Estimates of Time Spent in Capital and Non-Capital Murder Cases:
A Statistical Analysis of Survey Data from Clark County Defense Attorneys

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I. Introduction

A survey was designed to provide average estimates of the time spent at various stages of criminal processing for the defense of capital and non-capital murder cases. Defense attorneys were asked to use their personal experiences over the past three years to estimate the number of hours they spent in pretrial, trial, penalty, and post-conviction activities in a "typical" capital and non-capital murder case. Separate questions were asked about their experiences as "lead attorney" and "second chair" in these typical cases.

A total of 22 defense attorneys completed the survey. The largest group of survey respondents were attorneys within the Public Defender's office (n=10), followed by the Special Public Defender's office (n=9) and the Office of Assigned Counsel (n=3). To provide some context for the time estimates provided by these defense attorneys, this survey data was also supplemented with general case processing information on a sample of 138 murder cases sentenced in District Court between 2009 and 2011. The Clark County Court's electronic record system was used to identify these murder cases and to construct summary statistics on case processing (e.g., average time between court filing and sentencing; number of total meetings with parties present, number of orders and motions filed). These court statistics were analyzed separately for each major type of sentence (i.e., yearly maximum sentences, life with possibility of parole, life without possibility of parole, and death sentences).

For the survey data included in this report, the median score (i.e., the middle score of a distribution) is used as the average estimate of time spent at each stage of criminal processing. The median is the most appropriate measure for these analyses because (1) it minimizes the impact of extreme ratings and (2) the distribution of time estimates across respondents is not normally distributed. Under these conditions, the median, rather than the mean, is the appropriate summary measure of central tendency.

II. Survey Questions

The survey items included questions about pretrial, trial, penalty, and post-conviction activities. Definitions of these stages and activities within them were provided to reduce ambiguity in the attorney's time estimates.

Survey respondents were told that **pretrial phase activities** include "time spent up to jury selection including but not limited to consultation time with the client, witnesses, experts, etc; court time, document review and investigations." Hourly estimates were then elicited for their time spent as lead attorney and second chair attorney in all pretrial phase activities related to guilty and penalty in a "typical" capital murder case. Similar hourly estimates were elicited for a "typical" non-capital murder case.

Trial phase activities were defined as "activities from jury selection to verdict including participation in *voir dire* and trial." Questions were included to estimate both the number of days and hours per day for trial phase activities as the lead attorney and as second chair attorney.

Penalty phase activities were defined as "activities after verdict through sentencing including preparation and participation in penalty/sentencing hearings." Questions were included to estimate both the number of days and hours per day for penalty phase activities as the lead attorney and as second chair attorney.

Post-conviction phase activities were defined as "time spent on any guilt-related and penalty-related activities after sentencing including appeals." Questions were included to estimate both the number of days and hours per day for post-conviction phase activities as the lead attorney and as second chair attorney.

III. Results of Time Estimates in Typical Cases

Median time estimates as lead attorney and second chair were computed for a "typical" capital and non-capital murder case for each stage of criminal processing. These comparisons of capital and non-capital cases were conducted for the entire sample and for specific groups (e.g., attorneys who have been lead attorney on 10 or more capital cases vs. attorneys with less experience in capital cases). The results of these comparisons are described below and summarized in Tables 1 and 2.

1. ***Pretrial Phase Activities*:**

- The median time estimate as lead attorney for pretrial phase activities was ***1,075 hours*** in a typical capital murder case and ***461 hours*** in a typical non-capital murder case. This time differential as lead attorney was ***614 hours*** longer for pretrial activities in capital than non-capital cases (see Panel A of Table 1).

- The median time estimate as second chair attorney for pretrial phase activities was ***685 hours*** in a typical capital murder case and ***351 hours*** in a typical non-capital murder case. This time differential as second chair attorney was ***334 hours*** longer for pretrial activities in capital than non-capital cases (see Panel B of Table 1).

- The median time estimates as lead attorney and second chair attorney for pretrial phase activities was ***1,760 hours*** in a typical capital murder case and ***812 hours*** in a typical non-capital murder case. This time differential as lead attorney and second chair attorney was ***948 hours*** longer for pretrial activities in capital than non-capital cases (see Panel C of Table 1).

- For both estimates as lead attorney and second chair attorney, penalty-related activities accounted for most of the time spent in the pretrial phase in capital cases. However, guilt-related activities were the primary source of time spent for both lead attorneys and second chair attorneys in the pretrial phase in non-capital cases.

2. *Trial Phase Activities*:

- The median time estimate as lead attorney for trial phase activities was ***168 hours*** in a typical capital murder case and ***110 hours*** in a typical non-capital murder case. This time differential as lead attorney was ***58 hours*** longer for trial activities in capital than non-capital cases (see Panel A of Table 1).

