The Economic Impact of the Death Penalty on the State of Nebraska: A Taxpayer Burden?

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Preface

The Economic Impact of the Death Penalty On the State of Nebraska: A Taxpayer Burden?

Between 1973 and 2014, there were 1,842 murders in the State of Nebraska. Of these, prosecutors obtained 281 first degree murder convictions. Of the convictions, prosecutors sought the death penalty (DP) in just 119 cases, or approximately 2.9 cases per year, resulting in only 33 death sentences. But of Nebraska's 33 individuals sentenced to death, Nebraska courts reduced 13 sentences, six individuals died in prison, one individual's sentence was vacated, three were executed, and attorneys are currently appealing 10 sentences. Thus, for the 41 year period only 1.1 percent of murder convictions resulted in an execution.[1]

Based partly on the ineffectiveness of the state's DP law, the Nebraska Legislature repealed the use of the DP in 2015. The goal of this study is to examine the cost to the Nebraska taxpayer of reintroducing the DP compared to the cost of the sentence of life without parole (LWOP).

The Goss & Associates research team thanks the staff of *Retain A Just Nebraska* for their assistance in facilitating the completion of this study. However, any conclusions, findings, errors or misstatements contained in this study are solely the responsibility of Goss & Associates, Economic Solutions, LLC.[2]

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[1]FBI Uniform Crime report; Criminal homicide reports filed with the Nebraska Supreme Court; Nebraska Commission on Public Advocacy Study of Nebraska Capital Cases - 2007 & Equal Justice and the DP: A Legal and Empirical Analysis. By the Numbers, 2007; Nebraska Commission on Public Advocacy.

[2]This study was completed independent of Creighton University. As such, Creighton University bears no responsibility for findings or statements by Ernie Goss, or Goss & Associates, Economic Solutions.

Glossary

Term	Definition
Capital case	A criminal case where prosecution seeks the DP because the state charges that the defendant committed aggravated murder, that is, it involved "special circumstances" that may be specific to the state in which the case is being tried. The case involves two phases: the guilt phase and the penalty phase.
Commuted sentence	Legal reduction of a sentence while maintaining the conviction. The commutation may be applied with specific restrictions.
Corrections	Confinement and correction of adults and minors convicted of offenses against the law, pardon, probation, and parole activities.
DP states	States that maintain use of the death penalty in the penalty phase of a capital case.
Habeas corpus	A stage of the appeals process that allows death row inmates to raise issues outside the trial record and determine whether or not the individual has been imprisoned legally or whether they should be released from custody.
In-kind costs, or opportunity costs	Re-allocation of resources to a capital case that would otherwise be available for other cases or services within the legal system. Examples include the time spent by justices, law clerks, attorneys, and administrative staff.
Judicial & legal	Includes all court and court-related activities (except probation and parole activities which are included in the "Correction" function), court activities of sheriff's offices, prosecuting attorneys' and public defender's offices, legal departments, and attorneys providing government-wide legal service.
Justice costs	Includes costs for corrections, judicial and legal activities. Does not include police costs.
LWOP	Life without the possibility of parole. In Nebraska, a sentence of "Life" equals a sentence of LWOP.[3]
NDP states	States without the death penalty.
Post-conviction costs	Costs include those for direct appeal and appeal processes such as state-paid attorneys and include legal proceedings such as writs, motions, petitions, and briefs that are required as part of the appeal process.
Special circumstances	Factors that prosecutors consider when determining whether to seek the DP. Each DP state has its own specific list of factors that make an individual eligible for the DP.
Vacated sentence	A previous legal judgment that has been legally declared void.
Writ of certiorari	To appeal to the Supreme Court one applies to the Court for a *writ of certiorari*. In this process, the lower court sends the higher court all case documents so the higher court may review the lower court's decision. It is used by the U.S. Supreme Court to select the cases it will hear on appeal, which is granted only when at least three members believe that the case involves a sufficiently significant federal question in the public interest. If the writ is denied, the Supreme Court allows the lower court decision to stand.

[3] Peterson, Douglas J., Attorney General Letter to Senator Colby Coash, Nebraska Legislature. 5 May 2015. Accessed June 1, 2016 at https://ago.nebraska.gov/_resources/dyn/files/1482096zd18f980d/_fn/AG+Opinion+15-006.pdf

Executive Summary

The Economic Impact of the Death Penalty On the State of Nebraska: A Taxpayer Burden?

This study concluded that Nebraska's maintenance of the death penalty cost the state, in 2015 dollars, approximately $14.6 million annually[4], and each additional death penalty arraignment costs the state almost $1.5 million, also in 2015 dollars.

I. Cost of the Death Penalty (DP): evidence from previous research:

- Factors adding to the costs of maintaining the DP:
  - **Defense costs** - In a North Carolina study, DP defense costs per case were found to exceed that of non-DP cases by almost $50,000. A study using data collected from Nevada defense attorneys estimated that between $170,000 and $212,000 per case was spent for the defense of a DP case above that of a life without parole (LWOP) murder case.
  - **Pre-trial costs including jury selection** - a Colorado study concluded that on average, a DP prosecution that goes to trial required in excess of six times more court days than a comparable LWOP prosecution.
  - **Court days and court costs** - In a 2012 study of the costs of capital punishment in California, it was determined that on average, DP cases involved 120 more court days than non-capital cases at a rate of $3,589 per court day for an additional cost of $430,680 per case.
  - **Prison costs** - California estimated that it costs an additional $90,000 per year to house a death row inmate.
  - **Appeals costs** - In a California study it was concluded that due to appeals the average time from conviction to the filing of a federal *habeas corpus* had risen to nearly five years from 1.5 years in 1979.
- Estimated average cost for DP prosecution compared to LWOP prosecution:
  - California, 1978-2011, DP cases cost an additional $121.2 million per year.
  - Florida, 2000, DP cases cost an additional $51.0 million above that for LWOP prosecutions annually.
  - Maryland, 2008, successful prosecution of one DP case was $2.2 million above that for a LWOP prosecution.
  - Texas, 1992, A DP case cost an average of $2.3 million, or about three times the cost of imprisoning an inmate in a single cell at the highest security level for 40 years, or LWOP.

[4] 2013 costs of $14.1 million were indexed for inflation using the Consumer Price Index (CPI) for legal services.

Executive Summary

II. Estimated average prosecution cost for the death penalty compared to life without parole:

- Based on the most recent U.S. Census data for the U.S., Goss & Associates concludes that:
  - As a percentage of overall state and local budgets, DP states spent 3.54 percent on justice,[5] while NDP states spent a much lower 2.93 percent on justice.
    - Nine of the top 10 spending states were DP states.
  - Per $1,000 of gross domestic product (GDP), DP states spent $6.70 on justice, while NDP states spent a much lower $6.46 on justice.
    - Seven of 10 top spending states were DP states.
  - Controlling for other state characteristics using multivariate statistical analysis, it is estimated that:
    - The average savings for the sentencing option of LWOP compared to the DP across all 50 states and the District of Columbia for 2012 and 2013 were $0.145 per $1,000 of state gross domestic product.
    - Thus for the two-year period, 2012 and 2013, the average U.S. state with the DP would have saved $46,474,823 had the state eliminated the DP and replaced with LWOP. Alternatively, the average U.S. state with LWOP as the sentencing option would have spent an additional $46.5 million for the two-year period had the state adopted the DP.

For 2012 and 2013, the average U.S. state with the DP would have saved $46.5 million had the state eliminated the DP and replaced with LWOP.

III. The Nebraska experience:

- Between 1973 and 2014, there were 1,842 murders in the State of Nebraska.
  - Of these, prosecutors obtained 281 first degree murder convictions.
    - Of these, prosecutors sought the DP in only 119 cases, or approximately 2.9 cases per year, resulting in only 33 death sentences.
    - Of Nebraska's 33 individuals sentenced to death.
      - Nebraska courts commuted 13 sentences.
      - Six individuals died in prison.
      - One individual's sentence was vacated.
      - Three individuals were executed.
      - Attorneys are currently appealing 10 sentences.

[5] Throughout this study justice spending refers to state and local spending on corrections, and judicial/legal activities. At the time of this study, 2013 census data were the latest available.

Executive Summary

- Based on the most recent U.S. Census data, Nebraska's savings for abolishing the DP were:
  - In 2013, Nebraska spent $532.8 million on justice activities. It is estimated that Nebraska would have spent $518.7 million for justice activities with LWOP prosecution for capital cases for a savings of $14.1 million, or $14.6 million in 2015 dollars.
  - Based on other studies examining the cost of a DP prosecution versus a LWOP prosecution:
    - Each DP prosecution cost the Nebraska taxpayer almost $1.5 million above and beyond the cost of an LWOP prosecution.
      - $740.1 thousand of post-conviction costs over the life of the prisoner.
      - $619.4 thousand of maximum security costs over the life of the prisoner.
      - $134.0 thousand of in-kind payments, or opportunity costs, over the life of the prisoner.

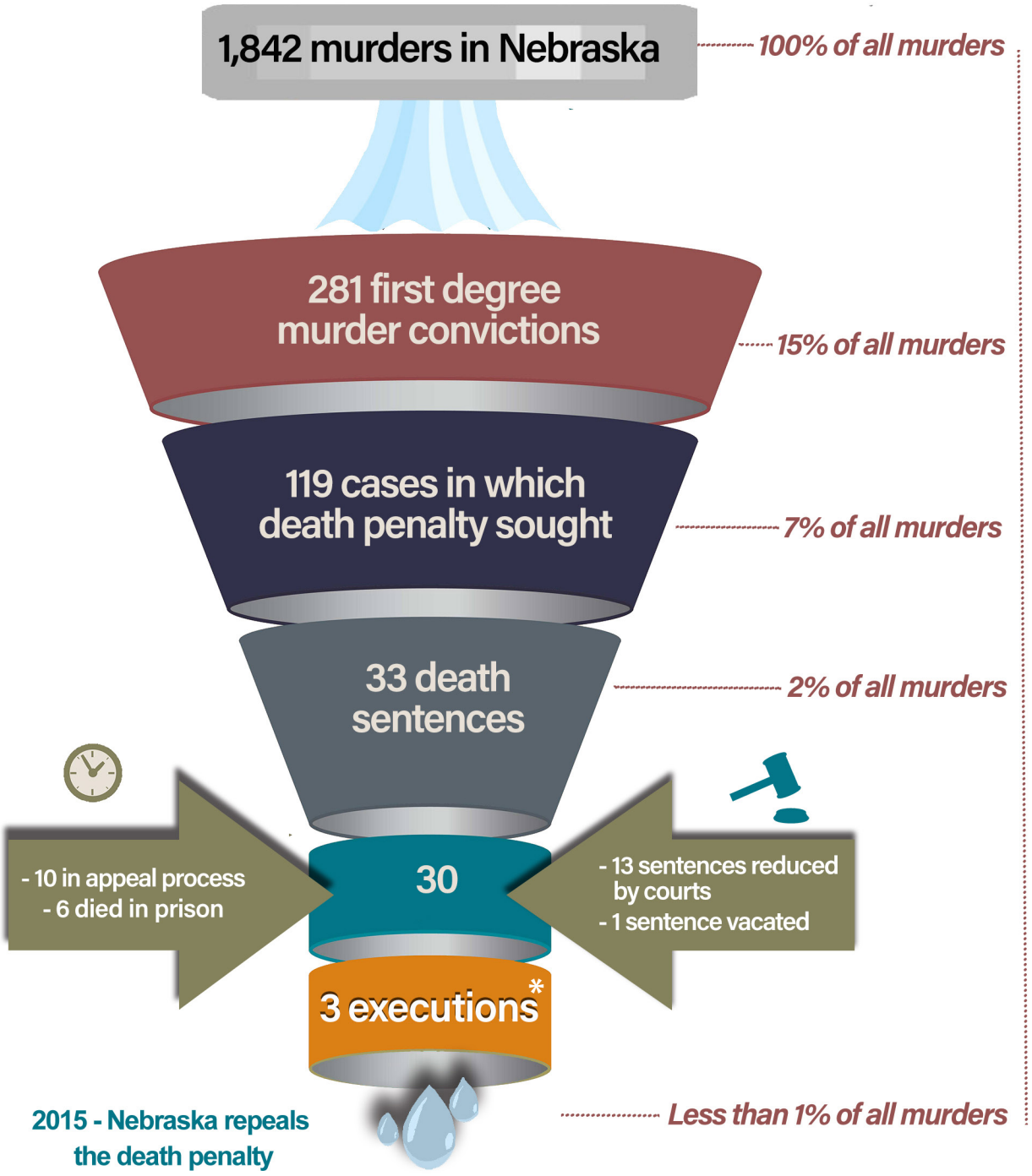
Each DP prosecution cost the Nebraska taxpayer almost $1.5 million above and beyond the cost of LWOP.

- Plea bargaining combined with use of the DP can increase the cost to the taxpayer.

A prime Nebraska example of how plea bargaining can increase wrongful prosecutions and boost costs is that of the "Beatrice Six." The state won convictions of six individuals based on faulty forensics and five confessions which were obtained under threats that the six would be given the death penalty if they did not admit guilt. In 2008 DNA evidence exonerated all six and in July 2016, a federal jury awarded the wrongfully convicted $28.1 million in damages.

Executive Summary

Figure EX.1: A snapshot of 41 years of executions in Nebraska, 1973-2014



Source: Goss & Associates adapted from Nebraska Commission on Public Advocacy study of Nebraska Capital Cases.

**No additional executions have taken place in Nebraska since 2014.*

Section 1 - Death Penalty Costs in the U.S.

Costs Associated with the Death Penalty (DP)

Studies have identified five major factors driving the cost of the DP over and above the cost of the sentence of life without parole (LWOP).

1. **Defense costs**. Studies have found that a capital case is especially costly because of the special due-process protections, the guarantee of defense attorneys before and throughout the trial and appeal process, pretrial motions specific to capital cases, and the extended length of time for jury selection.

In North Carolina and other states, including Nebraska, defendants in DP trials must be represented by two attorneys. Since most defendants are unable to pay for their defense, states generally appoint and fund both attorneys, pay travel expenses, and provide fees for expert witnesses and psychiatric testing.[6]

It was estimated that the defense costs for a capital trial in North Carolina were approximately $116,400, while a similar case with a non-capital trial cost $67,800.[7] In California, the state's defense costs per capital case often exceed $1 million. Adjusted for inflation, one case reached $4.87 million in 2011 dollars.[8]

In 2014, the Kansas Judicial Council concluded that defense costs for DP trials in Kansas averaged about $400,000 per case, compared to $100,000 per case when the DP was not sought.[9]

A study using data collected from Clark County, Nevada, defense attorneys estimated that between $170,000 and $212,000 per case was spent for the defense of a capital murder case beyond the costs that would have been incurred if the case had been prosecuted as a non-capital murder.[10]

It was estimated that the defense costs for a capital trial in North Carolina were approximately $116,400, while a similar case with a non-capital trial cost $67,800.

