The 2% Death Penalty:

How a Minority of Counties Produce Most Death Cases At Enormous Costs to All

A Report from the Death Penalty Information Center
by Richard C. Dieter, Executive Director

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UPDATE: Following the production of this report, DPIC learned that a death sentence imposed on Raymond Oscar Butler in Los Angeles County, California on May 11, 2012 was a new death sentence, not a capital resentencing. As a result, the number of new death sentences imposed in the U.S. and in Los Angeles County in 2012 are one higher than indicated in the text of this report. The number of prisoners on death row in Los Angeles County and in the United States remains unchanged.

The 2% Death Penalty

EXECUTIVE SUMMARY

Contrary to the assumption that the death penalty is widely practiced across the country, it is actually the domain of a small percentage of U.S. counties in a handful of states. The burdens created by this narrow but aggressive use, however, are shifted to the majority of counties that almost never use it.

The disparate and highly clustered use of the death penalty raises serious questions of unequal and arbitrary application of the law. It also forces the jurisdictions that have resisted the death penalty for decades to pay for a costly legal process that is often marred with injustice.

Only 2% of the counties in the U.S. have been responsible for the majority of cases leading to executions since 1976. Likewise, only 2% of the counties are responsible for the majority of today's death row population and recent death sentences. To put it another way, all of the state executions since the death penalty was reinstated stem from cases in just 15% of the counties in the U.S. All of the 3,125 inmates on death row as of January 1, 2013 came from just 20% of the counties.

Each decision to seek the death penalty is made by a single county district attorney, who is answerable only to the voters of that county. Nevertheless, all state taxpayers will have to bear the substantial financial costs of each death penalty case, and some of the costs will even be borne on a national level.

The counties that use the death penalty the most have some of the highest reversal rates and many have been responsible for errors of egregious injustice. As their cases are reversed, more money will be spent on retrials and further appeals. For example:

- Maricopa County in Arizona had four times the number of pending death penalty cases as Los Angeles or Houston on a per capita basis. The District Attorney responsible for this aggressive use was recently disbarred for misconduct.

- Philadelphia County, with the third largest number of inmates on death row in the country, ranked lowest in the state in paying attorneys representing those inmates.

- During the tenure of one district attorney in New Orleans, four death row inmates were exonerated and freed because of prosecutorial misconduct, bringing a stinging rebuke from four Justices of the U.S. Supreme Court.

Some states have recently chosen to opt out of this process altogether, greatly limiting their obligations for its high costs and disrepute. As the death penalty is seen more as the insistent campaign of a few at tremendous cost to the many, more states may follow that course.

The 2% Death Penalty:

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Although death penalty laws are on the books of 32 states, a mere 2% of the counties in the U.S. generate the majority of executions.

I. Introduction

The notion that America is strongly wedded to the death penalty is not supported by a review of its use over the past 40 years. When examined closely, the practice of the death penalty in the U.S. is highly clustered in relatively few jurisdictions. Only 9 states carried out executions in 2012.[1] Even fewer are likely to do so in 2013. Most states have not had a single execution in over five years. Death sentences in recent years are at their lowest level in four decades.[2]

However, it is only when focusing on the use of the death penalty on a county level that the real disparities are revealed. Only a small minority of counties regularly use capital punishment. Eighty percent (80%) of the counties in the U.S. currently have no one on their states' death row. Eighty-five percent (85%) of the counties have not had a single person executed in over 45 years. Over half of the executions carried out since 1976 come from cases originating in 2% of U.S. counties.[3] Other jurisdictions distance themselves from these high-use counties, which produce a disproportionate share of the mistakes and injustices in capital prosecutions, and a high number of reversals.

[1] . See Bureau of Justice Statistics, "Capital Punishment, 2011—Statistical Tables" (2013), at 3 (information on executions in 2012) [hereinafter *BJS*].

[2] . *Id.* at 19.

[3] . See sources and further details in section III, below.

85% of the counties in the U.S. have not had a single person executed in over 45 years.

Every year hundreds of millions of dollars are spent on the death penalty in the U.S., generated by a small number of counties where prosecutors have made this practice a high priority. The burdens, however, are not restricted to a few counties but are shifted to the entire state.

Moreover, when the death penalty is pursued frequently, it is often litigated poorly, with more reversals, retrials, and greater delays. Counties may pay part of the trial expenses, but states are responsible for much of the expense that follows over the many years that each case requires. The state attorney general's office typically defends death sentences and convictions through 15 or more years of appeals. Keeping an inmate on death row is much more expensive than housing a prisoner in general population. And executions have their own special costs.

When the total costs of the death penalty are divided by the number of executions carried out in a state, the amount can be *$30 million per execution*,[4] including the costs of federal review drawn from taxpayers across the country. As Professor James Liebman of Columbia Law School noted in a study of the burden shifting caused by the death penalty, "[T]he dramatically higher appellate costs instigated by a decision to proceed capitally are mainly triggered by the small set of counties that impose [the] most death sentences and are largely subsidized by state and federal taxpayers …."[5]

This report focuses on two issues deserving greater public attention:

- The death penalty is being mainly driven by a small minority of counties that use it aggressively, while most counties in the U.S. do not resort to it at all.

- These high-use counties do not shoulder their own burdens, but instead shift the costs to every taxpayer, many of whom are unaware of the exorbitant costs or the unfavorable record of reversals and unfairness.

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[4] . See R. Dieter, "Smart on Crime: Reconsidering the Death Penalty in a Time of Economic Crisis" (2009), at 14.

[5] . J. Liebman & P. Clarke, "Minority Practice, Majority's Burden: The Death Penalty Today, 9 Ohio State Journal of Criminal Law 255, 312 (2012) [hereinafter *Liebman Minority Practice*].

II. The Death Penalty by County

Death sentences depend more on the location of the county line than on the severity of the crime.

In examining the death penalty, counties are not just another geographical entity like states and cities. In almost every state, the key decision to charge and pursue the death penalty is made by the district attorney of the county. Typically, this is an elected position, and the chief prosecutor is mainly answerable to the people of the county, rather than to other state officials. A prosecutorial decision is rarely overruled by a higher executive.