- The median time estimate as second chair attorney for trial phase activities was ***180 hours*** in a typical capital murder case and ***110 hours*** in a typical non-capital murder case. This time differential as second chair attorney was ***70 hours*** longer for trial activities in capital than non-capital cases (Panel B of Table 1).

- The median time estimates as lead attorney and second chair attorney for trial phase activities was ***348 hours*** in a typical capital murder case and ***220 hours*** in a typical non-capital murder case. This time differential as lead attorney and second chair attorney was ***128 hours*** longer for trial activities in capital than non-capital cases (see Panel C of Table 1).

3. *Penalty Phase Activities*:

- The median time estimate as lead attorney for penalty phase activities was ***56 hours*** in a typical capital murder case and ***12 hours*** in a non-capital murder case. This time differential as lead attorney was ***44 hours*** longer for penalty phase activities in capital than non-capital cases (see Panel A of Table 1).

- The median time estimate as second chair attorney for penalty phase activities was ***58 hours*** in a typical capital murder case and ***12 hours*** in a typical non-capital murder case. This time differential as second chair attorney was ***46 hours*** longer for penalty phase activities in capital than non-capital cases (see Panel B of Table 1).

- The median time estimates as lead attorney and second chair attorney for penalty phase activities was ***114 hours*** in a typical capital murder case and ***24 hours*** in a typical non-capital murder case. This time differential as lead attorney and second chair attorney was ***90 hours*** longer for penalty phase activities in capital than non-capital cases (see Panel C of Table 1).

Table 1: Median Time Estimates (in hours) as Lead Attorney and Second Chair Attorney by Type of Murder Case

A. Lead Attorney Estimates:

Stage	*Capital Cases*	*Non-Capital Cases*	*Difference*
Pretrial	1,075	461	+ 614
Trial	168	110	+ 58
Penalty	56	12	+ 44
Post-Conviction	48	18	+ 30
TOTAL:	***1,347 hours***	***601 hours***	***+ 746 hours***

B. Second Chair Attorney Estimates:

Stage	*Capital Cases*	*Non-Capital Cases*	*Difference*
Pretrial	685	351	+ 334
Trial	180	110	+ 70
Penalty	58	12	+ 46
Post-Conviction	28	13	+ 15
TOTAL:	***951 hours***	***486 hours***	***+ 465 hours***

C. Both Lead Attorney and Second Chair Attorney Estimates Combined:

Stage	*Capital Cases*	*Non-Capital Cases*	*Difference*
Pretrial	1,760	812	+ 948
Trial	348	220	+ 128
Penalty	114	24	+ 90
Post-Conviction	76	31	+ 45
TOTAL:	***2,298 hours***	***1,087 hours***	***+ 1,211 hours***

4. *Post-Conviction Phase Activities*:

- The median time estimate as lead attorney for post-conviction phase activities was ***48 hours*** in a typical capital murder case and ***18 hours*** in a typical non-capital murder case. This time differential as lead attorney was ***30 hours*** longer for post-conviction phase activities in capital than non-capital cases (see Panel A of Table 1).

- The median time estimate as second chair attorney for post-conviction phase activities was ***28 hours*** in a typical capital murder case and ***13 hours*** in a typical non-capital murder case. This time differential as second chair attorney was ***15 hours*** longer for post-conviction phase activities in capital than non-capital cases (see Panel B of Table 1).

- The median time estimates as lead attorney and second chair attorney for post-conviction phase activities was ***76 hours*** in a typical capital murder case and ***31 hours*** in a typical non-capital murder case. This time differential as lead attorney and second chair attorney was ***45 hours*** longer for post-conviction activities in capital than non-capital cases (see Panel C of Table 1).

5. *Overall Time Estimates Across All Stages*:

- The median time estimate as lead attorney across all stages of criminal processing was ***1,347 hours*** in a typical capital murder case and ***601 hours*** in a typical non-capital murder case. This overall time differential as lead attorney was ***746 hours*** longer in capital than non-capital cases (see Panel A of Table 1).

- The median time estimate as second chair attorney across all stages of criminal processing was ***951 hours*** in a typical capital murder case and ***486 hours*** in a typical non-capital murder case. This overall time differential as second chair attorney was ***465 hours*** longer in capital than non-capital cases (see Panel B of Table 1).

- The median time estimates as lead attorney and second chair attorney across all stages of criminal processing was ***2,298 hours*** in a typical capital murder case and ***1,087 hours*** in a typical non-capital murder case. This overall time differential as lead attorney and second chair attorney was ***1,211 hours*** longer in capital than non-capital cases (see Panel C of Table 1).

6. <u>Average Time Estimates by Attorney's Legal Experience in Capital Cases</u>:

- Capital murder cases were estimated to be more time intensive than non-capital murder cases at each stage of criminal processing for both attorneys who have been lead counsel in 10 or more capital cases and those attorneys with less experience in capital cases (see Table 2).