2. **Pretrial/jury selection/trial/sentencing**. In addition to pretrial motions specific to capital cases, which add the time and expense of appointed counsel, a Colorado study found that on average, a DP prosecution that goes to trial requires in excess of six times more court days than a comparable LWOP prosecution. The extra time is generally due to jury selection-an average of 26 days-as well as capital sentencing which takes approximately 21 days. In contrast, an LWOP sentencing generally takes only hours in some cases.[11]

North Carolina juries in a capital case must be screened to ensure they are open to imposing the DP. If they deliver a conviction of first-degree murder, the jury is retained for the sentencing phase to hear evidence regarding aggravating and mitigating circumstances. The sentencing phase, as a result, can take weeks longer for a DP case, resulting in additional payments to jurors.[12]

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[6]Cook, Philip J. (2009). Potential Savings from Abolition of the DP in North Carolina. American Law and Economics Review (2009) 11 (2), 498-529. Accessed May 2016; http://www.deathpenaltyinfo.org/documents/CookCostRpt.pdf.

[7] Ibid.

[8]Alarcón, Arthur L., Mitchell, Paula M. (2011), Executing the Will of the Voters?: A Roadmap to Mend or End the California Legislature's Multi-Million Dollar DP Debacle. Loyola of Los Angeles Law Review, 44, S41-S223. Accessed at http://www.deathpenaltyinfo.org/documents/LoyolaCalifCosts.pdf.

[9]Kansas Judicial Council. DP Advisory Committee. Report of the Judicial Council DP Advisory Committee (2014). Accessed at http://www.deathpenaltyinfo.org/documents/KSCost2014.pdf.

[10]Miethe, Terance D. (2012). Estimates of Time Spent in Capital and Non-Capital Murder Cases: A Statistical Analysis of Survey Data from Clark County (Nevada) Defense Attorneys. University of Denver Criminal Law Review, 3, 145-163. Accessed at http://aclunv.org/files/clarkcostexec.pdf.

[11]Marceau, Justin F., Whitson, Hollis A. (2013). The Cost of Colorado's DP.

[12]Cook, Philip J. (2009). Potential Savings from Abolition of the DP in North Carolina.

Furthermore, the post-conviction phase for capital cases is very different from that of non-capital cases. State supreme courts become involved in the review of all DP cases. Many other post-conviction proceedings are required for capital cases that are not required for non-capital cases, involving petitions, appeals, and court determinations.

3. Court days and court costs. While the costs of court days vary by state, cases seeking the DP require significantly more time to adjudicate than those for which the DP is not an option.

In the Nevada study, the number of days between initial filing and sentencing of the DP was 1,107 days, while the number of days between filing and sentencing for LWOP was 887 days.[13]

In an analysis of the cost of Colorado's DP, it was found that on average, a death prosecution/jury trial case requires a total of 148 court days, not including post-conviction proceedings or appeals.[14]

In a 2012 study of the costs of capital punishment in California, it was found that on average, DP cases involve 120 more court days than non-capital cases at a rate of $3,589 per court day, for an average of $430,680 in additional costs per case.[15] These costs include filing fees, charges for serving subpoenas and summons, court reporter charges for depositions and court transcripts, and costs for reproduction of papers and exhibits.

In the 2014 *Report of the Death Penalty Advisory Committee for Kansas*, average district court costs per trial from 2004 to 2011 when the DP was sought were $72,530, compared to $21,554 when the DP was not an option.[16]

In a 2012 study of the costs of capital punishment in California, it was found that on average, DP cases involved 120 more court days than non-capital cases at a rate of $3,589 per court day, for an average of $430,680 in additional costs per case.

Given the required additional defense motions, and the automatic appeal process which can span decades, court costs for DP sentences are significantly higher than those where the DP is not a factor.

4. Incarceration/prison system costs. It costs significantly more to house death-row inmates than other prisoners since, unlike other prisoners, death-row inmates are housed in single cells; thus more physical space is required to house them.

In addition, state prison officials must provide extra security for supervising and escorting death-row inmates to medical care as well as to other meetings and religious services.

Furthermore, most death-row inmates require more legal mail processing and records-management due to the ongoing and lengthy nature of the legal process.

In the 2014 *Report of the Death Penalty Advisory Committee for Kansas*, average district court costs per trial from 2004 to 2011 when the DP was sought were $72,530, compared to $21,554 when the DP was not an option.

[13]Miethe, Terance D. (2012). Estimates of Time Spent in Capital and Non-Capital Murder Cases: A Statistical Analysis of Survey Data from Clark County (Nevada) Defense Attorneys.

[14]Marceau, Justin F., Whitson, Hollis A. (2013). The Cost of Colorado's DP.

[15]Arthur L. Alarcón and Paula M. Mitchell, Costs of Capital Punishment in California: Will Voters Choose Reform this November?, 46 Loy. L.A. L. Rev. S1 (2012). Accessed at http://digitalcommons.lmu.edu/llr/vol46/iss0/1.

[16]Kansas Judicial Council. DP Advisory Committee. Report of the Judicial Council DP Advisory Committee (2014). Accessed at http://www.deathpenaltyinfo.org/documents/KSCost2014.pdf

In Kansas, actual execution costs are significant, and site security costs, while already high, balloon over time. In a 2005 article, the Los Angeles Times cited the case of an individual who was incarcerated on death row for 21 years.[17] California estimated that death row housing costs an additional $90,000 per year, per inmate[18]

A national organization for relatives of murder victims cites that cases involving the DP often take 25 years or more to resolve. In addition, it has been found that prisoners often die in prison with their appeals still pending.[19] Of Nebraska's 33 individuals sentenced to death from 1973 to 2014, six died in prison.

A New Jersey study found that housing each death row inmate at New Jersey State Prison in Trenton, prior to the state's abolishment of the DP, costs approximately $58,526, while it costs $34,805 per general population inmate.[20]

Of Nebraska's 33 individuals sentenced to death from 1973 to 2014, six died in prison.

Of California's 117 death row inmates who have died since 1976, only 13 were executed, prompting Governor Jerry Brown to request more than $3 million from the Legislature to build additional cells for California's burgeoning death row population.[21]

California estimated that death row housing costs an additional $90,000 per year, per inmate.

In terms of site security and death row inmate housing, Nebraska currently has 10 inmates on death row, and has not executed a prisoner since 1997.

5. **Appeals costs**. A capital case typically triggers a protracted and extensive appeal process. After pretrial motions such as a request for dismissal based on the validity of a confession or key witnesses, and after the subsequent trial and conviction, the appeals process is set into motion.

Unlike a case that does not involve the DP, individuals sentenced to death most often require an automatic, non-waivable direct appeal to the state's supreme court involving one, and most often two, appellate lawyers, usually provided by the state. In addition, the state's office of the attorney general files a brief in opposition to the petition at further expense to the state.

If the conviction or sentence is reversed, the case may return to trial court. If the petition is not successful, the defense may ask for a *habeas corpus* review, which is rarely granted. If the petition is successful and returns the case back to trial, a subsequent conviction will trigger another appeals process.

One study determined that the average time from conviction to the filing of a federal *habeas corpus* had risen to nearly five years.

[17] Death Row Often Means a Long Life; California condemns many murders, but few are ever executed, March 2005. http:/deathpenaltyinfo.org/latimesarticle.pdf

[18] Alarcon, Arthur L., and Paula M. Mitchell. "Executing the Will of the Voters: A Roadmap to Mend or End the California Legislature's Multi-Billion-Dollar DP Debacle."

[19] Marceau, Justin F., Whitson, Hollis A. (2013). The Cost of Colorado's DP.

[20] Forsberg, Mary E., New Jersey Policy Perspective, Money for Nothing? The Financial Cost of New Jersey's DP (2005). Accessed at http://sentencing.nj.gov/downloads/pdf/articles/death3.pdf.

[21] Krisai, Lauren. "Pull the plug on DP in California," The Orange County Register, Feb. 8, 2016. Accessed at http://www.ocregister.com/articles/death-702997-california-penalty.html.

If the state appeals process is unsuccessful for the defense, it would likely request a *habeas corpus* review in federal court to examine whether constitutional rights have been violated. One study found that the average time from conviction to the filing of a federal writ of *habeas corpus* had risen from 1.5 years in 1979 to nearly five years in 1992.[22]

If the review is approved, the defense is given a period of time to prepare. If the review results in the reversal of the conviction, a new trial, and thus the entire process, must begin again. And as stated earlier, prisoners often die in prison with appeals still pending.

Figure 1.1 provides a flow chart of the capital punishment appellate cycle, while Figure 1.2 shows the average amount of time spent on a capital case from conviction to execution for the state of California.

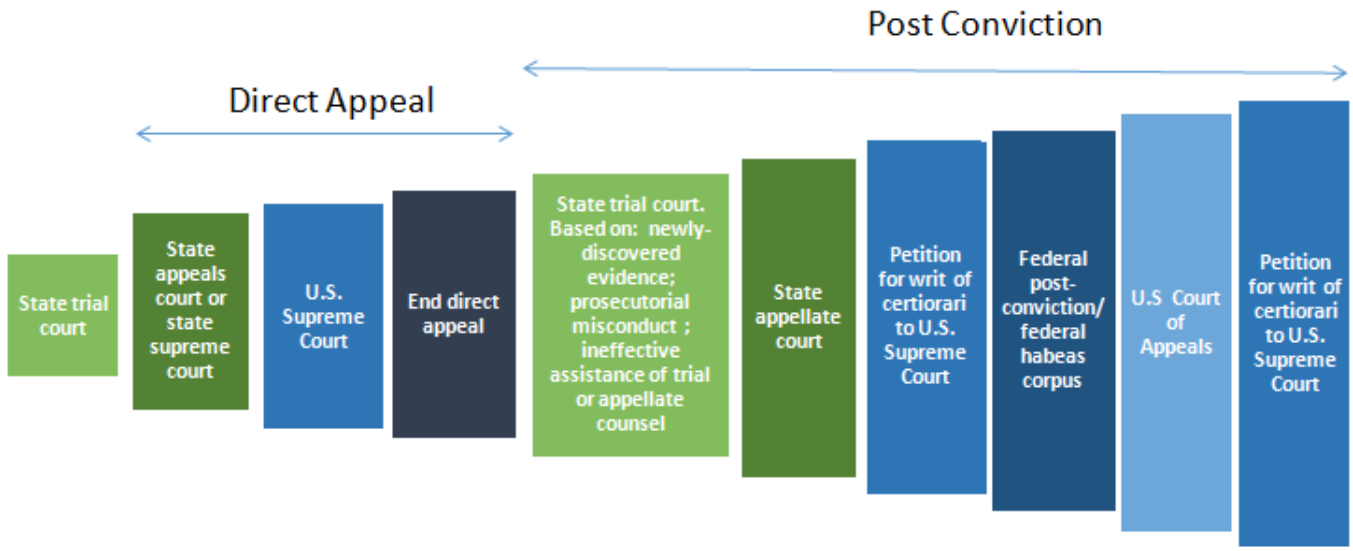
Because states bear most of the costs of DP cases, many have undertaken studies to quantify the expenses incurred by state and local taxpayers.

One of the more recent investigations into the costs of capital cases is being led by State Senator JP Morrell, D-New Orleans, who authored a resolution for a Capital Punishment Fiscal Impact Commission in Louisiana.[23]

The large majority of research to date has found that the state's costs to adjudicate capital punishment cases are significantly higher than the costs of cases when capital punishment is not an option.

In 2013, Richard Dieter, Executive Director of the Death Penalty Information Center, testified before the Judicial Committee of the Nebraska Legislature. He provided the committee with estimated costs for various states for the maintenance of the DP. While he did not provide an estimate for Nebraska, he did assert that the costs to Nebraska were significant.[24]

Figure 1.1: The capital punishment appellate cycle



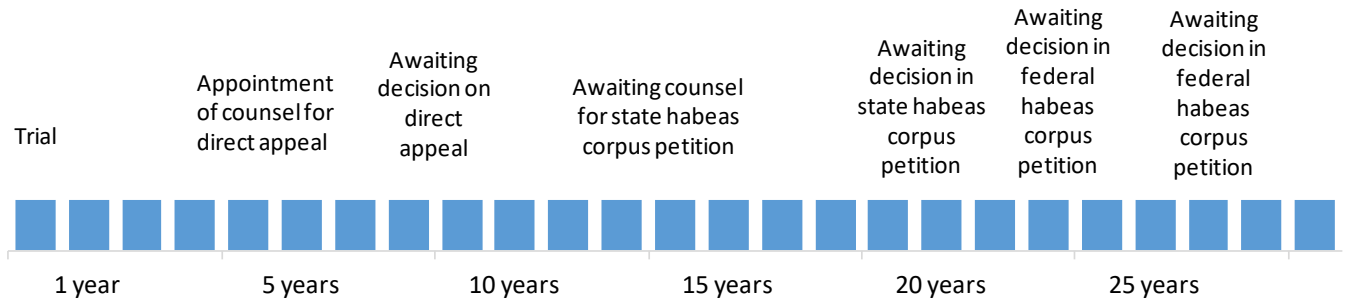
Source: Goss & Associates, adapted from ACLU. https://www.aclu.org/death-penalty-101

[22]Hanson, Roger, Henry W.K. Daley (1995) Federal Habeas Corpus Review, Challenging State Court Criminal Convictions. Accessed at http:// www.bjs.gov/content/pub/pdf/FHCRCSCC.PDF

[23]Louisiana. Legislature. Senate. Creates the Joint Capital Punishment Fiscal Impact Commission. SLS 14RS-850, Senate Concurrent Resolution No. 16, 2014. Accessed May 2016 http://www.legis.la.gov/legis/ViewDocument.aspx?d=881738

[24]Dieter, Richard, "Testimony Submitted to the Nebraska Legislature," Judiciary Committee Hearings on the Death Penalty, Lincoln, NE, March 13, 2013. http://www.deathpenaltyinfo.org/documents/NebraskaTestimony.pdf accessed on June 8, 2016.

Figure 1.2: The average amount of time spent on a capital case from conviction to execution for the State of California



Source: Wisckol, M., Quick S., Zisk, S., *Orange County Register* (2012)

Total Costs

In North Carolina, it was found that for the period 2005-2006, the state would have saved nearly $11 million each year had the DP not been an option.[25]

Yearly costs that could have been avoided included:[26]

- Extra defense costs in trial phase $6.6 million.
- Additional payments to jurors $112 thousand.
- Post-conviction costs $3.7 million.
- Resentencing hearings $297 thousand.
- Additional prison system costs $85 thousand.
- Other costs of $1.2 million.

