worked nearly full time on the case for a year.

The prosecution kept meticulous records of its expenses.<sup>20</sup> The records document spending on supplies such as files and “press on labels,” and even include individual receipts for supplies costing less than \$5. Unlike in the Peterson case, the Krebs records also reflect the district attorney’s efforts to keep costs manageable. The records indicate, for example, that the prosecution retained forensic psychologists at a rate of \$100 per hour, even though the firm normally charges \$500 per hour. The experts’ final bill at their regular rate would have been \$56,792, but the prosecution paid \$14,303.<sup>21</sup>

**Chart 7**

**Krebs Prosecution--Staff Time and Salaries**

<b>Position</b>	<b>Hours Worked</b>	<b>Salaries &amp; Benefits</b>
<b>Attorneys</b>		
Deputy DA	4,036	356,169
Deputy DA	4,003	351,971
District Attorney	180	20,702
Chief Prosecutor	120	10,811
Deputy DA	50	4,258
Principal Deputy DA	40	3,398
<b>Attorney Total</b>	<b>4,393</b>	<b>\$391,140</b>
<b>Investigators</b>		
Supervising DA Investigator	2,132	165,026
Supervising DA Investigator	1,079	80,260
DA Investigator III	192	12,527
DA Investigator III	115	6,747
Chief DA Investigator	80	6,174
DA Investigator	58	4,941
DA Investigator II	70	4,345
DA Investigator	51	4,230
<b>Investigator Total</b>	<b>3,726</b>	<b>\$280,019</b>
<b>Support Staff</b>		
Legal Clerk	1,918	61,285
Legal Clerk	139	4,367
Legal Assistant	81	2,784
Legal Clerk	15	327
Automation Specialist	25	1,117
legal Clerk Trainees	30	508
Supervising Legal Clerk	8	294
Legal Clerk	7	179
Legal Clerk	7	166
Legal Clerk	1	25
<b>Support Staff Total</b>	<b>312</b>	<b>\$9,768</b>
<b>Victim Witness Staff</b>		
Victim Witness Coordinator	280	20,434
Senior VW Asst Coordinator	60	2,505
<b>Victim Witness Total</b>	<b>340</b>	<b>\$22,939</b>
<b>Prosecution Total</b>	<b>8,771</b>	<b>\$703,866</b>

Finally, the Krebs records reveal that, as with the prosecution, the greatest expense to the Sheriff's Department was in staff costs. The Sheriff's Department paid \$20,857 in salaries and benefits for work related to the case. This represents nearly two thirds of the total costs incurred by the department.<sup>xxii</sup>

As with the Peterson case, the Krebs records reveal that detailed accounting of homicide trial costs is feasible, even in relatively small counties and departments. These records also show what useful information may be revealed to taxpayers, including both questionable expenditures and admirable efforts to control costs.

### ***Robert Allen Wigley***

Of the records reviewed here, only one other case included prosecution staff hours, the Del Norte prosecution of Robert Allen Wigley. The county reported total costs for the trial of \$454,000.<sup>xxiii</sup> However, the county recorded only costs for prosecution, defense and sheriff. No costs were reported for court expenses or jury and witness expenses. The figure does, however, include the full costs of the prosecution staff time, as shown in Chart 8.<sup>xxiv</sup> The contrast between this non-death penalty prosecution and the Peterson case is stark.



## Chart 8

### Wigley Prosecution--Staff Time and Salaries

Prosecution	Hours Worked	Salaries & Benefits
<b>Attorneys</b>		
District Attorney	671	36,305
District Attorney	91	4,464
<b>Attorney Total</b>	<b>762</b>	<b>\$40,769</b>
<b>Investigators</b>		
DA Investigator	400	12,379
DA Investigator	257	8,320
DA Investigator	265	7,614
<b>Investigator Total</b>	<b>922</b>	<b>\$28,313</b>
<b>Support Staff</b>		
Clerk	9	1,380
<b>Support Staff Total</b>	<b>9</b>	<b>\$1,380</b>
<b>Prosecution Total</b>	<b>1,692</b>	<b>\$70,462</b>

The Peterson prosecution team logged more than ten times as many hours as did the Wigley prosecution team. Although not nearly as high profile, the Wigley case was not a simple prosecution. In fact, Wigley's case was one of the first cold-hit DNA prosecutions in the state, involving the brutal rape and murder of a young woman.<sup>xxv</sup>