- For defense attorneys with the greater legal experience in capital cases, the average estimated time spent as lead attorney in pretrial activities was ***340 hours*** longer than the time estimate for lead attorneys in non-capital murder cases. For defense attorneys with less experience, this average time differential in pretrial activities by type of murder case was ***659 hours*** longer in capital murders. Regardless of their level of legal experience as lead attorney, the average time estimates for trial and penalty phase activities were between ***36 and 63 hours*** longer for capital cases (see Table 2).

Table 2: Median Time Estimates (in hours) as Lead Attorney by Legal Experience

Stage	*Capital Cases*	*Non-Capital Cases*	*Difference*
<u>Pretrial</u>:			
More Experience	650	310	+ 340
Less Experience	1,125	466	+ 659
<u>Trial</u>:			
More Experience	168	126	+ 42
Less Experience	138	96	+ 42
<u>Penalty</u>:			
More Experience	84	21	+ 63
Less Experience	48	12	+ 36

IV. <u>Deriving Cost Projections from Time Estimates</u>

It is possible to generate relative cost projections for defense activities in capital and non-capital murder cases by (1) assigning hourly wage estimates for defense attorneys' time estimates, (2) using the median time estimates from defense attorneys as our best estimate of hourly workload in these cases, and (3) multiplying the product of these two estimates by the number of capital cases currently pending in Clark County.

The following information is used to provide a preliminary estimate of the relative financial costs for the defense of capital cases beyond the costs incurred if they were prosecuted as non-capital cases:

1. Estimated average time spent as lead attorney across all stages of criminal processing in a typical capital murder case (***1,347 hours***) and a typical non-capital murder case (***601 hours***).

2. Estimated average time differentials as second chair attorney across all stages of criminal processing in a typical capital murder case (***951 hours***). Second chair attorneys are not required in non- capital murder case.

3. Estimated cost of $100 per hour for a public defender attorney and $125 per hour for a private defense attorney through the Office of Appointed Counsel.

4. The number of pending capital cases currently in Clark County (n=80). 45 of these 80 pending cases are represented by public defenders (through the Clark County Public Defender's Office and Special Public Defenders). 35 of these 80 pending cases are represented by defense attorneys assigned by the Clark County Office of Appointed Counsel.

Based on these specifications, the estimated cost differentials for defense counsel in capital and non-capital cases are summarized in Table 3.

These estimated cost differentials suggest that between ***$170,000 and $212,000 per case*** is spent for the defense of a capital murder case beyond the costs that would have incurred if the case were prosecuted as a non-capital murder (see Rows E and F of Table 3). When these estimates of the cost differential per case are applied to the 80 capital cases currently pending in Clark County, the overall cost saving differential for defense counsel would be about **$15 million** if these cases were prosecuted as non-capital murders (see last row of Table 3).

It is important to note that this statistical extrapolation does not cover the full array of time spent in capital cases by other court officials (e.g. judges, prosecutors, jurors), staff and administrative personnel, mitigation specialists, investigators, and expert witnesses. It also does not take into account the additional costs of capital litigation that are associated with state/federal appeals and the extra costs of imprisonment of death-eligible inmates pending trial and sentencing. The possible benefits of capital punishment are also not factored into this extrapolation (e.g., the retributive value of capital punishment, its potential deterrent effect on other murders, and the value of "notice of intent" filings for capital charges in reducing trial costs by encouraging guilty pleas for life sentences). Given these major omissions in the present analysis, a more comprehensive study is required for estimating the overall costs and benefits of capital litigation in this jurisdiction across all groups involved in the criminal processing and adjudication of these cases.

Table 3: Estimated Costs for Defense Attorneys in Capital and Non-Capital Murder Cases (per case and projected cost savings for pending cases)

1. Defense Attorney Costs Per Case:

A. Defense Attorney (Public Defender):

Capital Murder Case [Formula = Hours as Lead + Hours as 2nd Chair) x $100 per hr]

= (1,347 + 951) x $100 = ***$229,800 per capital case.***

B. Private Defense Attorney (Office of Assigned Counsel):

Capital Murder Case [Formula = Hours as Lead + Hours as 2nd Chair) x $125 per hr]

= (1,347 + 951) x $125 = ***$287,250 per capital case.***

C. Defense Attorney (Public Defender):

Non-Capital Murder Case [Formula = Hours as Lead Attorney) x $100 per hr.]

= (601) x $100 = ***$60,100 per non-capital case.***

D. Private Defense Attorney (Office of Assigned Counsel):

Non-Capital Murder Case [Formula = Hours as Lead Attorney) x $125 per hr.]