Courts, too, give prosecutors wide latitude in their charging discretion. In 1972, the U.S. Supreme Court struck down the death penalty because it was being applied randomly and with little guidance to jurors from state statutes. In 1976, revised laws that attempted to guide the jury's decision-making were approved by the Court as a purported answer to the problem of arbitrariness in sentencing. When objections were raised that the death penalty remained unguided because the key decision resulting in a death case rested with a single person—the charging D.A.—the Court refused to intervene. Justice Byron White, concurring with the majority, wrote:

> [I]t cannot be assumed that prosecutors will be motivated in their charging decision by factors other than the strength of their case and the likelihood that a jury would impose the death penalty if it convicts. ...[D]efendants will escape the death penalty through prosecutorial charging decisions only because the offense is not sufficiently serious; or because the proof is insufficiently strong.[6]

Since that assessment history has not supported Justice White's confidence in the system. Factors such as geography and race appear to play a larger role in choosing to seek the death penalty than the relative severity of the crime or the certainty of outcome.

The key step in a prosecutor's decision is assessing whether a case meets the minimum requirements under the state's death penalty law. This could involve considering an objective fact, such as whether the victim was a police officer or a child, or if the defendant has been convicted of a prior murder. However, it might also rest on more subjective

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[6] . Gregg v. Georgia, 428 U.S. 153, 225 (1976) (White, J., concurring).

considerations, such as whether the crime was "heinous, cruel, or atrocious."[7]

The prosecutor will have to convince a jury beyond a reasonable doubt that at least one aggravating factor applies to the case, and the vague heinousness factor is often a convenient one. A prosecutor may seek the death penalty if he or she reasonably believes the murder satisfies the state supreme court's interpretation of this broad standard.[8]

Although the U.S. Supreme Court originally approved a system of state review comparing cases that resulted in death sentences with those that did not,[9] it later held that such a proportionality review was not essential.[10] Thus, overreaching by a single prosecutor may go unchecked.

[7] . See J. Kirchmeier, "Aggravating and Mitigating Factors: The Paradox of Today's Arbitrary and Mandatory Capital Punishment Scheme," 6 William & Mary Bill of Rights Journal 345, 364 (1998).

[8] . The Supreme Court has held that these criteria may be too vague, but has allowed the state's supreme court to interpret them in a way that narrows the class of death-eligible cases. See *Godfrey v. Georgia*, 446 U.S. 420 (1980). Many states retain such language in their list of aggravating factors making a case eligible for the death penalty.

[9] . See *Gregg*, 428 U.S. at 198.

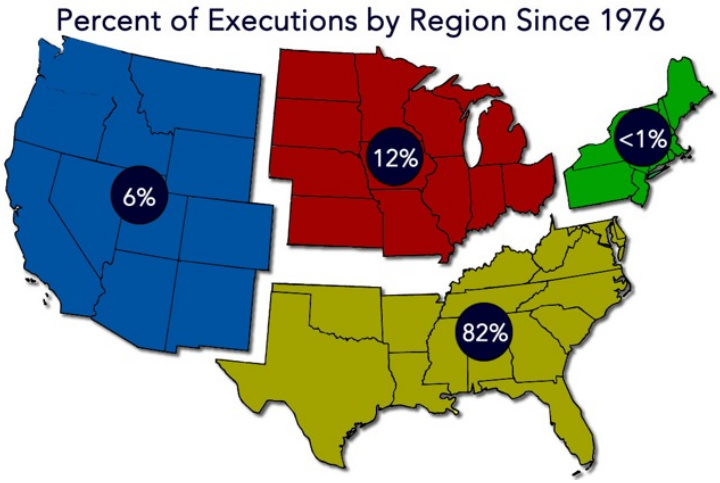
[10] . Pulley v. Harris, 465 U.S. 37 (1984).

III. A Geographic Snapshot of the Death Penalty

All of the state executions since the death penalty was reinstated in 1976 stem from just 15% of the counties in the U.S.

Clearly, the death penalty is not evenly distributed across the country. Texas, for example, has the well-deserved reputation as the capital of capital punishment. Since the reinstatement of the death penalty in 1976, Texas alone has accounted for 38% of the nation's executions. Just four states (Texas, Virginia, Oklahoma, and Florida) have been responsible for almost 60% of the executions. The South has carried out 82% of the executions, the Northeast, less than 1%.[11]

[11] . See DPIC's Execution Database, at http://www.deathpenaltyinfo.org/views-executions. Data are frequently cross-checked with other sources such as the Bureau of Justice Statistics annual reports, see note 1 above.



The true picture, however, is even more unbalanced. Even in Texas, a minority of jurisdictions drive the death penalty statistics. Most of the counties in Texas have not been responsible for a single case resulting in an execution since 1976. Just four counties (Harris, Dallas, Tarrant, and Bexar) account for almost half of the executions in Texas.[12] These counties do represent some of the more populous areas of the state, but they produce nearly 50% of the state's executions while representing only 34% of the population.[13]

California, a state that has a considerably larger population than Texas and the largest death row in the country, has carried out less than 3% as many executions as Texas in the same time span.[14] As in Texas, California's death row mainly comes from a small minority of counties. Over half of the state's death-row inmates come from just three counties (Los Angeles, Riverside, and Orange),[15] even though these counties represent only 39.5% of the state's population.[16]

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[12] . *Id*. DPIC's database includes the county of the trial for each U.S. execution since 1976. Initial research for the county information was conducted by Prof. Frank Baumgartner at the University of North Carolina, Chapel Hill.