#### ii. Case With Detailed Accounting of Court Costs

##### ***Richard Allen Davis***

Unlike the records in Peterson, Krebs and Wigley, the records from the Richard Allen Davis case do not include every cost of the prosecution, only the "extraordinary" costs. These records are unusual, however, in that they reflect the substantial costs to the court, which are paid by the state and its taxpayers rather than the by the counties. The total cost for the

Davis trial was a minimum of \$2.3 million.<sup>xxvi</sup> Of that amount, \$287,000 in costs were incurred by the court. Chart 9 shows the known overall costs of the trial by category.

**Chart 9**

**Davis Trial Costs**

Court	\$287,000
Jury and Witness	\$174,000
Prosecution	\$212,000
Defense	\$1 million
Sheriff	\$509,000
Other-Santa Clara Costs	\$86,000

The court costs include more than \$66,000 in salaries and benefits, more than \$68,000 in trial transcripts, and nearly \$19,000 to maintain a courtroom for the trial.<sup>xxvii</sup>

The Davis records encompass only extraordinary county prosecution and police costs for overtime and additional staff. As a result of the Davis case, the Sonoma County District Attorney’s Office was forced to spend nearly \$90,000 on additional staff and nearly \$20,000 in overtime.<sup>xxviii</sup> Likewise, the Sonoma County Sheriff’ Department spent nearly \$60,000 on overtime and extra help.<sup>xxix</sup> Regular salary expenses are not included in these calculations.

**iii. The Most Expensive Trial and the Worst Record Keeping**

***Charles Chitat Ng***

The Charles Ng trial, costing a minimum of \$10.9 million, appears to be the most expensive single trial in California history.<sup>xxx</sup> The records reveal actual trial expenses as follows:

## Chart 10

### Ng Trial Costs

Court	\$1.24 million
Jury and Witness	Unknown
Prosecution	\$2.22 million
Defense	\$6.42 million
Sheriff	\$560,000
Other	\$420,000

Even this enormous tally does not include all trial expenses. Jury and witness costs are notably absent and the court costs reported here include very few of the actual court expenses. Further, the prosecution staff costs appear to cover only “replacement staff,” the additional staff hired by the district attorney to handle the increased workload caused by the case (one attorney, one investigator and one support staff).<sup>xxxix</sup> All prosecution staff time, however, does not appear to be included. Thus, \$10.9 million does not even encompass all of the costs of the trial.

But California taxpayers will never know the full costs of this trial because the record-keeping in the Ng case was abysmal. Indeed, after an audit in 2006, the state required Calaveras County to return \$14.9 million of the \$19 million it received in advanced payment for the case, in part because the county did not adequately support its claims.<sup>xxxix</sup> The records provided by the state controller to the ACLU were incomplete and largely incoherent, with little documentation to support or explain the charges claimed. The ACLU also obtained records directly from the county. The expenses recorded on the county’s own spreadsheets rarely correlated with those submitted on the Claim for Payment forms and, indeed, showed the county spent in excess of \$11.5 million on the case.<sup>xxxix</sup> Ultimately, little of substance can be garnered from the Ng trial records. Given the incredible amount of money spent on this one trial, this is disturbing. California taxpayers should not have to guess where \$11 million in public funds went.

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<sup>1</sup> Claim for Payment, Stanislaus, *supra* note 54; Claim for Payment, Modesto, *supra* note 54.

<sup>2</sup> Stanislaus County District Attorney Staff Hours, *supra* note 14.

<sup>3</sup> *Id.*

<sup>4</sup> “Support staff overtime” is listed as a separate item on the document entitled Stanislaus County District Attorney Staff Hours, *supra* note 14, in addition to the staff hours claimed as “normal salaries.” The spreadsheet detailing the time spent on the case by all staff employees only reflects the hours claimed under the normal salary expenditures, not these overtime hours.

<sup>5</sup> Letter of Richard Robinson, Chief Executive Officer of Stanislaus County, to Steve Westly, State Controller, dated Feb. 22, 2005.

<sup>6</sup> *Id.*

<sup>7</sup> *Id.*

<sup>8</sup> *Id.*

<sup>9</sup> Stanislaus County, People versus Peterson CHT Trial Costs, District Attorney Services and Supplies Costs, FY 2002-2003 to FY 2004-2005 (on file with ACLU-NC).