A Seattle University study concluded that the average cost of a DP prosecution and conviction was almost $3 million, while an equivalent prosecution that sought a LWOP cost approximately $2 million.[27]

A Kansas study determined that the median cost for a DP case was 70 percent more than the cost when the DP was not sought.[28]

An earlier 2011 study examined the financial impacts of the DP in California and found that the existence of the DP from 1978 to 2011 cost the state's taxpayers $4 billion more than a system that had LWOP as its most severe penalty.[29]

In North Carolina, it was found that for the period 2005-2006, the state would have saved nearly $11 million each year had the DP not been an option.

[25]Cook, Philip J. (2009). Potential Savings from Abolition of the DP in North Carolina.

[26]ibid

[27]Boruchowitz, Robert C.; Collins, Peter A.; Hickman, Matthew J.; and Larranaga, Mark A., "An Analysis of the Economic Costs of Seeking the DP in Washington State" (2015). Fred T. Korematsu Center for Law and Equality. Paper 29. Accessed at http://digitalcommons.law.seattleu.edu/korematsu_center/29

[28]A Report to the Legislative Post Audit Committee by the Legislative Division of Post Audit State of Kansas. Costs Incurred for DP Cases: A K-GOAL Audit of the Department of Corrections (2003). Accessed at http://www.kslpa.org/assets/files/reports/04pa03a.pdf.

[29]Alarcón, Arthur L., Mitchell, Paula M. (2011), Executing the Will of the Voters?: A Roadmap to Mend or End the California Legislature's Multi-Million Dollar DP Debacle.

Table 1.1 lists studies comparing the cost of prosecuting and/or maintaining the DP compared to LWOP cost.

Table 1.1: Studies examining costs of DP

State	Finding	Period of time	Citation
California	DP impact equals $4 billion above LWOP over a 33-year period.	1978-2011	Alarcon and Mitchell (2012)
Florida	Enforcing the DP costs Florida $51 million a year above what it would have cost to punish all first-degree murderers with LWOP.	2000	Palm Beach Post, January 4, 2000
Kansas	Median cost of DP case was 50% above NDP case.	2004-2011	Kansas Judicial Council (2014)
Maryland	Successful prosecution of a DP case averaged $3 million.	1978-1999	Urban Institute study (2008)
North Carolina	Found that the DP costs $2.16 million per execution over the costs of sentencing murderers to LWOP.	2005-2006	Cook (2011)
Texas	A DP case costs an average of $2.3 million, or about three times the cost of imprisoning someone in a single cell at the highest security level for 40 years.	1974-1991	Dallas Morning News, March 8, 1992
Washington	DP prosecution and conviction cost $1 million above that of a LWOP prosecution and conviction.	1997-2014	Boruchowitz, et. al. (2015)

Source: Goss & Associates compilation, 2016

Summary

As states struggle to contain costs related to the capital punishment process, the length of the appeals process, pre-trial costs, and court costs are apt to thwart their efforts. This is especially evident in California, a state that houses a growing death row population, while facing problems with providing representation for indigent defendants.

In its 2008 report, the California Commission on the Fair Administration of Justice stated, "To reduce the average lapse of time from sentence to execution by half," the report said, "[California] will have to spend nearly twice what we are spending now."[30]

[30]Krisai, Lauren. "Pull the plug on DP in California," 2016.

Section 2 - The Death Penalty in Nebraska[28]

Introduction

Since the responsibility for capital punishment passed from Nebraska counties to the state in 1903, 23 individuals have been executed in the state. Prior to that time, 14 executions took place under the administration of Nebraska's counties.

From 1976 to the present, which is considered the modern era of executions,[32] Nebraska sentenced 33 individuals to death, but executed only three. Prior to 1976, Nebraska executed a total of 20 individuals, nearly half of the 41 sentenced to capital punishment. However, Nebraska currently has 10 individuals on death row, and has not executed an inmate since 1997.

Before 1976, prisoners were resident on death row for an average of only 2.3 years prior to disposition regardless of their status: execution (20), commutation (20), or furlough (1). During that period, no prisoners died while on death row. In contrast, since 1976, inmates have spent, to date, an average of 14.5 years on death row, with one current inmate on death row for the past 36 years.

Since 1976, one sentence was vacated for death row inmate, Jeremy Sheets, due to the inadmissibility of his accuser's statement, and the sentences of 11 death row prisoners were commuted. Of those whose sentences were commuted, six are currently serving LWOP in the state's prison system, one was released to Lincoln Regional Center, having been determined legally insane by a jury in a second trial, one was released after serving 13 years and 4 months of his 40-year commuted sentence, and three died while serving their commuted sentences.

Figure 2.1 details Nebraska's DP experience from 1973-2014. As shown, 1,842 murders were committed in the state, resulting in 281 first degree murder convictions. Of that number, prosecutors sought the DP in 119 of those cases, 33 of which resulted in death sentences. Of these cases, 13 sentences were reduced by the court, one sentence was vacated, six inmates died during the appeals process, and 10 inmates remained in the appeals process. Only three executions ultimately took place.[33]

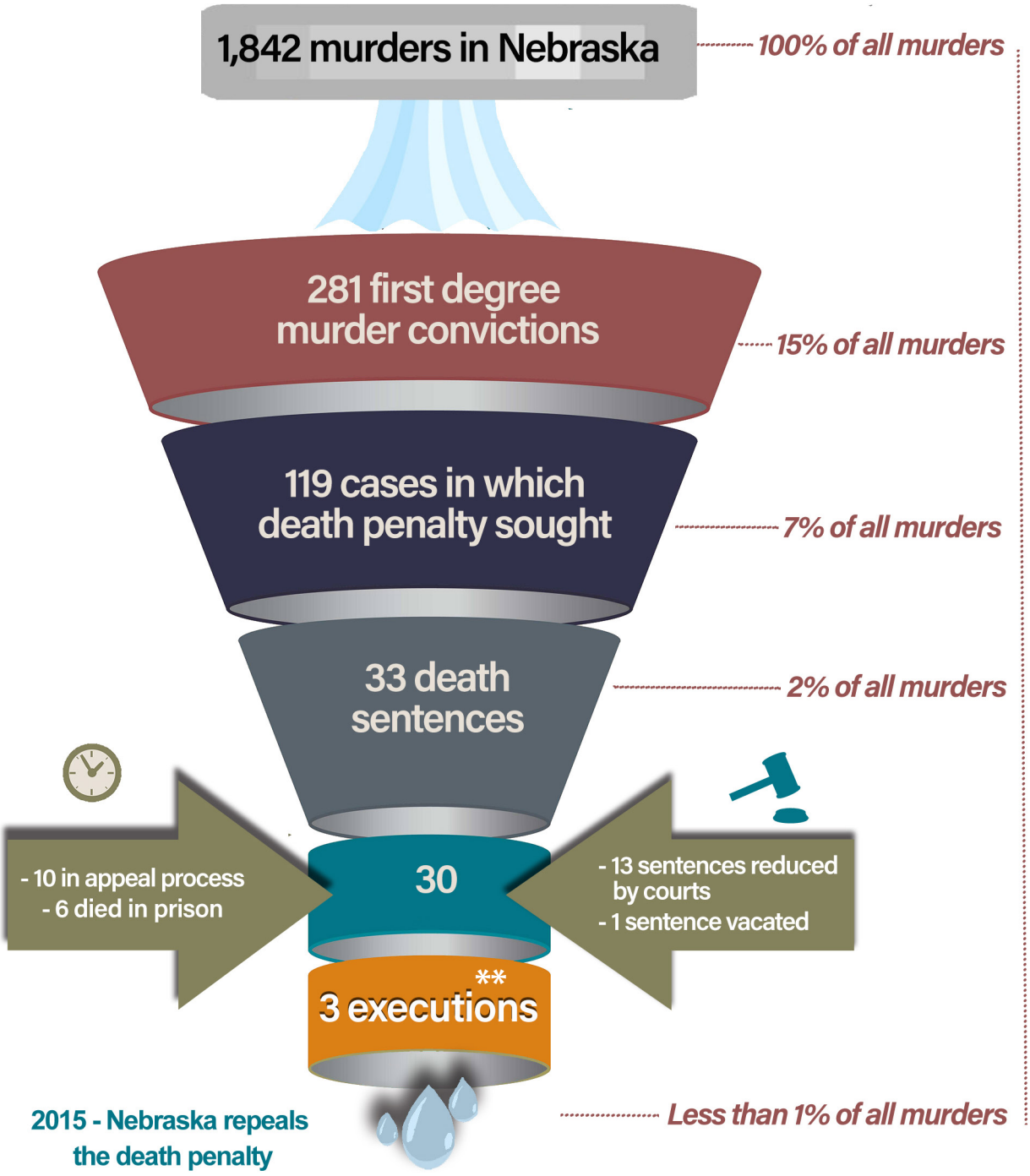
> From 1976 to 2014, which is considered the modern era of executions, the state of Nebraska has sentenced 33 individuals to death, but has executed only three.

[31]Nebraska Department of Corrections, *Inmates Sentenced to Death Row in Nebraska*. Accessed at http://www.corrections.nebraska.gov/pdf/DRHistory.pdf.

[32]http://www.deathpenaltyinfo.org/executions-united-states.

[33]The Nebraska Commission on Public Policy.

Figure 2.1: Snapshot of 41 years of executions in Nebraska, 1973-2014



Source: Goss & Associates adapted from Nebraska Commission on Public Advocacy study of Nebraska Capital Cases.
** No additional executions have taken place in Nebraska since 2014.*

Table 2.1 provides a timeline of significant events related to the DP in Nebraska.

After the DP was abolished by the Supreme Court in 1972, states began to apply statutes resulting in highly complex issues and procedures that changed the face of the DP process over subsequent decades. As a result, for example, a 2005 study found that in 2000, the state of Florida reversed 42 percent of its DP sentences.[34]

Table 2.1. Nebraska's Death penalty timeline	
1972	The U.S. Supreme Court, in response to Furman v. Georgia, ruled that the DP constituted cruel and unusual punishment when applied arbitrarily and capriciously, effectively striking down the DP across the U.S.[†] The ruling, though without a clear majority, resulted in commutations of the sentences of all pending executions across the nation to LWOP.[††]
1973	Nebraska reinstated the DP on April 19, 1973. States began to reenact based upon their interpretations of the U.S. Supreme Court opinions in Furman vs. Georgia and the use of new statutes and guidelines for the application of capital punishment.
1976	Nationwide, the DP was reinstated after the Supreme Court accepted the use of the DP under revised statutes.
1979	The Nebraska Legislature repealed the DP but the vote was vetoed by Gov. Charles Thone.
1982	The Nebraska Legislature excluded offenders younger than 18 from the DP.
1999	The Nebraska legislature passed a moratorium on executions. The bill, sponsored by Sen. Kermit Brashear of Omaha was vetoed by Governor Mike Johanns with an advisory opinion by state Attorney General Don Stenberg, which stated that he believed the moratorium would be unconstitutional.[†††]
2008	The Nebraska Supreme Court ruled that use of the electric chair violated the Nebraska Constitution.
2009	A bill providing for lethal injection in Nebraska became law.
2015	On May 20, 2015, the Nebraska State Legislature voted 32–15 on LB268 in favor of abolishing Nebraska's DP. The bill, sponsored by Sen. Ernie Chambers of Omaha was vetoed by Gov. Pete Ricketts. His veto was later overridden by a vote of 30-19.
	"Nebraskans for the Death Penalty", gathered the required number of signatures on a ballot measure petition seeking to reinstate Nebraska's DP. With 166,692 signatures, of which 120,479 were certified and verified, the repeal is no longer in effect, and the issue will be voted on by the electorate in November 2016.[††††]

[†] http://www.stetson.edu/law/lawreview/media/capital-punishment-an-examination-of-current-issues-and-trends-and-how-these-developments-may-impact-the-death-penalty-in-florida.pdf.
[††] http://www.deathpenaltyinfo.org/part-i-history-death-penalty.
[†††] http://articles.latimes.com/1999/may/27/news/mn-41554
[††††] http://www.omaha.com/news/nebraska/death-penalty-backers-turn-in-signatures-far-more-than-needed/article_33250440-4c03-11e5-b181-1b2db6c6d958.html

Source: Goss & Associates

[34] http://www.stetson.edu/law/lawreview/media/capital-punishment-an-examination-of-current-issues-and-trends-and-how-these-developments-may-impact-the-death-penalty-in-florida.pdf.

Nebraska's Death Row: Residents and Disposition[35]

Nebraska prosecuted approximately 3.03 DP cases per year.[36] Since 1929, Nebraska's use of the DP has steadily decreased. And with the application of new statutes related to the DP process in 1973, the number of executions carried out in the state has remained low, as shown in Figure 2.2, which details the number of Nebraska executions by time period.

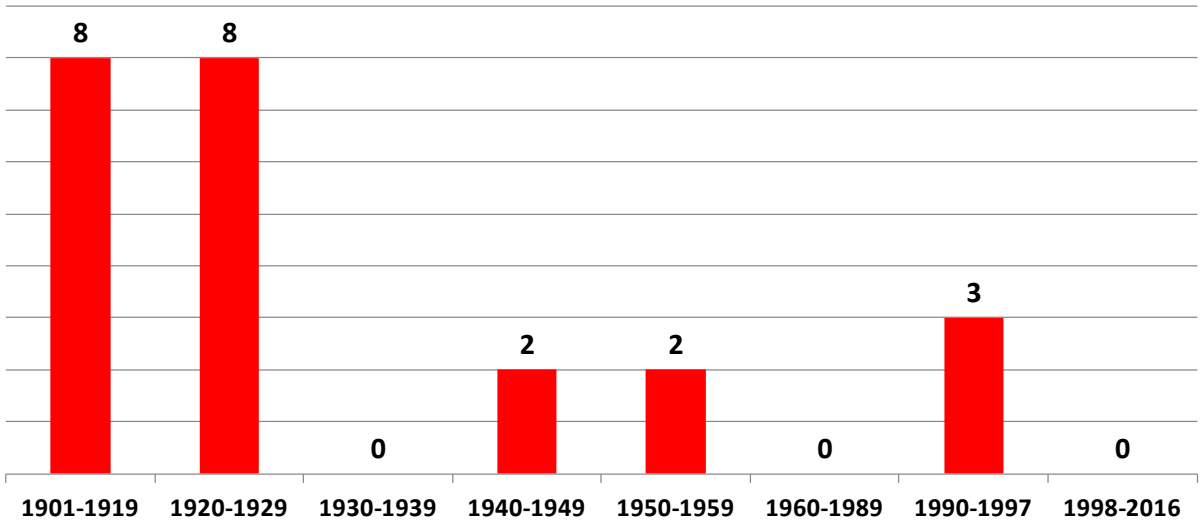
However, the number of individuals actually sentenced to death and placed on death row has shown little decrease since the changes in statutes transformed the DP process.