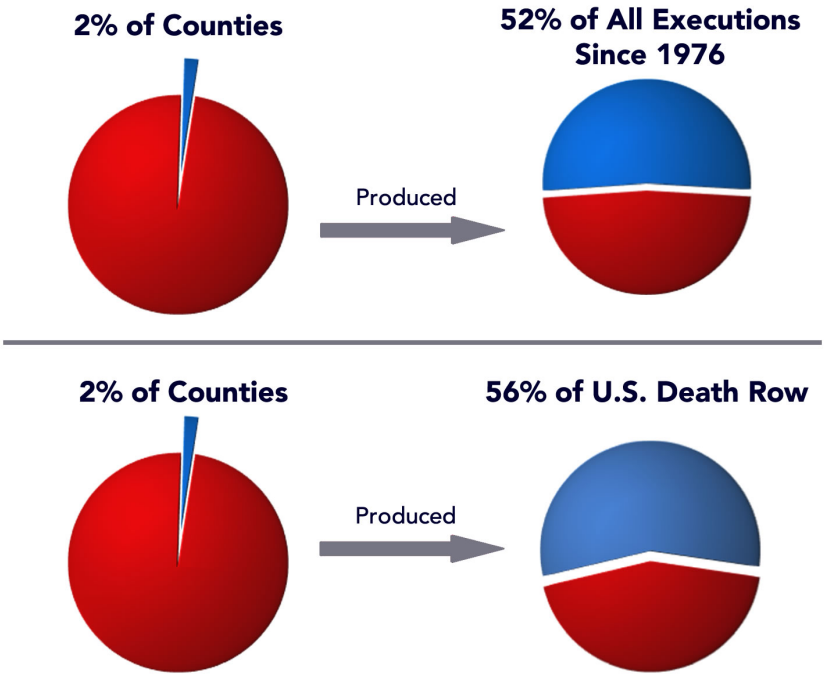
[13] . The top four execution counties in Texas are: Harris - population 3,693,050 (14.2% of the state's population); Dallas - population 2,294,706 (8.8%); Tarrant – population; 1,446,219 (5.5%); Bexar - population 1,392,931 (5.3%).

[14] . See DPIC *Database*, note 11 above. As of July 30, 2013, Texas has carried out 502 executions; California has carried out 13.

[15] . The counties responsible for the inmates on death row were determined by DPIC's research, using state departments of corrections and other sources. An Excel spreadsheet of inmates and their counties can be found at <http://www.deathpenaltyinfo.org/documents/DeathRowCounties.xlsx> (execution and death row data as of Jan. 1, 2013).

[16] . Los Angeles - pop. 9,818,605 (25.8% of the state's population); Riverside - pop. 2,189,641 (5.8%);

The Two-Percent National Death Penalty



Although death penalty laws are on the books of 32 states, a mere 2% of the counties in the U.S. generate the majority of executions.[17] A similar pattern holds true for the 3,125 inmates currently on death row. Just 2% of the counties in the U.S. are responsible for 56% of the population of death row.[18]

Not surprisingly, many of these counties represent high population areas within their respective states. Nevertheless, these counties represent only 15.9% of the U.S. population (execution counties) or 24.7% of U.S. population (death row counties).

Orange - pop. 3,010,232 (7.9%). U.S. Census.

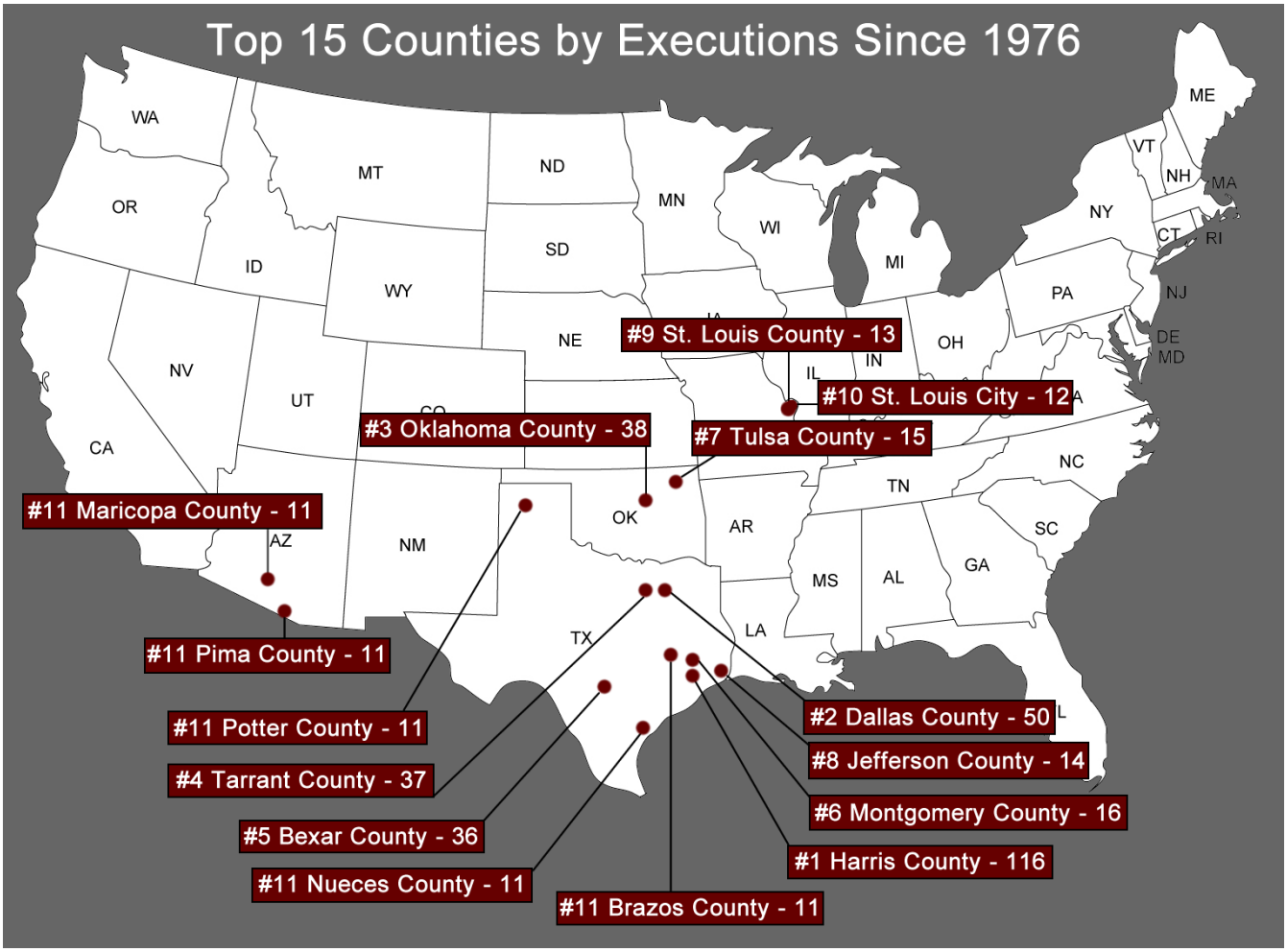
[17] . 62 of the 3,143 counties in the U.S. have been responsible for 693 executions out of a total of 1,320. See Appendix to this report (noting small correction.