<sup>10</sup> *Id.*

<sup>11</sup> Letter of Larry Haugh, Auditor-Controller of Stanislaus County, to Steve Westly, State Controller, dated September 14, 2005 (on file with the ACLU-NC).

<sup>12</sup> Letter from Larry Haugh to Ginny Brummels, Subject: City of Modesto – Scott Peterson Case (July 29, 2005), attachment “Explanation of Reimbursement Request” (on file with the ACLU-NC).

<sup>13</sup> *Id.*

<sup>14</sup> *Id.*

<sup>15</sup> Stanislaus County District Attorney Services and Supplies Costs, *supra* note 65.

<sup>16</sup> Sternbee, *supra* note 16.

<sup>17</sup> Modesto Police Department, Peterson Case Costs, December 24, 2002 through April 5, 2005 (on file with the ACLU-NC).

<sup>18</sup> Claim for Payment, San Luis Obispo, *supra* note 55.

<sup>19</sup> District Attorney Summary Attached to Claim for Payment, San Luis Obispo, *supra* note 55 (on file with the ACLU-NC).

<sup>20</sup> District Attorney Office’s Expenses—Salaries and Benefits, Attached to Claim for Payment, San Luis Obispo, *supra* note 55 (on file with the ACLU-NC).

<sup>21</sup> District Attorney Office’s Expenses—Receipts, Attached to Claim for Payment, San Luis Obispo, *supra* note 55 (on file with the ACLU-NC).

<sup>xxii</sup> San Luis Obispo Sheriff’s Department, Krebs Trial Court Reimbursement, Salary & Benefits and Services & Supplies, dated Oct 12, 2001 (on file with the ACLU-NC).

<sup>xxiii</sup> Claim for Payment for Reimbursement of the Cost of Homicide Trial, Del Norte, dated Sept. 23, 2004 (on file with the ACLU-NC).

<sup>xxiv</sup> Cost Report (FAM-34), Del Norte County District Attorney, Costs Incurred between 12/4/2001 and 11/20/2003, attached to Claim for Payment for Del Norte, *supra* note 79 (on file with the ACLU-NC).

<sup>xxv</sup> Jim Sanders, *DNA Effort Pays off in Crime Fight*, Sacramento Bee, Dec. 17, 2001.

<sup>xxvi</sup> Claim for Payment for Reimbursement for Homicide Trials, Sonoma County, Claim #1, dated Dec. 17, 1996, Claim #2 dated Apr. 28, 1997, Claim # 3 dated March 31, 1998; Claim for Payment for Reimbursement for Homicide Trials—Reimbursement for Change of Venue, Sonoma County, Claim #1, dated Dec. 17, 1996, Claim #2 dated Apr. 28, 1997, Claim # 3 dated Mar. 31, 1998,

<sup>xxvii</sup> Memorandum from William Parsons, Director of Finance for Santa Clara County Superior Court to Joseph Torretto, Fiscal Officer, dated July 1, 1997 (on file with the ACLU-NC).

<sup>xxviii</sup> Sonoma County District Attorney Summary of Expenses Richard Allen Davis Case (on file with the ACLU-NC).

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<sup>xxix</sup> Sonoma County Sheriff-Corner Summary of Expenses Richard Allen Davis Case (on file with the ACLU-NC).

<sup>xxx</sup> Calaveras County, Revised Audit Report, *supra* note 53.

<sup>xxxi</sup> See Email correspondence from Stephanie Woo, State Controller's Office, to Jim Spano, dated Oct 8, 2004; Letter from Brent Herrington, County Administrator of Calaveras, to Clint Armstrong, State Controller's Office, dated May 13, 1991 (on file with the ACLU-NC).

<sup>xxxii</sup> Calaveras County, Revised Audit Report, *supra* note 53. Of the \$14,875,984 the county had to return, the State allowed the county to temporarily retain \$2,015,185 in confidential defense costs until confidentiality was no longer an issue and another audit of those costs could be performed.

<sup>xxxiii</sup> Expenditures 00-01: County of Calaveras, Ng Expenditures, 6/1/85 through 06/30/01 (on file with the ACLU-NC).