As shown in Figure 2.3, in the six decades prior to the Supreme Court's action to strike down the DP in 1972, an average of 0.54 individuals in Nebraska were added to death row annually over a span of 70 years.

A 2005 study found that in 2000, the state of Florida reversed 42 percent of its DP sentences.

After the 1972 ruling, and the introduction of newer, less arbitrary processes involved in assigning the DP, the number of inmates added to Nebraska's death row averaged 1.29 per year, over a span of 40 years.

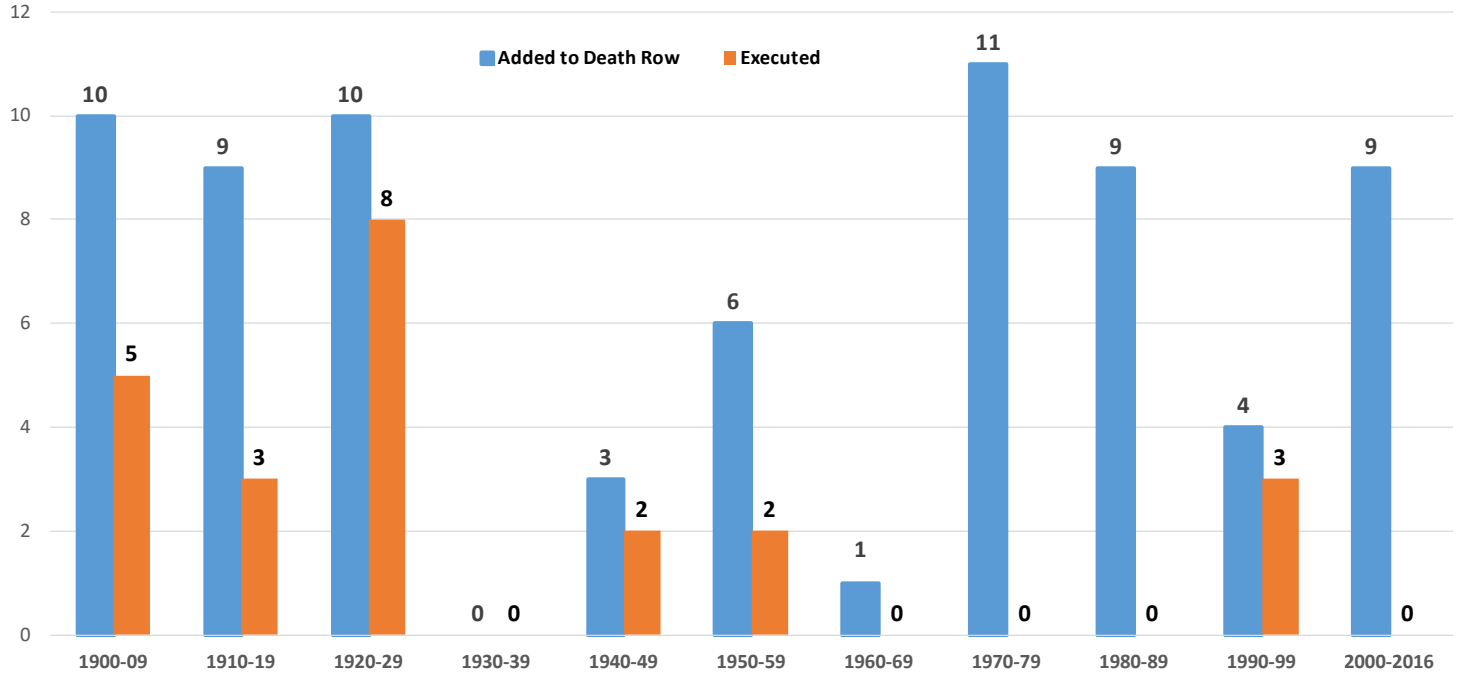
Figure 2.2: Number of Executions Carried Out in Nebraska since 1901



Source: Goss and Associates using data from Nebraska Department of Corrections
http://www.corrections.nebraska.gov/pdf/DRHistory.pdf

[35]Nebraska Department of Corrections.
[36]Goss & Associates calculations.

Figure 2.3: Number of Nebraska inmates placed on death row vs. executed 1900-2016



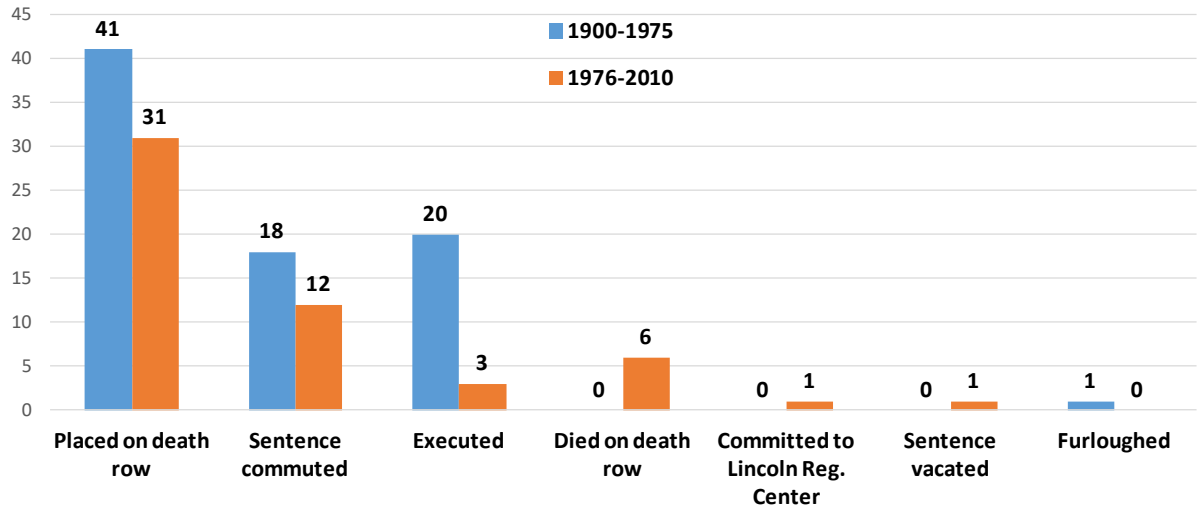
Source: Goss and Associates using data from Nebraska Department of Corrections
http://www.corrections.nebraska.gov/pdf/DRHistory.pdf

DP verdicts in recent decades show little slowing, while executions have waned significantly. As expected, with the steady flow of DP verdicts, along with a decrease in executions, defendants are remaining incarcerated for longer periods of time while the appeal process for a single case routinely spans decades. As stated earlier, the 10 individuals currently on death row have spent an average of 14.7 years appealing their cases, and since 1976, six individuals to date have died while their cases were being adjudicated.

As shown in Figure 2.4, under the jurisdiction of the state from 1900 to 1975, 41 individuals entered death row, while 31 entered from 1976 to the current date, the modern era of the DP process. The sentences of 18 inmates were commuted prior to 1976, while 12 were commuted after 1975.

The disparity is greater in the number of inmates who were executed. Prior to 1976, 20 individuals were executed while only three were executed after 1976. Prior to 1976, no prisoners died on death row, while six died after 1976 with their cases still in the appeals process.

Figure 2.4: Disposition of Nebraska's death row inmates, 1900-1975 and 1976-2010



Source: Goss and Associates using data from Nebraska Department of Corrections http://www.corrections.nebraska.gov/pdf/DRHistory.pdf

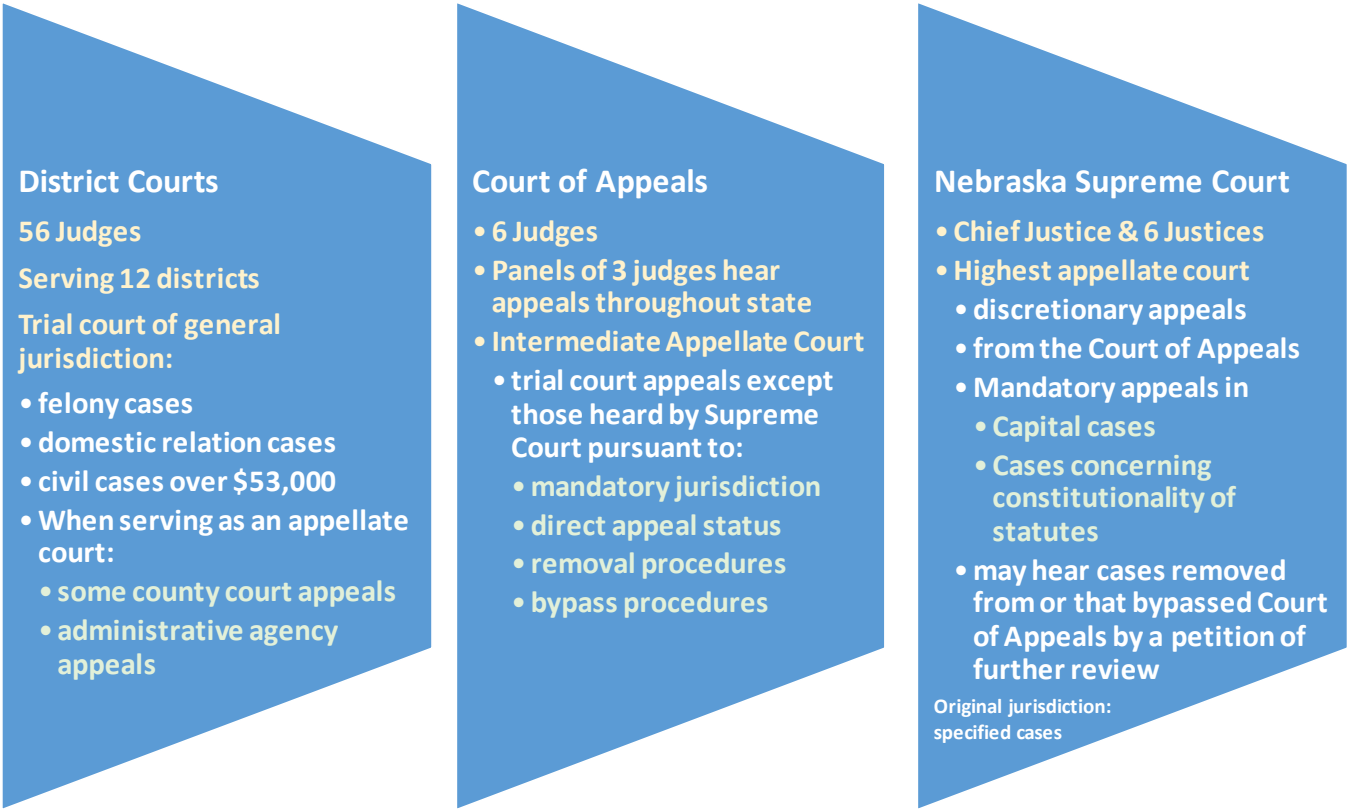
The Nebraska Appeals Process

Approximately 1,400 appeals of a variety of types are filed yearly in Nebraska. The majority of cases are handled by the six-judge appellate court, while the seven-member Nebraska Supreme Court handles cases with legal ramifications that extend beyond the individuals involved in the case. After a verdict, or decision, has been reached in the trial court, a written notice of appeal must be prepared and filed with the clerk of the trial court within thirty days.

The next steps include the provision of a transcript and bill of exceptions by the appealing party and the writing and filing of briefs. After the court has decided an appeal, the appealing party may request further review by the supreme court, although in Nebraska, a small number of cases, approximately two to four percent, are decided by the state's highest court. Figure 2.5 provides a schematic of the Nebraska Appeals Court Structure.[37]

[37]Nebraska Supreme Court. *Citizen's Guide to the Nebraska Appellate Courts*. July 2009. Accessed https://supremecourt.nebraska.gov/sites/supremecourt.ne.gov/files/self-help/citz-guide-appellate-courts.pdf.

Figure 2.5: Nebraska district and appeals courts



Source: Nebraska Supreme Court. https://supremecourt.nebraska.gov/sites/supremecourt.ne.gov/files/reports/courts/Court%20Structure.pdf

In Nebraska, defendants for whom the DP is being sought are entitled to two attorneys[38] and automatically guaranteed a direct appeal to the Nebraska Supreme Court to review the legality of the conviction and sentence.[39]

> In capital cases in Nebraska, defendants receiving death sentences are entitled to two attorneys and automatically guaranteed a direct appeal to review the legality of the conviction and sentence.

[38] E.g., id. § 23-3408 ("In the event that the contracting attorney is appointed to represent an individual charged with a Class I [death-eligible] or Class IA [LWOP-eligible] felony, the contracting attorney shall immediately apply to the district court for appointment of a second attorney to assist in the case."). *Quinnipiac University School of Law Civil Justice Clinic.*

[39] E.g., Neb. Rev. Stat. § 29-2525 ("In cases when the punishment is capital, no notice of appeal shall be required."). *Quinnipiac University School of Law Civil Justice Clinic*.

While defendants sentenced to LWOP may also pursue an appeal, it was found in a 2000 study that 41.5 percent of the 4,578 U.S. state death sentences imposed between 1973 and 1995 were reversed on direct appeal.[40] However, only 12 to 20 percent of non-capital cases, including LWOP, were reversed on direct appeal.[41]

Capital cases trigger more than 40 additional issues that may be raised in direct appeal beyond those possible in an appeal of an LWOP case.[42]

In fact, an average of 6.76 direct and post-conviction appeals were filed on behalf of Nebraska capital defendants, versus 1.64 appeals for those who received LWOP.

Capital cases trigger more than 40 additional issues that may be raised in direct appeal beyond those possible in an appeal of an LWOP case.

For capital cases, this contributes to a higher likelihood of a successful appeal, which in turn leads to another capital trial, an important driver of costs in the DP process.

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An average of 6.76 direct and post-conviction appeals were filed on behalf of Nebraska capital defendants, versus 1.64 appeals for those who received LWOP.

Summary

This section has detailed the factors contributing to the lengthening in the time and costs of Nebraska's DP law prior to 2015. The next section of this report estimates the cost of the DP process in comparison to the cost of the LWOP process.

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[40] James S. Liebman et al., Capital Attrition: Error Rates in Capital Cases, 1973-1995, 78 TEX. L. REV. 1854 n.49 (2000). *Quinnipiac University School of Law Civil Justice Clinic.*

[41] See Neb. Rev. Stat. §§ 29-2520 (aggravation hearing), 29-2521 (sentencing proceeding); see also ALAN E. PETERSON, ESQ., FACT-BASED COMPARISON OF LIFE & DEATH SENTENCING, at 14. (April 2013) (discussing three stages of trial in death penalty cases under Nebraska law). *Quinnipiac University School of Law Civil Justice Clinic.*

[42] FACT-BASED COMPARISON, supra note 40, at 2.*Quinnipiac University School of Law Civil Justice Clinic.*

Section 3 - The Cost of the Death Penalty Based on State and Local Spending Data

Introduction[43]

U.S. Census data compiled yearly on state and local government spending were used to investigate the impact of the DP on corrections and judicial/legal spending. The latest year of data available at the time of this study was for fiscal 2013.