[18] . 62 counties are responsible for 1,755 death-row inmates out of a total of 3,125. See Appendix. The counties responsible for the cases resulting in executions are available from DPIC's *Database*, note 11 above. For the counties responsible for the inmates on death row, see note 15 above.

All of the state executions since the death penalty was reinstated in 1976 stem from cases in just 15% of the counties in the U.S. *All* of the 3,125 inmates on death row as of January 1, 2013 came from just 20% of the counties in the U.S.

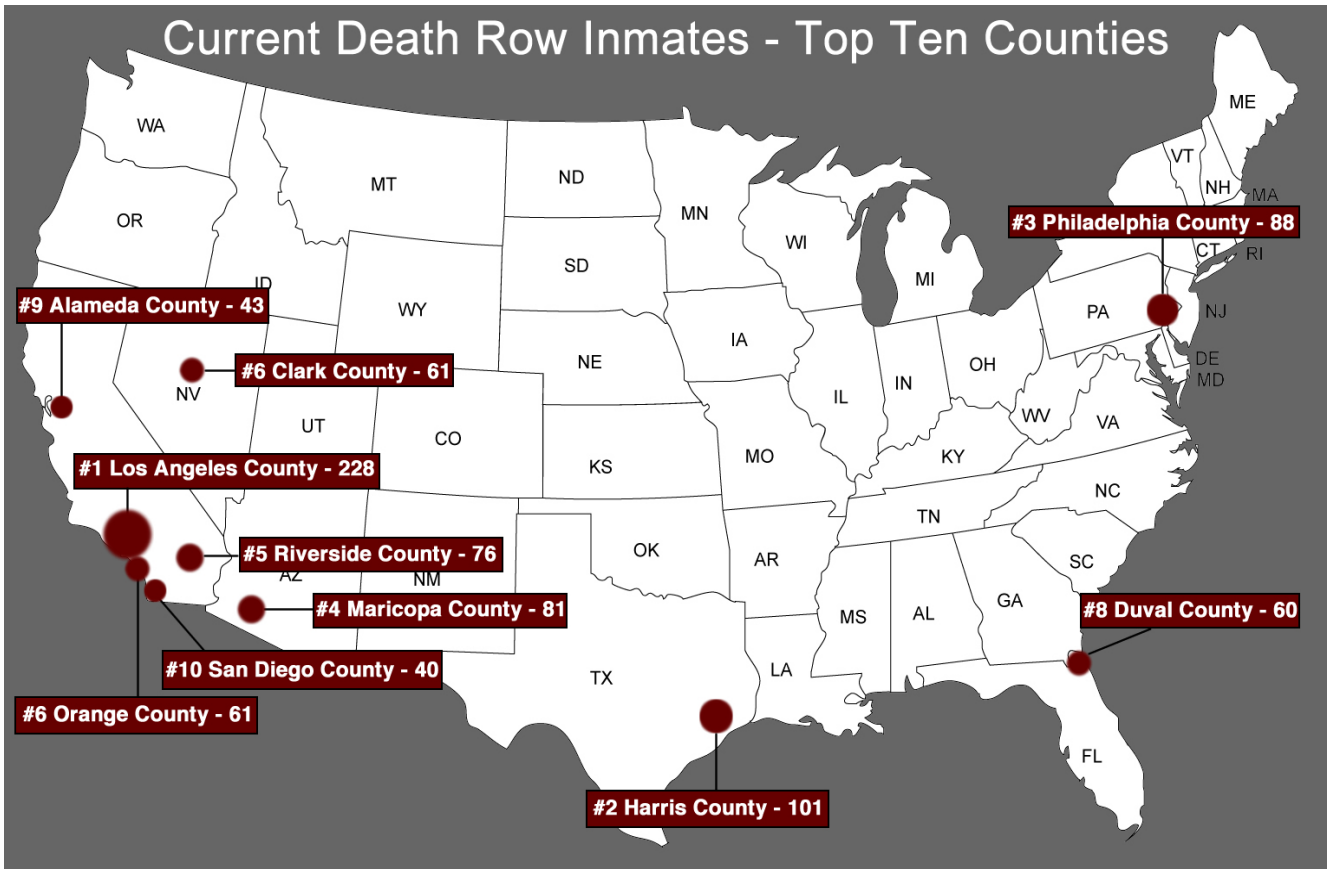
The map below illustrates the top counties in terms of executions over the past 37 years. Similar maps illustrate the top counties responsible for death row and recent death sentences.

(Corrected version)



These 15 counties accounted for 30% of the executions in the U.S. since 1976, but are fewer than 1% of the counties in the U.S.