= (601) x $125 = ***$75,125 per non-capital case.***

2. Difference in Costs Per Capital and Non-Capital Case:

[Formula = costs per capital case - costs per noncapital case]

E. Public Defenders as Defense Attorney:

Difference Per Case [Row A - Row C] **=** $229,800 - $60,100 = **$169,700 per case.**

F. Private Assigned Counsel as Defense Attorney:

Difference Per Case [Row B - Row D] **=** $287,250 - $75,125 = **$212,125 per case.**

3. Projected Cost Differential for Defense Counsel in All Pending Capital Cases

Cost Saving Differential for Defense Attorneys if all Pending Capital Cases in Clark County were Prosecuted as Non-Capital Cases:

[Formula: ***Row E*** x (N cases pending) + ***Row F*** x (N cases pending)]

= [$169,700 x 45] + [$212,125 x 35] = $7,636,500 + $7,424,375 ***= $15,060,875***

V. Profile of Court Processing in Murder Cases in Clark County (2009-2011)

To provide some context for understanding these estimates of time spent in capital and non-capital litigation, a supplemental analysis of court processing data was conducted. This supplemental involved 138 murder cases that lead to convictions and sentencing between 2009 and 2011. Average estimates of court processing time (from initial filing dates to sentencing) and the number of court hearings/meetings, order, and motions were recorded. These court processing outcomes were then compared for cases in which the pronounced sentence involved the following penalties: (1) a maximum years of imprisonment excluding life and death sentences (N=68 cases), (2) life sentences with the possibility of parole (n= 44 cases), (3) life without the possibility of parole (n= 21), and (4) death sentences (n= 5 cases). The results of these analyses are summarized in Table 4.

As shown in Table 4, murder cases that ultimately result in a death sentence involve far more court-related activities than murder cases that lead to a life sentence or a maximum sentence of less than life or death. In particular, all death penalty convictions occurred from trials (versus < 50% were trial convictions in non-death sentence cases). The average death penalty case took about 3 years (1,107 days) between the initial filing of these charges by the prosecution and sentencing, whereas this court processing time was substantially lower in all murder cases that did not result in a death sentence (see Table 4, Line 2). The average number of separate court appearances, orders filed, and motions was also considerably greater in murder cases resulting in a death sentence than other penalties.

Table 4: Average Court Processing Outcomes in 127 Murder Cases Resulting in Conviction by Type of Sentence (Clark County, 2009-2011)					
Case Outcome	***Years****	***Life With***	***Life W/O***	***Death***	***All Cases***
% Convicted by Trial versus Guilty Plea:	5.9 %	22.7 %	47.6 %	***100 %***	21.0 %
# of Days between Initial Filing and Sentencing:	387 days	732 days	887 days	***1,107 days***	599 days
# of Separate Court Appearances/Meetings:	9.3	20.9	27.9	***35.2***	16.8
# of Separate Orders Filed to the Court:	3.6	10.1	12.6	***20.0***	7.6
# of Separate Motion Filed to the Court:	5.4	16.6	24.4	***30.0***	12.8
Total # of Cases with this Sentence:	68	44	21	***5***	138
Note: * Years include any sentence in which a specific maximum number of years of imprisonment was pronounced (excluding life and death sentences).					

These average statistics from the Clark County Court's public record system provide some basis for gaining a preliminary understanding of the time and cost differentials between capital and non-capital cases that were found in the survey of defense attorneys. A more complete analysis of the reasons for these cost differentials, however, requires a more comprehensive study of capital and non-capital cases.

VI. Disposition of "Notice of Intent" Cases in Clark County (2009-2011)

A final summary of murder case processing derived from the Clark County Court's public record system involves the final disposition of cases in which a "Notice of Intent to Seek the Death Penalty" was filed by the prosecutor's office. In this sample of 138 murder cases, a "notice of intent" was filed in 35 cases. The final disposition of these 35 cases is summarized in Table 5.

Table 5: Final Disposition of Murder Cases in which a "Notice of Intent to Seek the Death Penalty" was Filed (Clark County, 2009-2011)		
Case Outcome	***Number of Cases***	***Percent Distribution***
Charges Dismissed	1	2.8 %
Specific Number of Years Given*	5	14.3 %
Life With Possibility of Parole	7	20.0 %
Life Without Possibility of Parole	17	48.6 %
Death Sentence	5	14.3 %
Total	**35**	**100.0 %**

Note: * Years include any sentence in which a specific number or range of years of imprisonment was pronounced (excluding life and death sentences).

As shown in Table 5, nearly half (49%) of the cases in which a "notice of intent" was filed ultimately resulted in a sentence of life without the possibility of parole. The next most common disposition was a sentence of life with the possibility of parole (20%). A death sentence was the final disposition in only 5 of the 35 cases (14%) in which a "notice of intent to seek a death sentence" was initially filed.