Table 3.1 provides average spending comparisons for DP states compared to NDP states. In 2013, there were 17 states, including the District of Columbia, that did not have a DP. The remaining 34 states are included in DP states as of 2013.[44]

For 2013, as listed, DP states spend a significantly larger share of state and local budgets on justice, at 3.54 percent, than NDP states at 2.93 percent.

Additionally, per $1,000 of GDP, DP states spent $6.70 compared to $6.46 for NDP states on justice. In 2013, had DP states spent on justice as a share of GDP as did NDP states, taxpayers for the median DP state would have saved approximately $32.5 million.

For 2012 as listed in Table 3.1, DP states spend a significantly larger share of state and local budgets on justice, at 3.51 percent, than NDP states at 3.11 percent.

Additionally, per $1,000 of GDP, DP states spent $7.07 compared to $6.75 for NDP states on justice. For the two-year period, had DP states spent on justice as a share of GDP as did NDP states, taxpayers for the median DP state would have saved approximately $46.5 million.

Table 3.1: Justice spending for DP states vs. NDP states, 2012 and 2013

	Median values			
	2012		2013	
	DP	NDP	DP	NDP
Percent of state and local government spending				
Corrections	2.30%	1.75%	2.26%	1.73%
Corrections capital spending	0.06%	0.04%	0.05%	0.06%
Judicial and legal	1.29%	1.13%	1.33%	1.17%
Total justice spending as percent of total state & local spending*	3.51%	3.11%	3.54%	2.93%
Spending per $1,000 of state gross domestic product				
Corrections	$4.31	$3.78	$4.12	$3.72
Corrections capital	$0.11	$0.07	$0.09	$0.12
Judicial and legal	$2.44	$2.36	$2.43	$2.36
Total justice spending per $1,000 of GDP*	$7.07	$6.75	$6.70	$6.46

Source: Goss & Associates calculations based on U.S. Census data and U.S. Bureau of Economic Analysis
*Detail will not sum to total.
Note: In 2016 Colorado, Pennsylvania, Oregon, and Washington had governor-imposed DP moratoriaums.

[43]Throughout this chapter, justice spending data refers to spending on corrections operations spending, corrections capital spending, and judicial and legal spending.

[44]Currently Maryland does not have a DP. On May 2, 2013, Governor Martin O'Malley signed a bill nullifying the state's DP. Before the Governor signed the bill, only first-degree murder was a capital offense in the state of Maryland.

Table 3.2 lists the top 10 states in terms of corrections spending as a percent of overall state and local spending. As presented, nine of the top 10 justice spending states were DP states. Only one top justice spending state, New Mexico, was an NDP state.[45]

Table 3.2: Top 10 justice spending states as a percent of total state and local spending, 2013

	Death penalty, 2013	Justice spending as % total spending
Nevada	Yes	5.29%
Louisiana	Yes	4.94%
Arizona	Yes	4.79%
California	Yes	4.72%
Delaware	Yes	4.58%
Idaho	Yes	4.53%
New Mexico	No	4.52%
Maryland (had DP in 2013)	Yes	4.32%
Montana	Yes	4.24%
Virginia	Yes	4.23%

Source: Goss & Associates calculations based on U.S. Census data

Table 3.3 lists the top 10 states in terms of corrections spending per $1,000 of gross domestic product (GDP). As presented, seven of the top 10 justice spending states were DP states. Only three top justice spending states, New Mexico, Alaska, and Michigan were NDP states.

Table 3.3: Top 10 justice spending states, 2013 (spending per $1,000 GDP)

	Death penalty, 2013	Justice spending per $1,000 GDP
New Mexico	No	$10.74
Alaska	No	$10.51
California	Yes	$9.80
Louisiana	Yes	$9.67
Montana	Yes	$9.30
Nevada	Yes	$9.13
Arizona	Yes	$8.99
Idaho	Yes	$8.78
Michigan	No	$8.62
Pennsylvania	Yes	$8.59

Source: Goss & Associates calculations based on U.S. Census data

[45]In 2016, according to the Death Penalty Information Center, there were four states with governor-imposed moratoriums, 20 states and the District of Columbia with NDP, and 30 states with DP.

In order to separate the factors contributing to justice spending differentials, multiple regression is undertaken. Regression is a statistical procedure that allows a researcher to estimate the correlation between, for example, per capita income, and justice spending per $1,000 of GDP. Equation 3.1 details the empirical regression equation.

$$\textbf{Justice spending per \$1,000 GDP} = \beta_0 + \beta_1 \text{ DP} + \beta_2 \text{ Prisoners} + \beta_3 \text{ PopDensity} + \beta_4 \text{ PcapInc} + \beta_5 \text{ State/LocalSpending} + \beta_6 \text{ Year} + \beta_7 \text{ \%Black} + \beta_8 \text{ \%Catholic} + \beta_9 \text{ West} + \beta_{10} \text{ Midwest} + \beta_{11} \text{South} \quad \text{(Equation 3.1)}$$

Definitions of the variables contained in Equation 3.1 are provided in Appendix A. Estimates of Equation (3.1) are also listed in Appendix A. As shown, the existence of the DP has a positive impact on corrections and judicial/legal spending, or justice spending.

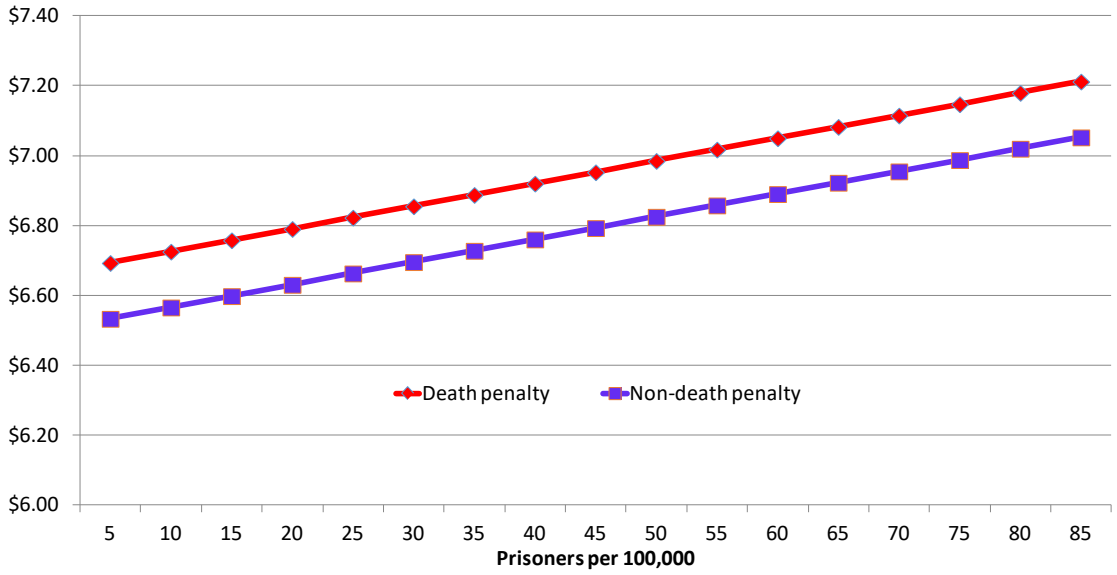
Statistical modeling results contained in Appendix A indicate that the average savings for the sentencing option of LWOP compared to the DP across all 50 states and the District of Columbia for 2012 and 2013 was $0.145 per $1,000 of state gross domestic product.

Thus for the two-year period, 2012 and 2013, the average U.S. state with the DP would have saved $46,474,823 had the state eliminated the DP. Alternatively, the average U.S. state with LWOP as the sentencing option would have spent an additional $46,474,823 for the two-year period had the state adopted the DP.

Based upon the estimates of Equation (3.1), justice cost for DP and NDP states versus the number of prisoners in the state are estimated and presented in Figure 3.1.[46] Based on regression results from Equation 3.1, estimated spending for Nebraska is calculated based on the assumption that LWOP remains as a replacement for the DP. Figure 3.2 shows those results.

As presented in figure 3.2, the 2013 cost of maintaining the DP versus LWOP was approximately $14.1 million. Indexing this to inflation as measured by the Consumer Price Index for legal services results in an additional 2015 cost of $14.6 million.

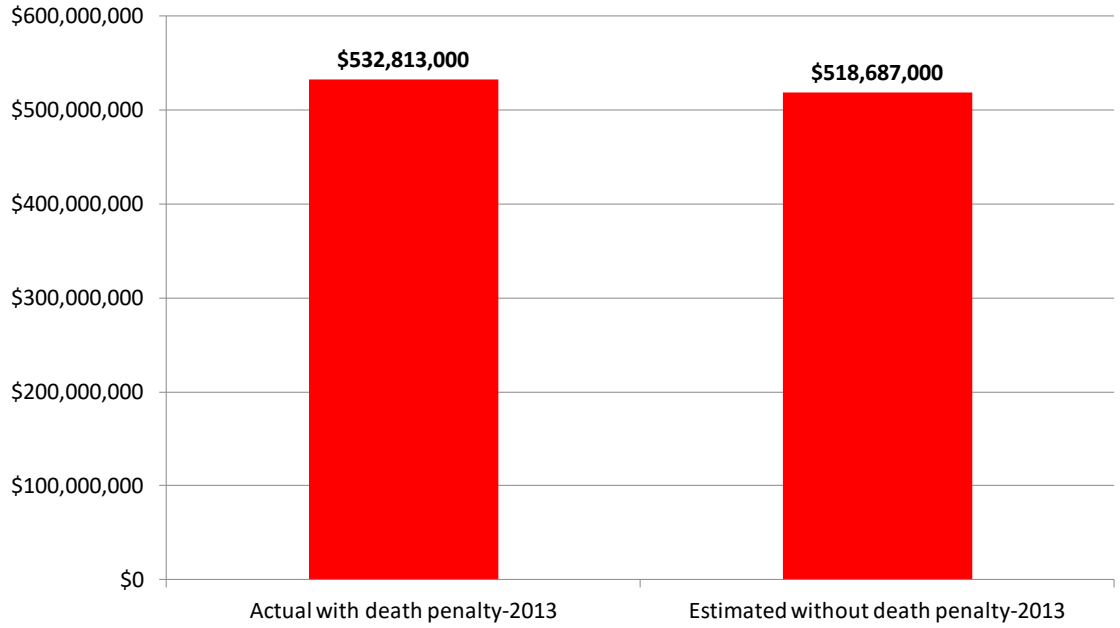
Figure 3.1: Justice spending per $1,000 GDP versus prisoners per 100,000 population (DP states and NDP states)



Source: Goss & Associates calculations based on U.S. Census data

[46] All variables, except for prisoners and DP are set to their average value.

Figure 3.2: Nebraska justice spending, actual vs. estimated spending without DP, 2013[47]



Source: Goss & Associates calculations based on U.S. Census data

Table 3.4: Annual savings from abolishing the DP			
State	Year	Source:	Justice spending savings
California	Annual average 1978-2011	Alarcon and Mitchell (2012)	$121,212,121
Florida	2000	Palm Beach Post (2000)	$51,000,000
Nebraska	2013	Goss & Associates	$14,126,000
North Carolina	2005-06	Cook (2009)	$11,000,000
Average U.S. stat	2013	Goss & Associates	$23,200,000
Source: Goss & Associates Statistical Analysis			

[47]Estimated values are the midpoint of estimated ranges, or 95 percent confidence interval.

Does the Death Penalty Increase Conviction Rates?

According to Alarcón, et. al.,[48] "There is no credible evidence that replacing the DP with LWOP will result in significant added trial costs to the state due to defendants refusing to plead guilty and forcing prosecutors to meet their burdens at trial. The few studies that have been completed support the proposition that the threat of the DP does not increase plea bargain rates." This study concluded that, nationally, defendants in DP states are more likely to plead guilty to longer sentences, but the rate of guilty pleas was not different.

A prime Nebraska example of how plea bargaining can increase wrongful prosecutions and boost costs is that of the "Beatrice Six." The state won convictions of six individuals based on faulty forensics and five confessions which were obtained under threats that the six would be given the death penalty if they did not admit guilt. In 2008 DNA evidence exonerated all six and in July 2016, a federal jury awarded the wrongfully convicted $28.1 million in damages.

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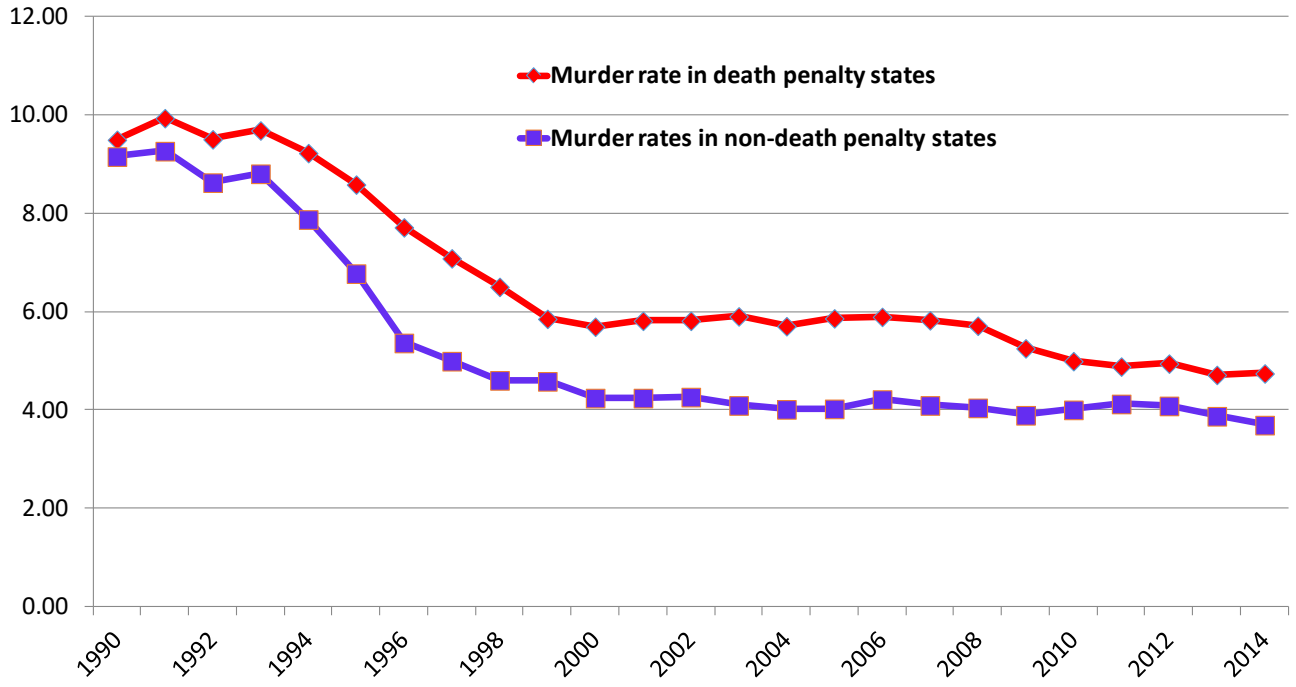
[48] Arthur L. Alarcón and Paula M. Mitchell, Costs of Capital Punishment in California: Will Voters Choose Reform this November?, 46 Loy. L.A. L. Rev. S1 (2012). Accessed at http://digitalcommons.lmu.edu/cgi/viewcontent.cgi?article=2803&context=llr.