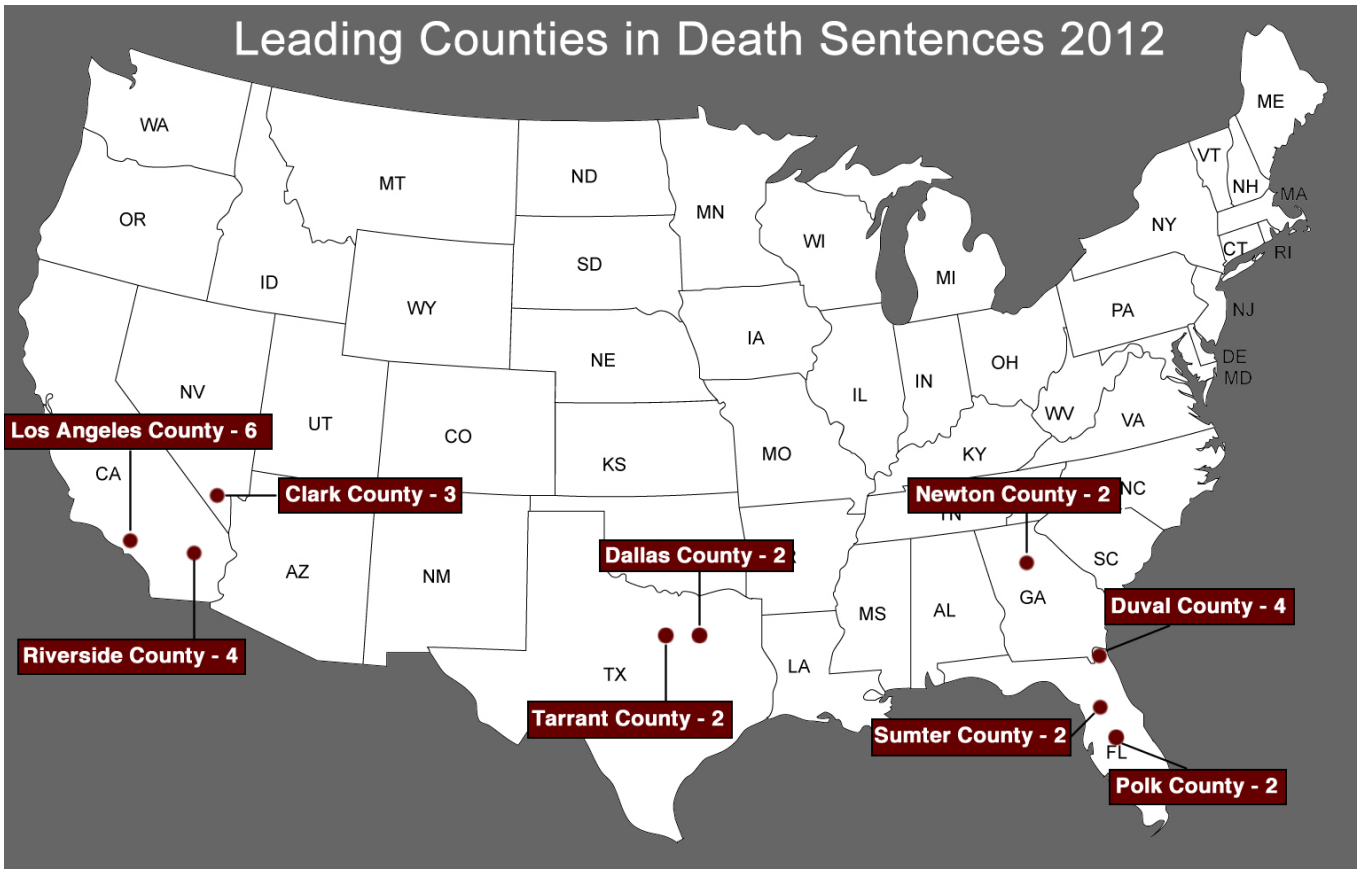
The next map illustrates the top counties in terms of inmates on death row as of January 1, 2013. Again, a small percentage of counties produce a high percentage of the death row population.



These 10 counties account for over 27% of all death row inmates as of Jan. 1, 2013, but are fewer than 1% of the counties in the U.S.

These patterns continued with the new death sentences in 2012. (See map below.) Fewer than 2% of the counties in the U.S. (59 out of 3,143) were responsible for all of the death sentences last year.[19]

Of course, the counties responsible for death sentences may vary from year to year, thereby expanding the total number of counties participating in the death penalty. However, even over long periods of use the death penalty remains highly isolated. Professor Liebman tracked all death sentences over a 23-year period (1973-1995). He found that 90% of the country's death sentences came from just 16% of the counties in the U.S.[20] The leading death-sentencing counties in 2012 are shown below; the total number of new death sentences was 78.



These 9 counties accounted for 35% of the death sentences in 2012, but are fewer than 1% of the counties in the U.S.

[19] . See DPIC, at http://www.deathpenaltyinfo.org/2012-sentencing.

[20] . *Liebman Minority Practice*, note 5 above, at 265.

Research by academic experts has both informed and confirmed the above statistics showing wide disparities among counties within death-penalty states. Professor Liebman's major study of every U.S. death sentence[21] found sparse use of the death penalty in much of the country:

> [T]hirty-four states sentenced at least one person to death, yet fully 60% of the counties in those states did not impose a single sentence of death over the twenty-three year period—out of an estimated 332,000 homicides and 120,000 murder convictions occurring there during that time. Even in Texas, nearly 60% of its counties did not impose a single death sentence in the period.[22]

Although 68% of U.S. states allowed capital punishment, "More than half of the death sentences imposed nationwide over the twenty-three-year *Broken System* study period originated in only sixty-six, or 2%, of the nation's 3,143 counties, parishes and boroughs."[23]

Professor Robert J. Smith of the University of North Carolina examined a more recent group of death sentences—those between 2004 and 2009—and found similar geographical disparities:

> Even in those states that most often impose the death penalty, the majority of counties do not return any death verdicts. The geographic distribution of death sentences reveals a clustering around a narrow band of counties: roughly 1% of counties in the United States returned death sentences at a rate of one or more sentences per year from 2004 to 2009.[24]

Professor Smith describes how the decisions by a single prosecutor can affect the death penalty more than the collective decisions in an entire state:

> In 2009, Los Angeles County, California sentenced

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[21] . J. Liebman et al., "A Broken System: Error Rates in Capital Cases, 1973-1975, (2000), http://www2.law.columbia.edu/instructionalservices/liebman/liebman_final.pdf [hereinafter *Liebman Part I*]; and "Broken System, Part II: Why There is So Much Error in Capital Cases, and What Can Be Done About It" (2002) http://www2.law.columbia.edu/brokensystem2/ [hereinafter *Liebman Part II*].

[22] . *Liebman Minority Practice*, note 5 above, at 264.

[23] . *Id.* at 264-65.

[24] . R. Smith, "The Geography of the Death Penalty and Its Ramifications," 92 Boston University Law Review 227, 228 (2012).

the same number of people to death as the State of Texas. Maricopa County, Arizona sentenced more people to death than the State of Alabama. This is not the exception to the rule; just 10% of counties in the United States account for all death sentences imposed from 2004 to 2009.[25]

IV. A Few Counties Dominate Within States

More than anything else, therefore, it is the practices, policies, habits and political milieu of local prosecutors, jurors and judges that dictate whether a given defendant in the United States—whatever his crime—will be charged, tried, convicted and sentenced capitally and executed.