Thus, the findings of this study demonstrate the use of the DP as a bargaining chip does not save money since the same number of cases would be resolved through a plea bargain with or without the DP.

Furthermore, past data indicate that the existence of the DP has no negative impact on state murder rates. Figure 3.3 compares murder rates between DP states and non-DP states from 1990 and 2014. As presented, each year the murder rate was higher for DP states than NDP states.

The findings of this study demonstrate the use of the DP as a bargaining chip does not save money since the same number of cases would be resolved through a plea bargain with or without the DP.

Figure 3.3: Actual murder rates per 100,000 population, DP states vs. NDP states, 1990-2014



Source: Death Penalty Information Center

Section Summary

The data on state and local spending indicate that on average, DP states spend more on justice than do NDP states. For the state of Nebraska, it is estimated that the state would have saved $14.6 million in 2015 dollars had the DP been replaced with LWOP.

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Section 4 - Estimation of the Cost of a Death Penalty Prosecution to the State of Nebraska

Introduction

Between 1973 and 2014, Nebraska prosecutors sought the DP in 119 cases with only 33 of the defendants actually receiving the death sentence. Furthermore, more than half of those death sentences were reversed, and only three resulted in an execution.[49]

It has been found that prosecuting DP cases also strains local government budgets. An *Omaha World-Herald* article reported that Nebraska's Richardson County, facing bankruptcy, was forced to borrow funds and mortgage its ambulances to pay legal expenses for the two DP cases it prosecuted in 1995-1996.[50]

In another Nebraska case, it was estimated that the DP sentencing phase alone cost $750,000. And in neighboring Kansas, the cost of defense alone for 26 DP trials, 12 of which resulted in a death sentence, was $19.9 million through February 2009. And as of the date of this study, Kansas, which enacted the DP in 1994, has executed no one.[51]

In 1995, the Nebraska Unicameral created the Nebraska *Commission on Public Advocacy*. One role of the commission is to provide legal assistance to public defenders and court-appointed attorneys. By providing legal assistance to aid indigent defendants charged with first-degree murder and serious violent or drug-related felonies, the Commission assumes costs that might otherwise burden the county in which the case is prosecuted.

The intent of the state commission was to provide property tax relief since counties pay nothing for such legal services and associated costs to provide assistance to the indigent.[52] In 2005-06, the NCPA estimated that Commission attorneys were spending 2,000 hours per DP case.

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Meta-Analysis

The purpose of this section of the study is to determine the cost of a DP prosecution in Nebraska compared to an LWOP prosecution. A technique called meta-analysis is used for this estimation. According to Cochrane Statistical Methods Group, meta-analysis is "… the statistical combination of results from two or more separate studies.[53] Or as one scholar puts it, it is, "an analysis of analyses" (Glass 1976).

Meta-analysis has been used in fields as diverse as sociology, social psychology, finance, political science, marketing, ecology, genetics, and most relevant to this study, economics.[54]

As Goss and Phillips (1995) state, "…it is a method for statistically analyzing results across empirical studies."[55] It is the best way to produce a sophisticated, comprehensive, and statistically rigorous literature review. The other method of conducting a literature review is the prominent chronological narrative.

---

[49]FBI Uniform Crime report; Criminal homicide reports filed with the Nebraska Supreme Court; Nebraska Commission on Public Advocacy Study of Nebraska Capital Cases - 2007 & Equal Justice and the DP: A Legal and Empirical Analysis. By the Numbers, 2007; Nebraska Commission on Public Advocacy..

[50]Omaha World Herald, "Spat brews over public defenders," by Paul Hammel, January 31, 2012.

[51]Senator Carolyn McGinn, "DP Too Costly, Not Deterrent," Wichita Eagle, March 1, 2009. Accessed at http://nadp.net/death-penalty-info/cost/#sthash.PRSTmksL.dpuf

[52]http://www.statespending.nebraska.gov/history/byFund.php?agency=60.

[53]http://handbook.cochrane.org/chapter_9/9_analysing_data_and_undertaking_meta_analyses.htm.

[54]https://www.meta-analysis.com/pages/why_do.php

[55]Goss, Ernest and Joseph Phillips. "The Effects of State and Local Taxes on Economic Development: A Meta Analysis." Southern Economic Journal, Vol. 62(2), October 1995, pp. 320-333.

The chronological narrative, contrary to meta-analysis, has serious limitations in its ability to characterize previous research done in a given subject area, for three reasons.

First, reviewers are often unable to deal with the large number of studies on their topic, so they focus on a few, without discussing how the studies were selected (Rudner et. al., 2002).

Second, "Reviewers often cite the conclusions of previous reviews without examining those reviews critically," (Rudner et. al., 2002).

Third, because certain reviewers are prominent in their fields, they are hesitant to give credit to studies whose conclusions oppose their own (Rudner et. al., 2002). Because of the issues inherent in the chronological narrative, the meta-analysis method has been used rather extensively.

There are areas in which meta-analysis is uniquely prone to error, and for that reason, scholars recommend that:

1. Conclusions should not be drawn by comparing and aggregating studies that use different measurement techniques, definitions of variables, and subjects.

2. Meta-analysis should not mix results from poorly-designed studies with those from well-designed studies.

3. Published research is dominated by studies that reject the null hypothesis while studies that do not reject are rarely published. This biases the analytic results.

4. Multiple results from the same study are used in the meta-analysis, making that study more influential than it deserves to be.

5. Summarizing the research with a single variable overlooks the impact of moderating variables on the relationship (Goss and Phillips, 1995).

Despite the usage of meta-analysis throughout the field of economics (Goss, Phillips 1995; Fisher 1997), it has not, to the knowledge of the authors, been used to investigate the cost of the DP.

In order to undertake a meta-analysis, a systematic review was conducted to select and review all studies relevant to the subject area, sorting their conclusions based on the methodology used, and identifying the data that are suitable for analysis.

This study uses meta-analysis because it brings the weight of evidence of the cost of the DP to bear on the issue. Instead of conducting one study, this study brings the results of nearly all the relevant studies conducted in the United States together to determine the cost of the DP in Nebraska.

To ensure accuracy while conducting the meta-analysis, this study formulated an explicit review question, specifed eligibility criteria for study selection, critically assessed the studies that have been selected, collected appropriate data, and decided what was meaningful to analyze.

Table 4.1 lists the studies used for the meta-analysis. Study costs vary significantly since some, such as Colorado, include only the additional attorney costs. Likewise, others such as California, include post-conviction costs, attorney costs, in-kind costs and maximum security costs. Estimation of Equation 4.1 controls for the exclusion or inclusion of these costs.

Table 4.1: Studies used in meta-analysis

	State	Authorship (see annotated bibliography for details)	Costs per DP 2015 dollars
1	Arizona	The Williams Institute, Linda M. Williams, Ph.D.	$128,922
2	California (1993)	David Erickson	$2,447,795
3	Colorado	Justin F. Marceau* and Hollis A. Whitson	$130,931
4	Connecticut	STATE OF CONNECTICUT COMMISSION ON THE DEATH PENALTY: Jeffrey Bennett, et. al.	$334,168
5	Federal Government	Jon B. Gouldv and Lisa Greenman	$412,707
6	Idaho	Office of Performance Evaluations Idaho Legislature	$154,008
7	Indiana (2002)	Senator William Alexa	$166,551
8	Indiana (2010)	Legislative Services Agency for SB 43, 2010 Indiana General Assembly	$153,546
9	Iowa (1995)	Fiscal Note State of Iowa	$430,125
10	Iowa (2006)	Fiscal Services Division Legislative Services Agency Fiscal Note	$2,693,129
11	Kansas (2003)	PERFORMANCE AUDIT REPORT: Costs Incurred for DP Cases: A K-GOAL Audit of the Department of Corrections A Report to the Legislative Post Audit Committee	$668,882
12	Kansas (2014)	Report of the Judicial Council DP Advisory Committee	$382,849
13	Maryland (2008)	John Roman et. al.	$1,902,255
14	Nevada (2012)	Terance D. Miethe	$237,230
15	Nevada (2014)	Performance Audit Report on the Fiscal Costs of the DP	$625,462
16	North Carolina (2011)	Cook	$453,026
17	Pennsylvania	Capital punishment in Pennsylvania: When death means life, The Reading Eagle	$1,902,255
18	Tennessee	John G. Morgan, Comptroller of the Treasury, Office of Research	$893,172
19	Washington State	Collins, et. al.	$1,152,172

Source: Goss & Associates calculations based on the individual study

The present study brings the results of nearly all the relevant studies conducted in the United States together to determine the cost of the DP in Nebraska.

Equation (4.1) provides details of the variables used in this study to estimate the cost of the DP using meta-analysis.

$$\text{Cost of DP prosecution} = \beta_0 + \beta_1 \text{Factor}(1) + \beta_2 \text{Factor}(2) + \ldots \beta_i \text{Factor}(i) \qquad (4.1)$$

Equation (4.1) is estimated using ordinary least squares regression where the dependent variable is the cost per capital case prosecuted and the factors are the independent variables controlled for in the study. Additional factors are added which are specific to the state, and/or study. The empirical estimation of Equation (4.1) is contained in Appendix B, along with a definition of each variable.

Table 4.2 summarizes the cost of Nebraska's DP derived from the estimation of Equation (4.1). As presented, the cost per case in 2015 dollars is $1,493,500.

Table 4.2: Estimated cost to Nebraska taxpayer for each DP prosecution (2015 dollars)	
Cost per DP case (from meta-analysis, Equation (4.1)	$1,493,500
Source: Goss & Associates estimate based on meta-analysis	

Table 4.3 details the elements of the annual cost for maintaining the DP for Nebraska. These are costs above that for LWOP.

Table 4.3: Cost elements per-Nebraska case (in 2015 dollars)	
Element	Estimated savings
Post conviction	$740,100
Maximum security costs	$619,400
In-kind cost	$134,000
Total costs	$1,493,500
Source: Goss & Associates estimate based on meta-analysis	

Distribution of Cost Savings

How could cost savings realized through adjudicating capital cases with other penalties, such as LWOP be used? While some states are considering the elimination of the DP to help offset deficits, more specific options are being considered by others.

Compensation to victims. In June, 2013, Kansas' Death Penalty Advisory Committee requested that the committee study the addition of a provision in the DP repeal bill, HB 2515, that would allocate cost savings to a victims' support fund. However, that portion of the study request was withdrawn.[56] In 2011, Illinois' DP repeal required that state funds used for the DP be transferred to a fund for murder victims' services and law enforcement.[57]

Redeployment of funds. Criminal justice scholars often recommend that cost savings from the abolition of the DP be allocated to law enforcement, investigation, or prison systems. For example, if the DP is eliminated in Colorado, the state intends to spend a portion of the savings on investigating the state's unsolved murders.[58]

Summary

This section has detailed the costs incurred by the state of Nebraska for the re-introduction of the DP. These costs are the additional costs compared to LWOP. The estimated costs are based on the meta-analysis of 19 past studies examining the costs of the DP.

[56]Costs Incurred for DP Cases:A K-GOAL Audit of the Department of Corrections, Dec. 2003. http://www.kslpa.org/ assets/files/ reports/04pa03a.pd

[57]Illinois Abolishes DP; 16th State to End Executions, March 2011. http://abcnews.go.com/Politics/illinois-16th-state-abolish-death-penalty/story?id=13095912

[58]Saving Lives and Money, March 2009. http://www.economist.com/node/13279051

Appendices

Appendix A - Statistical Modeling Results

The Impact of the Death Penalty on Justice Spending

Table A.1 provides definitions of the variables used in the estimation of Equation 3.1. Table A.2 lists details of the estimation of Equation 3.1 using ordinary least squares regression.[59]

Table A.1: Regression variables, Equation (3.1)

Variable name	Description	Source
Cost	Justice spending per $1,000 GDP in 2012 and 2013 (dependent variables)	Census
Death Penalty	Did state have DP in 2013 (1 = yes, 0 = no)	DPIC
Prisoners	Number of prisoners incarcerated in 2013 per 1,000 population	Census
PopDensity	State population density per square mile	Census
PCAPINC	Per capital income in thousands of $$s	BEA
State/local Government spending	State & local spending per $1,000 GDP excluding justice spending	Census
Year	Coded 2012 for 2012 data and 2013 for 2013 data	Census
%black	Percent of state population that is black, 2012 and 2013	Census
%Catholic	Percent of state population that is Catholic	Census
West	Binary variable if state is in West Census region (1 = yes, 0 = no)	Census
Midwest	Binary variable if state is in Midwest Census region (1= yes, 0 = no)	Census
South	Binary variable if state is in South Census region (1= yes, 0 = no)	Census

Sources: DPIC = DP Information Center; Census = U.S. Census Bureau; BEA = U.S. Bureau of Economic Analysis

[59]Alternative estimates using pooling techniques (random effects model) provided results similar to those presented. OLS results, due to greater transparency, were presented.

Appendix A - Estimation of Equation

Table A.2: Estimation of Equation (3.1)

SUMMARY OUTPUT					
Regression Statistics					
Multiple R	0.79				
R Square	0.62				
Adjusted R Square	0.057				
Standard Error	1.11				
Observations	102				
ANOVA					
	df	*SS*	*MS*	*F*	*Significance F*
Regression	11	179.61	16.33	5.12	0.000001
Residual	90	111.73	1.24		
Total	101	291.34			
	Coefficients		P-value		
Intercept	134.563		0.759		
Death Penalty	0.145[A]		0.012		
Prisoners per 1,000	0.142		0.122		
Pop. Density	0.011		0.388		
Per capita personal income	0.001		0.058		
State & local spending as % GDP (X Justice)	25.015[A]		0.000		
Year	-0.066		0.763		
% Black	-3.008		0.291		
%Catholic	1.222		0.667		
West	2.336[A]		0.000		
Midwest	0.127		0.783		
South	0.829		0.196		

[A]Indicates that estimated coefficient is statistically significant at the 95% level of confidence
Source: Goss & Associates estimations based on data described in Table A.1

Appendix B - Meta Regression Results

Table B.1 provides definitions of the variables used in the estimation of Equation 4.1. Table B.2 lists results of the estimation of Equation 4.1 using ordinary least squares regression.

Table B.1: Meta-regression variables, Equation (4.1)

Variable name	Definition	Data source
	Dependent variable	
Cost	Estimated cost of prosecution of one capital case (2015 dollars)	Study Table 4.1
	Independent variable	
Post conviction	Did study consider post conviction costs (1 = yes, 0 = no)	Goss
Maximum Security	Did study take into account maximum security costs (1 = yes, 0 = no)	Goss
In-kind	Did study consider in-kind costs or contributions (1 = yes, 0 = no)	Goss
Reduced costs	Does the study consider possible cost reduction resulting from the DP's existence	Goss
Felony	Can a defendant get death for a felony in which s/he was not responsible for the murder? (1 = yes, 0 = no) 2015	DPIC
State/local	State & local government spending as share of GDP	Census
Crime rate	State Crime Rate per 100,000 population	Census
PCap Income	State per capita income	BEA
West	Binary variable if state is in West U.S. Census region, (1=yes, 2 = no)	Census
Midwest	Binary variable if state is in Midwest U.S. Census region (1= yes, 2 = no)	Census
South	Binary variable if state is in South U.S. Census region (1= yes, 2 = no)	Census

Appendix B - Meta-analysis, estimation of Equation (4.1)

Table B.2: Estimation of Equation (4.1)			
SUMMARY OUTPUT			
Multiple R		0.763	
R Square		0.582	
Adjusted R Square		0.122	
Standard Error	1588514.659	*F*	*Significance*
Observations	22	1.26499091	0.359257479
ANOVA			
	df	*SS*	*MS*
Regression	11	3.5113E+13	3.19E+12
Residual	10	2.5234E+13	2.52E+12
Total	21	6.0346E+13	
	Coefficients	*Standard Error*	*P-value*
Intercept	-$12,953,717	$8,075,033	0.140
Post conviction	$668,940	$1,397,653	0.643
Maximum security	$864,291	$980,708	0.399
In-kind	$521,086	$916,110	0.582
Reduced costs	-$1,544,928	$1,500,711	0.328
Felony	-$339,027	$1,023,862	0.747
State/local	$40,127,778	$31,380,728	0.230
Crime rate	$2,072	$3,661	0.584
PCap Income	$131	$82	0.142
West	$262,279	$1,101,842	0.817
Midwest	$304,892	$1,098,848	0.787
South	$524,867	$1,088,902	0.640
Source: Goss & Associates estimations based on data described in Table A.1			

Appendix C - Annotated Bibliography

1. Alarcon, Arthur L., and Paula M. Mitchell. "Executing the Will of the Voters: A Roadmap to Mend or End the California Legislature's Multi-Billion-Dollar DP Debacle." *Loy. LAL Rev. S41* 44 (2010).

   Since the 1978 reinstatement of California's DP, the state has spent approximately $4 billion on capital cases and has performed 13 executions. The majority of the 714 prisoners currently on death row will wait more than 20 years before their cases are resolved and many will die of natural causes while their cases are in appeal. The Legislature has yet to enact changes while voters have elected to increase the number of death-eligible crimes. The authors determine the amount of taxpayer spending for DP trials versus non–DP trials and for costs incurred due to the delay from the initial sentence of death to the execution. The article also examines flaws in the voter initiative process that led to the expenditure of billions of dollars on a system that the authors say has been ineffective in carrying out punishment against those who commit the worst of crimes. The study presents and analyzes corrective measures to reduce the death row backlog, and propose several voter initiatives for meaningful reform.

2. *The Application of Indiana's Capital Sentencing Law: Findings of the Indiana Criminal Law Study Commission*, Senator William Alexa, Chair. [Indianapolis, Ind.: The Commission], 2002.

   The Indiana Criminal Law Study Commission's 2002 report examined the cases of 224 individuals who were sentenced for murders committed between July 1, 1993 and August 10, 2001. The study found that white offenders received more severe sentences than non-white offenders, but this may have been related to the victim's race rather than the offender's race; white offenders and non-white offenders who both have white victims garner similar sentences; and non-white offenders appear to be sentenced less severely than white offenders when the victim is non-white. In the majority of murders the offender and the victim are of the same race. The study also performed a cost comparison between cases that sought life without parole (LWOP) and the DP. The commission found that between 1970 and 2000, for the typical death row offender, the time between sentencing and execution was 10.5 years, while life without parole (LWOP) offenders remained in prison for 30-50 years. The present value cost for trials of those offenders who were executed exceeded the cost of a trial where LWOP is sought by 21.15 percent. When these costs were applied to 84 offenders for whom the DP was sought from 1970-2000, it was determined that DP costs were 34 to 37 percent greater than LWOP costs.

3. Barry, K.; Bonica, Angela. *Cost of Appeals in Capital Context*. Quinnipiac University School of Law Civil Justice Clinic (2016).

   This analysis examined whether the capital appeals process is more expensive than the appeals process for those serving life imprisonment ("LWOP") because of: (1) the representation provided to capital defendants, and (2) the number of appeals brought by capital defendants.

4. Bischoff, Laura A.; Sweigart, Josh; Nagel, Kyle. "DP Debate: What it Costs." *Dayton Daily News*, Feb. 23, 2014: accessed at http://www.mydaytondailynews.com/data/news/death-penalty-debate on Apr. 26, 2016.

This chart shows annual costs related to executions in Ohio's 165 active DP cases. Annual costs as shown included: $842,000 for seven attorneys and two paralegals in the Ohio Attorney General's capital crimes unit; $1.35 million for 14 attorneys and four other staff in the Ohio Public Defender's DP division; $2.5 million for appointed defense attorneys to represent indigent Ohioans in capital cases; $3.88 million budgeted for public defender attorneys on capital cases in federal court; and prison costs of $8.3 million in one year incurred for 138 Death Row inmates, a figure that is likely higher since inmates are held in single cells and under high security protocol. The costs for county prosecutors and the courts were unknown. 1 Cook, Philip J. (2009). Potential Savings from Abolition of the DP in North Carolina. *American Law and Economics Review* (2009) 11 (2), 498-529.

The author found that the state of North Carolina could have saved nearly $10.8 million annually for years 2005 and 2006 if the state's DP were abolished. Without capital cases, for the two-year period more than $21.6 million in criminal justice expenses would have been avoided, including additional defense costs, payments to jurors, post-conviction costs, resentencing hearings, and additional costs to the prison system for accommodating inmates with capital convictions. Not included in the costs were state resources in the Office of the Appellate Defender and the North Carolina Supreme Court, additional time spent by prosecutors in capital cases, and the costs to taxpayers for federal appeals.

5. Boruchowitz, Robert C.; Collins, Peter A.; Hickman, Matthew J.; and Larranaga, Mark A., "An Analysis of the Economic Costs of Seeking the DP in Washington State" (2015). *Fred T. Korematsu Center for Law and Equality.* Paper 29. http://digitalcommons.law.seattleu.edu/korematsu_center/29

This study found that the costs incurred due to the complexity of capital cases are about 1.4 to 1.5 times greater, a difference of $1.15 million in 2014 dollars, than the same cases when the DP is not sought. The study was limited to economic cost estimation only for 147 aggravated first-degree murder cases from 1997 to 2014, assuming a life sentence for all offenders, and reviewed data from more than 40 different sources. Since capital punishment was pursued, average trial level defense costs were 2.8 to 3.5 times greater, average trial level prosecution costs were 2.3 to 4.2 higher, while court, police/sheriff, and other costs related to pursuit of the DP were 3.9 to 8.1 times higher. Post-conviction lifetime incarceration costs (DOC) for the group studied were .7 to .8 times greater than those of capital cases. Average jail costs related to DP cases were 1.4 to 1.6 times higher than for non-capital cases.

6. Brambila, Nicole C.; Turner, Ford; Urban, Mike. "Capital Punishment in Pennsylvania: When Death Means Life." *Reading Eagle*, Dec. 14, 2014: accessed at http://www.readingeagle.com/news/article/capital-punishment-in-pennsylvania-when-death-means-life on Apr. 26, 2016.

This Reading Eagle article cites the state's DP system as "deeply flawed" and "dysfunctional," indicating that Pennsylvania's DP has cost taxpayers more than $351.5 million, with no executions in 15 years. Its three executions since 1976 cost approximately $116.5 million each. The analysis focuses on the state of Maryland where a study found that it costs an average of $3 million to prosecute and house DP inmates. Studies in other states showed estimates of the costs of capital cases as 50 to 70 percent higher than in non-capital cases. The authors cite court-appointed attorney costs of $75 to $100 per hour, with hundreds of hours of work required per inmate, as well as psychiatric evaluations costing approximately $2,500. According to analysis of costs in Berks County, PA, each successful capital prosecution costs $1.9 million. This figure does not include those cases overturned in the appeals process, those that ended with a plea, and trials that resulted in a hung jury.

7. Connecticut General Assembly H.B. No. 6578, A*n Act Concerning the Penalty for a Capital Felony.*

This bill sought to replace the DP with a penalty of life imprisonment without the possibility of release for certain murders committed on or after the effective date of the bill. The bill was vetoed by Governor M. Jodi Rell in June, 2009 (Public Act 12-5 eventually repealed the DP for all crimes committed on or after April 25, 2012).

8. Cook, Philip J. (2009). Potential Savings from Abolition of the DP in North Carolina. *American Law and Economics Review* (2009) 11 (2), 498-529.

The author found that the state of North Carolina could have saved nearly $10.8 million annually for years 2005 and 2006 if the state's DP were abolished. Without capital cases, for the two-year period more than $21.6 million in criminal justice expenses would have been avoided, including additional defense costs, payments to jurors, post-conviction costs, resentencing hearings, and additional costs to the prison system for accommodating inmates with capital convictions. Not included in the costs were state resources in the Office of the Appellate Defender and the North Carolina Supreme Court, additional time spent by prosecutors in capital cases, and the costs to taxpayers for federal appeals.

9. Erickson, David. *Capital punishment at what price: an analysis of the cost issue in a strategy to abolish the DP*. MPP Thesis. University of California at Berkeley (1993).

This study provides county-level costs of administering the DP in California and per case costs based on data from Los Angeles County. The author indicates distinctions between capital and non-capital cases in areas including the number of motions that must be filed, the number of attorneys per defendant, jury selection days, and full court days. In all areas, capital cases entail significantly more time and cost. The author calculates that the enhanced cost (taking into account average life expectancy of the inmates and the average amount of time a capital defendant spends on death row) of a DP case in California is at least $1.25 million more costly than a comparable case that seeks a sentence of life without parole.

10. *Fiscal Costs of the DP*. Performance audit report, Nevada Legislative Auditor Report #LA14-25 (2014).

The report samples average costs of 28 capital cases and estimates that DP cases, from arrest through the end of incarceration, cost approximately $532,000 more than non-capital cases. Costs included incarceration, medical, and trial and appeals (although these were incomplete, case costs were approximately three times greater than non-capital cases). Nearly every cost center used accumulated higher expenses for capital cases than for non-capital cases. Incarceration costs for offenders who received the DP were only slightly higher than those who received life without the possibility of parole. Medical costs double each decade after inmates reach the age of 35. Savings incurred from plea bargaining depend upon the point in the trial phase when the agreement is reached.

11. A Fiscal Note: *An Act Revising the Penalty for Capital Felonies*. OFFICE OF FISCAL ANALYSIS. sSB-280 (2012). Accessed May 2016 at http://www.palmbeachpost.com/news/news/cerabino-to-save-money-florida-should-kill-death-p/nLpn6/.

This note indicates that repeal of the DP will reduce litigation costs, resulting in savings of up to $850,000 beginning in FY 13. This includes $700,000 for the Public Defenders Service Commission, $150,000 for the Division of Criminal Justice. 2013-14 savings would include yearly savings of $3.38 million for the Public Defenders Service Commission; $1.20 million for the Division of Criminal Justice; and $455,000 per inmate for the Correctional system. The total costs for the most recent prisoner execution at that time was $1.73 million.

12. Forsberg, Mary E., *New Jersey Policy Perspective,* Money for Nothing? The Financial Cost of New Jersey's DP (2005).

Prior to New Jersey's 2007 decision to abolish the DP, the author examines the costs of capital punishment on the state of New Jersey, determining that the state has spent more than $250 million since the law was reinstated in 1982, while no executions have taken place in that time frame. The paper provides an appendix of other states' experiences with the DP.

13. Goss, Ernest and Joseph Phillips. "The Effects of State and Local Taxes on Economic Development: A Meta Analysis." Southern Economic Journal, Vol. 62(2), October 1995, pp. 320-333.

Study provides a meta-analysis of the effect of state and local taxes on economic development. Use of the meta-analytic technique to analyze the studies reviewed by Timothy J. Bartik; Estimate of tax elasticity; Determination of how the inclusion and omission of key variables in the estimated equations influences the elasticity estimates.

14. Gould, Jon B., Greenman, Lisa. Report to the Committee on Defender Services Judicial Conference of the United States. *Update on the Cost and Quality of Defense Representation in Federal DP Cases* (2010).

The authors found that for a DP eligible crime, where the DP was not authorized to be sought, the median cost for defense between 1998 and 2004 was $44,809, with the mean cost at $76,665. For capital cases in which the prosecution of the DP was authorized, the cost of defense for capital cases ranged from $26,526 to $1.79 million. The median cost for authorized cases was $465,602, while the median cost for those that were resolved by a plea was $200,933. The ratio of attorney time spent in-court to that spent out-of-court is greater for trials than pleas. For capital trials, defense counsel spent a median 353 hours in-court and 2,373 hours out-of-court. For pleas, defense attorneys spent a median 42 hours in-court and 992 hours out-of-court.

15. Kansas Judicial Council. DP Advisory Committee. Report of the Judicial Council DP Advisory Committee (2014).

The committee analyzed a sample of 34 capital-eligible cases filed between fiscal years 2004-2011 to capture costs to both state and local governments for the state of Kansas for trial, direct appeal, and additional appeals and proceedings. Costs were examined from the inception of each case. For the period studied the average cost per case to BIDS (Board of Indigents' Defense Service) for trial cases where the DP was sought cost $296,799 more than trial cases where the DP was not sought. BIDS costs, on average, for plea cases where the DP was sought were $65,884 higher than plea cases when the DP was not sought. Average district court costs per case for the period studied for trial cases where the DP was sought were $50,976 greater than trial cases where the DP was not sought. District court costs, on average, for plea cases where the DP was sought were $8,879 higher than plea cases when the DP was not sought. The Department of Corrections determined that the average annual cost to house a death row inmate was $49,380, a figure that is twice the amount to house an inmate in the general population. It was also estimated that for a three-year period, seven Kansas Supreme Court justices spent a total of 2,000 hours on DP cases.