-James Liebman, Minority Practice[26]

Similar geographical disparities have been found in research conducted within single states. Professor Raymond Paternoster of the University of Maryland examined the different rates among Maryland counties in seeking the death penalty. His 2003 study, which controlled for numerous case characteristics, found wide disparities even among neighboring counties:

> [T]he probability that a notification to seek death will be filed in Baltimore County is over 13 times higher than in Baltimore City, even after taking into account important case characteristics. The probability of being death notified if a case is in Baltimore County is over five times greater than if it occurred in Montgomery County and three times greater than if it occurred in Anne Arundel County….*What these results indicate is that clearly the jurisdiction where the homicide occurs matters and matters a great deal.*[27]

Maryland abolished the death penalty in 2013.

In 2011 Professor John Donohue of Stanford University Law School published a study of Connecticut's death penalty. As with Paternoster's study, he found geographical disparities in the application of the death penalty,

[25] . *Id.* at 233.

[26] . *Liebman Minority Practice*, note 5 above, at 262.

[27] . R. Paternoster et al., "An Empirical Analysis Of Maryland's Death Sentencing System With Respect To The Influence Of Race And Legal Jurisdiction" (2003), at 30-31 (emphasis added).

even when controlling for the differences in case characteristics. Donohue's study revealed dramatically different standards of death sentencing across Connecticut. In particular, he noted:

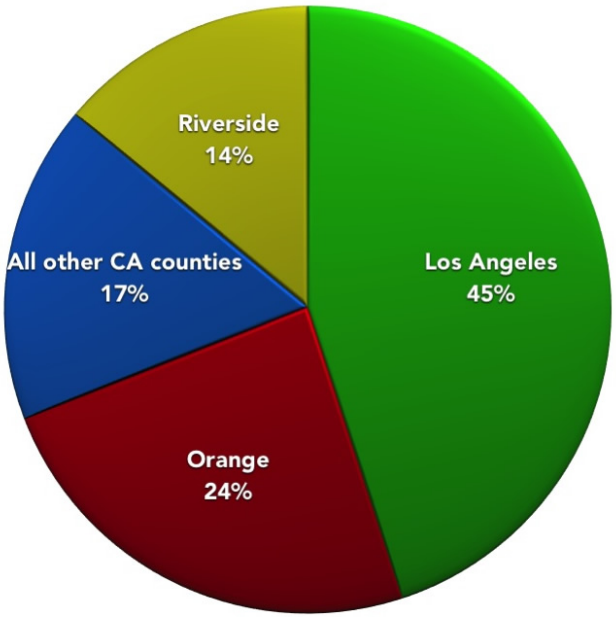
> Capital-eligible defendants in Waterbury are sentenced to death at enormously higher rates than are capital-eligible defendants elsewhere in the state. The arbitrariness of geography in determining criminal justice outcomes is a dominant factor in the Connecticut death penalty regime, despite the fact that, as a small state with no judicial election of judges or prosecutors, there is no articulated rationale for tolerating such immense geographic variation in capital sentencing.[28]

Connecticut abolished the death penalty in 2012.

When California experienced a spike in the number of death sentences in 2009, the American Civil Liberties Union of Northern California determined which counties were responsible:

> In 2009, only six counties accounted for 96.6% of death sentences. Even more startling, just three counties—Los Angeles, Orange and Riverside—accounted for 83% of death sentences in 2009. Only 41% of California's population lives in these counties. Together, these three counties sentenced more people to die in 2009 than the entire state did each year from 2002 to 2008. It is the increase in death sentencing in just these three counties that accounts for the high number of death sentences statewide in California in 2009.[29]

California Death Sentences 2009



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[28] . J. Donohue, "Capital Punishment In Connecticut, 1973-2007: A Comprehensive Evaluation From 4686 Murders To One Execution" (2011), at 8.

[29] . N. Minsker et al., "Death in Decline '09," ACLU of Northern California (2010), at 2.

The isolation of the death penalty to a few counties has grown more pronounced in recent years. In an earlier study the ACLU found that from 2000 to 2007, 10 counties accounted for 83% of the state's death sentences, whereas in 2009 only 3 counties produced that same percentage.[30]

Statistics in other states show similar patterns. About one-quarter of **Ohio's** death row inmates come from Hamilton County (Cincinnati), but only 9% of the state's murders occur there.[31] Research by Professor Baumgartner showed that 74% of the counties in **North Carolina** have not had a case resulting in an execution since 1977.[32] Counties differ widely in their use of the death penalty. For example, since 1977 Northampton County, in the east, had over 8% of its murders result in a death sentence. Caldwell County, in the west, had more murders than Northampton, but had a death-sentencing rate of about one-half of 1%—a sixteen-fold difference.

An investigation by seven **Indiana** newspapers in 2001 found use of the death penalty depended on factors such as the views of individual prosecutors and the financial resources of the county. Two Indiana counties produced almost as many death sentences as all of the other Indiana counties combined.[33]

Houston had 8% more murders than Dallas, but 324% more death row inmates; 15% more murders than San Antonio, but 430% more death row inmates.

Significant sentencing disparities exist within **Texas** as well. A 2005 study examined the practices of the three most populous counties of the State. At that time, Harris County (Houston area) had 159 inmates on death row, while Dallas County had 49, and Bexar County (San Antonio area) had 37. FBI statistics showed the per capita rate of murder in each of the three cities was similar: Houston had 8.4 murders per 100,000 people, Dallas had 7.8, and San Antonio had 7.3. Houston had 8% more murders than Dallas, but 324% more death row inmates; 15% more murders than San Antonio, but 430% more death row inmates. Population differences also did not explain the geographic disparities. According to the 2000 census, Harris County had 3.4 million people, while Dallas and

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[30] . *Id.*

[31] . R. Willing and G. Fields, *Geography of the Death Penalty*, USA Today, Dec. 20, 1999.

[32] . F. Baumgartner, correspondence to the author, with research databases, Aug. 12, 2013.

[33] . South Bend Tribune, Oct. 21, 2001.

Bexar Counties had a combined population of 3.6 million people. Still, Harris County had almost twice as many people on death row as Dallas and Bexar Counties combined.[34]

Florida has led the country in the number of death sentences in the past two years, and has the second largest death row in the country. It also has had more people exonerated and freed from death row than any other state in the country. Within the state, over 28% of the most recent 60 death sentences come from just one of the state's 20 judicial districts (the 4th Judicial District, including Duval, Clay, and Nassau Counties).[35]

Finally, Professor David Sloss of St. Louis University School of Law examined Missouri's use of the death penalty. He found the death penalty is rarely used—95% of intentional murder cases are never presented to juries as capital cases. However, geography seemed to play a key role in which cases were selected as capital. Prosecutors in St. Louis County pursued capital trials in more than 7% of their intentional homicide cases. In contrast, prosecutors in Jackson County (Kansas City) pursued capital trials in less than one-half of 1% of their cases, a fourteen-fold difference.[36]

Often the same studies that found geographical anomalies in the use of the death penalty also found that race, particularly race of the murder victim, played a significant role in applying the death penalty (see, for example, the studies in Maryland, Connecticut, Texas, and Missouri).[37]

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[34] . "Minimizing Risk," Texas Defender Service (2005), at 39.

[35] . See Florida Dept. of Corrections, at <http://www.dc.state.fl.us/activeinmates/deathrowroster.asp> (17 of 60, including 13 from Duval County alone).

[36] . D. Sloss, "Death penalty: In Missouri, where you live may matter," St. Louis Beacon, May 1, 2008.

[37] . See Paternoster, note 27 above, at 39 (MD); Donohue, note 28, at 7 (CT); Minimizing Risk, note 34, at 40-2 (TX); K. Barnes, D. Sloss, & S. Thaman, "Life and Death Decisions: Prosecutorial Discretion and Capital Punishment in Missouri," Arizona Legal Studies Discussion Paper No. 08-03, March 2008, at 55-8 (MO).

V. Costs Borne by All

Prosecuting a death penalty case through a verdict in the trial court can cost the prosecution well over $1 million dollars....my total operating budget for this office is $4.6 million and with that budget we prosecute 1,900 felonies, per year.

-Boulder County, Colorado, D.A. Stan Garnett

All of the costs of the death penalty are borne by the taxpayers. Because most capital cases emanate from a tiny minority of jurisdictions, this cost is shifted to the majority of Americans who live in areas that almost never use the death penalty by the minority that uses it profusely.

National estimates for the cost of the death penalty are difficult to compute because many states have not examined their own costs. Nevertheless, it is possible to obtain an approximation of the total cost by looking at typical costs in a single case. One of the most recent and thorough studies of death-penalty expenses concluded that the gross cost of one death sentence over the duration of the case was $3 million.[38]

Since 1973, when states began sentencing people to death under new capital punishment statutes, there have been 8,300 death sentences through the end of 2011.[39] Using the cost estimate above, the bill to U.S. taxpayers for those sentences amounts to almost $25 billion, a staggering sum for the 85% of U.S. counties that have not had a single case resulting in an execution.

If this cost is divided by the number of executions during that time, the result is that taxpayers are doling out almost $20 million *per execution*. Instead of one execution, states could pay the salaries of over 250 more police officers or teachers for a year at $75,000 each.

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[38] . J. Roman et al., "The Cost of the Death Penalty in Maryland," The Urban Institute (March 2008), at 2. Although this is a gross cost, it is a significant underestimation because it does not count the costs of murder cases in which the death penalty is sought but not imposed. In Maryland over the study period, those cases added $71 million to cost of the death penalty. The total cost to taxpayers for the death penalty over 22 years was $186 million. Five executions were carried out during this time, equivalent to $37 million per execution.

[39] . See *BJS*, note 1 above, at 19.

The costs of the death penalty to many states have been enormous, far exceeding what a few counties could absorb. In New York and New Jersey, the high costs of capital punishment were one factor in those states' decisions to abandon the death penalty. New York spent about $170 million over 9 years and had no executions. New Jersey spent $253 million over a 25-year period and also had no executions.[40]

In Kansas, the costs for the appeals in a death penalty case were estimated to be 21 times greater than for a non-death penalty case.[41] In 2008, the California Commission on the Fair Administration of Justice found that the state was spending $137 million per year on the death penalty. The Commission estimated a comparable system that sentenced the same inmates to a maximum punishment of life without parole would cost only $11.5 million per year.[42]

Counties that use the death penalty bear only a small fraction of the overall costs. Death-penalty costs can be broken into three categories: trial-related costs, appellate costs, and incarceration costs. (The cost of an actual execution is negligible by comparison.) Trial costs may be split between the county that brings the prosecution and the state. Counties usually pay for appointed defense counsel, while the chief prosecutor of the county and the judge may be paid by the state. Some states provide assistance to counties that bring capital cases because of the financial burden they cause.

When death sentences are overturned, the costs multiply further. If death is sought a second time, new trial and appellate costs are generated. Moreover, 82% of the defendants whose cases are overturned eventually receive a sentence less than death.[43] Two of the most expensive aspects of the criminal justice system are the death penalty (because of its expensive trial and appeals) and a sentence of life without parole (because of its lengthy incarceration). The death sentences that are overturned and result in life sentences combine both of these expensive results, at enormous costs to the taxpayer. The burden is borne by all, not just those in the county that elected the prosecutor.

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[40] . See Dieter, note 4 above at 14, with accompanying footnotes.

[41] . Performance Audit Report: Costs Incurred for Death Penalty Cases: A K-GOAL Audit of the Department of Corrections, Kansas (2003).

[42] . See California Commission on the Fair Administration of Justice, http://www.ccfaj.org/rr-dp-official.html, June 30, 2008.

[43] . *Liebman Minority Practice*, note 5 above, at 292.

As a case moves into appeals, the cost burden shifts to the state. The state's Attorney General defends the conviction and sentence, and appellate judges are paid by the state. The defense attorney may initially be the same lawyer who handled the trial, but will change to a new attorney paid at state expense for the latter part of the state review process. Finally, the federal appeal (habeas corpus review) will be partly borne by state taxpayers (work done by the state's Attorney General) and partly by all U.S. taxpayers.

The costs of incarceration on death row are the responsibility of state taxpayers. Keeping an inmate on death row for a year is typically much more expensive than keeping a non-capital inmate in the general prison population, due to higher guard-to-inmate ratio and tighter security measures.[44] Inmates on death row are usually in isolation cells, fed through a slot in the cell door; they have guards accompanying them to visits, and rarely participate in the work of the prison.

Although a detailed allocation of the county, state, and federal shares of death-penalty costs is beyond the scope of this report, clearly only part of the costs is borne by the tiny number of counties that produce the majority of death sentences. The rest of the burden is shifted to taxpayers who have little say in how other counties and states choose to prosecute cases.