16. Legislative Services Agency *Fiscal Note*, Iowa Fiscal Services Division. 1995. LBS No. 1150HH

The analyst indicated that for capital cases, there will be an estimated nine years between conviction and execution; the average life without parole offender will spend 40 years in prison; capital cases go through three levels of appeal, and 25 percent will return for retrial; an estimated three cases per year will be capital-eligible murder cases; 56.5% of capital murder cases will be prosecuted by county attorneys with the counties bearing the costs; appeals are handled by the Department of Justice. Under proposed law at the time of the analysis, the projected 2036 costs for a capital case were $2.18 million.6. Kansas Judicial Council. DP Advisory Committee. *Report of the Judicial Council DP Advisory Committee* (2014).

17. Legislative Services Agency Office of Fiscal and Management Analysis, *Fiscal Impact Statement, LS 6130, BILL NUMBER: SB 43* (2010).

This bill contains provisions and sentencing guidelines for aggravating circumstances in murder cases. The guidelines permit the prosecuting attorney to request either the DP or life without parole if no other conditions exist in the case that would authorize the prosecuting attorney to do so. Any added costs to the state depend on whether the prosecuting attorney chooses to file for the added enhancement. The bill stats that contested cases with both trial and appeal would be costlier than if the defendant pleads guilty in exchange for life without parole. If the prosecuting attorney elects to request life without parole, the costs will be lower for the state and county.

18. Lenstra, Beth. Legislative Services Agency Fiscal Note, Iowa Fiscal Services Division. 2006. HF 2573 – DP (LSB 6219 HV)

The analyst indicated an average daily housing cost for death row inmates of approximately $120 per day per offender. The average cost per day for county confinement is $50. The executioner works under contract, on a per diem basis. Iowa's cost for a capital conviction was between $418,000 and $760,000, depending upon prosecution and defense costs, and where in the prison system the offender is housed.

19. Louisiana. Legislature. Senate. Creates the Joint Capital Punishment Fiscal Impact Commission. SLS 14RS-850, *Senate Concurrent Resolution No. 16*, 2014. Accessed May 2016 http://www.legis.la.gov/legis/ViewDocument.aspx?d=881738.

Led by State Sen. JP Morrell, D-New Orleans, a resolution for a Capital Punishment Fiscal Impact Commission in Louisiana.

20. Marceau, Justin F., Whitson, Hollis A. (2013). The Cost of Colorado's DP. *University of Denver Criminal Law Review*, 3, 145-163.

This study found that the number of court days and the length of time between charges and sentencing in death prosecutions and aggravated first-degree murder cases result in higher costs. The authors found that capital cases require substantially more days in court and take substantially longer to resolve than non-capital cases. The study concluded that no tangible benefits offset the additional costs and time involved in capital cases. Study results also indicate that the possibility of avoiding the DP does not result in speedier pleas by the defendant. In addition, the authors found that deterrence benefits of the DP are speculative.

21. McLaughlin, Jolie. "Price of Justice: Interest-Convergence, Cost, and the Anti-DP Movement, The." *Nw. UL Rev. 108* (2013): 675.

The author concludes that the emphasis on costs and inefficiencies related to capital punishment has helped convince state lawmakers that abolishment of the DP is in states' best interests. Further, the author suggests that this interest-convergence story is a useful tool for anti-DP advocates when using an economic approach on which to base their arguments.

22. Miethe, Terance D. (2012). Estimates of Time Spent in Capital and Non-Capital Murder Cases: A Statistical Analysis of Survey Data from Clark County Defense Attorneys. *University of Denver Criminal Law Review*, 3, 145-163.

The author surveyed defense attorneys in Clark County, Colorado. Findings related to time and cost differences in time spent between capital and non-capital Murder cases in the county included: 112 percent more was spent on capital murder cases (2,298) than on non-capital murder cases (1,087); defense costs were $170,000 to $212,000 more per capital case than non-capital case; the average capital murder case costs were $229,800 (Public Defender) or $287,250 (Appointed Counsel); the 80 pending capital murder cases at the time of the study for Clark County cost approximately $20 Million; capital cases in the county for 2009-2011 took an average of 1,107 days, or just over three years, while non-capital cases took an average of 387 days, or (1.1 years); for the 35 completed cases in Clark County from 2009-2011 where the DP was sought, five resulted in a death sentence, 17 resulted in life without the possibility of parole, seven resulted in life with the possibility of parole, five resulted in a sentence other than a death or life sentence, and one resulted in dismissal.

23. Morgan, John G. "Tennessee's DP: Costs and Consequences." *Comptroller of the Treasury Office of Research*. (2004): 2011.

This study compares the costs of first-degree murder cases in Tennessee and recommends policy changes to streamline the capital case process. The author concludes that capital cases cost more to conduct than those seeking verdicts of life or life without parole, due to their complexity, additional agencies and individuals involved in the process, time spent by the prosecution and defense, and the expanded appellate process. The study indicates that capital trials cost an average of $46,791; life without the possibility of parole trials cost an average of $31,494 (not including defense costs); and life with the possibility of parole trials cost an average of $31,622.

24. Nebraska Commission on Public Advocacy study of Nebraska Capital Cases (2007). Equal Justice and the DP: A Legal and Empirical Analysis. *By the Numbers from 1973-2007*.

This graphic presents an analysis reaching from initial arrests for murders, to execution for Nebraska. Accessed May 2016 http://nadp.net/death-penal,ty-info/cost.

25. Nebraska. Legislature. Judiciary Committee Hearings on the DP. 13 March, 2013.Testimony presented by Richard C. Deiter, 2001.

This testimony provides a review of numerous studies, including the topics of DP costs, plea bargaining, the declining use of the DP, the innocence issue, time taken by use of the DP, and the relationship between innocence and cost.

26. Nebraska Supreme Court. Citizen's Guide to the Nebraska Appellate Courts. July 2009. Accessed at https://supremecourt.nebraska.gov/sites/supremecourt.ne.gov/files/self-help/citz-guide-appellate-courts.pdf.

This guide, created for self-litigants, provides an overview of the Nebraska appellate court system.

27. New York State Defenders Association. (1982). "Capital Losses: The Price of the DP in New York State." Albany, NY: New York State Defenders Association.

This 1982 report examines the costs of capital litigation and the fiscal impact of the DP on New York State at a time when the state was considering implementing the DP as law. The authors highlighted inadequacies of defense services under the proposed DP bill, and indicate that supporters recognized such and would respond by supplying 'unlimited funds' to the defense in capital cases. The study also concludes that at a cost of $1.4 million at the time of the study that a DP trial alone would exceed the cost of life imprisonment. It was estimated that the cost of the guilt and penalty phases of trial would total approximately $1.8 million, and by the time the first 40 New York capital cases had been tried, more than $59 million will have been spent.By the time the first 21 New York death cases reach the Supreme Court, New York State and its counties would have expended the entire allocation for the statewide Major Offense Prosecution Program. Given the continued escalation of criminal justice costs, it was predicted that by 2000, the DP would cost $1.075 billion annually.

28. Office of Performance Evaluations Idaho Legislature. Joint Legislative Oversight Committee. *Financial Costs of the DP Evaluation Report* 14-02 (2014).

The lack of available cost data prevented Idaho from quantifying the total financial cost of the DP to the state. Therefore, the Joint Legislative Oversight Committee determined the time taken to complete major parts of the guilt and penalty phase. This included: the appeal and post-conviction phase for capital and noncapital first-degree murder defendants, and a comparison of the number of offenders originally sentenced to death with the number of offenders currently serving a death sentence. Their major findings included: Few first-degree murder defendants are sentenced to death and fewer are executed. From 1998-2013, only 7 of 42 DP defendants received a death sentence. Only three of the 40 offenders sentenced to death since 1977 were executed. Concluding a capital trial (reaching guilty or not guilty) takes seven months longer for capital cases than for noncapital cases; statutory requirements that must be adhered to for capital cases cost extra money and include requirements such as extra legal representation for capital case defendants, a mandatory supreme court review of all death sentences, and the readiness that must be maintained for death row prisoners by the Department of Correction.

29. A Report to the Legislative Post Audit Committee by the Legislative Division of Post Audit State of Kansas. *Costs Incurred for DP Cases: A K-GOAL Audit of the Department of Corrections* (2003).

An audit compared estimated cost information for 22 capital punishment-qualifying cases where trial led to conviction. There was a relatively equal mix of cases in terms of DP sought and given, DP sought and not given, and DP not sought. The median trial cost for cases in which the DP was imposed was more than $500,000, compared to approximately $33,000 for non-DP cases reviewed. At just over $400,000, the projected appeal-related costs for the DP cases were more than 20 times the projected cost for cases in which the DP was not sought. The study concluded that because the U.S. Supreme Court ensures that due process is followed for DP cases, there does not appear to be significant opportunity to change the process in a way that would result in savings. However, the state could potentially benefit from attention to other states' implementation of cost-savings measures that do not result in significant legal challenges.

30. Roman, John; Chalfin, Aaron; Sundquist, Aaron; Knight, Carly; Darmenov, Askar. *The Cost of the DP in Maryland*. Urban Institute, Justice Policy Center (2008).

This analysis examined a sample of Maryland's 1,136 capital murder cases that occurred between 1978 and 1999. The average case was found to cost approximately $1.1 million. Costs for cases that were not capitally prosecuted were $1.8 million, while capital-eligible cases cost $3.1 million. For DP cases that began between 1978 and 1999, the cost to Maryland taxpayers was estimated at approximately $186 million.

31. Spangenberg, Robert L., and Elizabeth R. Walsh. "Capital Punishment or Life Imprisonment--Some Cost Considerations." *Loy. LAL Rev.* 23 (1989): 45.

The authors project costs of the capital process and describe how it is more detailed, and thus more costly, than the non-capital process, citing research available at the time of the study. The authors point out that because of the irrevocability of capital punishment, the steps in DP cases in the areas of pretrial, trial and post-trial demand more time and expense for law enforcement, prosecutors, courts, judges, correctional facilities, psychiatric experts, and counsel. The study points out that as of 1978, 85 to 90 percent of murder cases that are arraigned result in guilty pleas. However, guilty pleas are not common when the DP is being sought, and capital cases result in jury trials 10 times more often than do non-capital cases. In addition, voir dire was estimated to take 5.3 times longer in capital cases than non-capital cases; expenses incurred by both the prosecution and the defense during the guilt phase may be duplicated during the penalty phase; an automatic appeal is filed upon imposition of the DP; total defense attorneys' time was measured at 500-1,000 hours; and capital trials take approximately three and one-half times longer than non-capital trials.

32. State of Connecticut Commission on the DP. *Study Pursuant to Public Act No. 01-151 of the Imposition of the DP in Connecticut* (2014).

Created by the Connecticut General Assembly, the "Commission on the DP to study the imposition of the DP in this state" studied fourteen aspects of capital punishment. The Commission made recommendations to the state related to: financial costs; disparity based upon race, ethnicity gender and other factors as well as judicial district; training and experience for prosecutors and defense counsel; appellate and post-conviction review and the imposition of sentence and execution of sentence; procedures for reprieve, stay of execution, or commutation of DP and the authority of governor to grant reprieve; examination of safeguards; effect of victim impact statement; financial resources needed to address delays; studies by other states; and emotional and financial effects of delays on victims. It was found that defense costs for the current death row inmates averaged $380,000 per case, and cited an analysis by Connecticut's Public Defender Services that indicates that defense costs for capital cases are 88% higher than non-capital cases that could result in life without parole.

33. State of Missouri Public Defender Commission. *Fiscal Year 2013 Annual Report* (2013).

The author reports that total defense costs for the capital division were $2.67 million for 19 cases assigned, while all types of cases, including capital cases, numbered 73,666 with a total cost of $24.13 million.

34. Williams, Linda M., Case Study on *State and County Costs Associated with Capital Adjudication in Arizona: Data Set III Research Report to Arizona Capital Case Commission*. (2001).

For years 1990-1993 and 1998-1999 the study found that death sentence cases from indictment through sentencing, as well as appeals, cost an average of nearly $163,897, while non-capital cases cost nearly $70,231. For cases prosecuted capitally, but resulting in life sentences, costs for 1990-1993 were $118,165.9 on average, and for 1998-1999 were $128,454. The study included major cost factors only.

35. Wisckol, M., Quick S., Zisk, S., "Death Penalty Vote Could Come Down to Practicalities." *Orange County Register*, Oct , 2012: accessed at http://www.ocregister.com/articles/death-374323-percent-penalty.html on Apr. 26, 2016.

Appendix D - Researchers' Biographies

Ernie Goss is the Jack MacAllister Chair in Regional Economics at Creighton University and is the initial director for Creighton's Institute for Economic Inquiry. He is also principal of the Goss Institute in Denver, Colo. Goss received his Ph.D. in economics from The University of Tennessee in 1983 and is a former faculty research fellow at NASA's Marshall Space Flight Center. He was a visiting scholar with the Congressional Budget Office for 2003-2004, and has testified before the U.S. Congress, the Kansas Legislature, and the Nebraska Legislature. In the fall of 2005, the Nebraska Attorney General appointed Goss to head a task force examining gasoline pricing in the state.

He has published more than 100 research studies focusing primarily on economic forecasting and on the statistical analysis of business and economic data. His book Changing Attitudes Toward Economic Reform During the Yeltsin Era was published by Praeger Press in 2003, and his book Governing Fortune: Casino Gambling in America was published by the University of Michigan Press in March 2007.

He is editor of Economic Trends, an economics newsletter published monthly with more than 11,000 subscribers, produces a monthly business conditions index for the nine-state Mid-American region, and conducts a survey of bank CEOs in 10 U.S. states. Survey and index results are cited each month in approximately 100 newspapers; citations have included the New York Times, Wall Street Journal, Investors Business Daily, The Christian Science Monitor, Chicago Sun Times, and other national and regional newspapers and magazines. Each month 75-100 radio stations carry his Regional Economic Report.

Scott Strain is a senior research economist at Goss & Associates. He has worked as an economist and statistician for more than 20 years providing forecasts and analysis across a wide-range of industries. Scott served as an industry economist, working in new product development regarding both quantitative and qualitative research. Strain was Senior Director of Research for an economic development agency, providing economic impact and tax incentive analysis to both private businesses and government entities. He served on the business advisory committee that worked with Nebraska state senators and the director of the state's Economic Development Department to develop the Nebraska Advantage Act – a comprehensive package of business incentives that has helped to add more than $6 billion in new capital investment and over 13,000 new jobs in the state of Nebraska since the Act's inception in 2006.

Jackson "Alex" Blalock is a Research Assistant and undergraduate student majoring in economics and finance at Creighton University.