The high costs of the death penalty are one reason lawmakers in six states recently chose to end the death penalty.[45] (Although these states will experience significant savings, the costs of federal review of state cases and the cost of the federal death penalty death penalty will continue to be borne by all taxpayers.)

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[44] . See A. Alarcon & P. Mitchell, "Executing the Will of the Voters?: A roadmap to mend or end the California legislature's multi-billion dollar death penalty debacle," 44 Loyola of Los Angeles Law Review S41, S105 (Special Issue 2011) (death row cost additional $90,000 per inmate per year).

[45] . See R. Dieter, "The Issue of Costs in the Death Penalty Debate," at 16-22 (forthcoming in J. Acker, et al. (eds.), *America's Experiment With Capital Punishment*, 3d ed. (2014)). The six states are Maryland, Connecticut, Illinois, New Mexico, New Jersey, and New York.

Opting Out of the Death Penalty

Over long periods of our country's history, the people of many states have seen the death penalty as incompatible with who they are.

The significant cost burdens to both the state and the county are one reason some prosecutors do not seek the death penalty. As Boulder County (CO) District Attorney Stan Garnett remarked, "Prosecuting a death penalty case through a verdict in the trial court can cost the prosecution well over $1 million dollars....my total operating budget for this office is $4.6 million and with that budget we prosecute 1,900 felonies, per year."[46] Montana Assistant Attorney General John Connor expressed broader reasons for opting out of the death penalty system: "It seems to me to be the ultimate incongruity to say we respect life so much that we're going to dedicate all our money, all our resources, our legal expertise and our entire system to try and take your life. . . . Frankly, I just don't think I can do it anymore."[47]

Costs are not the only reason 18 states have chosen to end the death penalty and many counties never use it. Over long periods of our country's history, the people of many states have seen the death penalty as incompatible with who they are. Michigan, for example, has not had the death penalty since 1847, far longer than our European allies. Wisconsin abolished the death penalty in 1853, Maine in 1887, and Minnnesota in 1911. Neither Alaska nor Hawaii has had the death penalty since they became states over 50 years ago.

Governor Lincoln Chafee of Rhode Island recalled his state's long history of rejecting the death penalty as justification for his refusal to turn over a defendant for federal death-penalty prosecution: "To voluntarily let Mr. Pleau be exposed to the federal death penalty for a crime committed in Rhode Island would be an abdication of one of my core responsibilities as governor: defending and upholding the legitimate public-policy choices made by the people of this state."[48]

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[46] . S. Garnett, "DA: Death penalty not practical in Colorado," Daily Camera, December 16, 2012 (no death verdicts in 140 years).

[47] . Associated Press, Mar. 10, 2007.

[48] . L. Chafee, "My Pleau stand affirms core R.I. values," Providence Journal, August 24, 2011. Although Rhode Island was eventually compelled to turn over Pleau for federal prosecution, the U.S. Attorney then accepted a plea

More recently, states have abolished the death penalty even in the aftermath of notorious crimes. New York ended its death penalty *after* the terror attacks of 9/11. Connecticut voted to stop capital punishment in 2012, even with a heinous home invasion and murder of a well-known doctor's family still prominent in the news. However, despite such principled positions, the people of all states are still saddled with some of the costs and the injustices of the death penalty generated by the few jurisdictions that use it aggressively.

VI. Legal Failings in Representative Counties

One might expect counties responsible for a disproportionate use of the death penalty to be the ones most skilled in this difficult area of the law and best able to pursue capital convictions that withstand legal scrutiny. However, the record of some prominent counties shows the opposite to be true. There is a strong correlation between the prolific application of the death penalty and the high percentage of cases being reversed on appeal. Counties with the most death sentences have some of the worst records for legal errors. Liebman's report found:

> The higher the rate at which a state or county imposes death verdicts, the greater the probability that each death verdict will have to be reversed because of serious error. The overproduction of death penalty verdicts has a powerful effect in increasing the risk of error. Our best analysis predicts that:
>
> - Capital error rates more than *triple* when the death-sentencing rate increases from a quarter of the national average to the national average, holding other factors constant.
>
> - When death sentencing increases from a quarter of the national average to the highest rate for a state in our study, the predicted increase in reversal rates is *six-fold*—to *about 80%*.[49]

The combination of aggressive use of the death penalty and systemic abuses in Harris County (Houston), Texas, has been well documented.[50] Racial disparities,

bargain, thereby avoiding the possibility of a death sentence.

[49] . See *Liebman Part II,* note 21 above, at ii (Executive Summary).

[50] . See, e.g., M. Tolson, "A Deadly Distinction," Houston Chronicle,

flawed forensic science, and other injustices in the death penalty paralleled its reputation as the county that exceeded not only every other county in the country but also every state (except Texas itself) in executions. (However, underscoring the death penalty's dependence on single individuals, a change in the chief prosecutor in Harris County has made a dramatic difference in its use of the death penalty.[51] New death sentences are now rare, with none in 2012.) A closer review of the practices in other counties that have used the death penalty widely also illustrates their record of errors.

PHILADELPHIA – Reversals and Race

Philadelphia County ranks third among counties in the country in terms of the number of people on death row. Nearly half (43%) of Pennsylvania's death row comes from Philadelphia County. However, capital convictions there are frequently reversed on appeal and later reduced to life sentences because the county did not provide adequate representation to many defendants. According to a 2011 study by the *Philadelphia Inquirer*, 69 Philadelphia death penalty cases have been reversed or sent back by state or federal courts after findings that the defense attorney's inadequate performance deprived the defendant of a fair trial.[52] When these cases were retried, almost all of the defendants received a sentence less than death, and some were acquitted altogether. The *Inquirer* noted that court-appointed lawyers in Philadelphia received $2000 for trial preparation in a capital case and $400 per day in court, the lowest fees in the state.

A study mandated by the Pennsylvania Supreme Court found racial bias in the application of the death penalty, especially in Philadelphia. After controlling for the seriousness of the offense and other non-racial factors, researchers cited by the court found African-American defendants were sentenced to death at a significantly higher rate than similarly situated non-African Americans; they concluded one-third of African Americans on death row from Philadelphia County would have received life sentences were they not African American.[53]

Feb.5, 2001; S. Phillips, "Racial Disparities in the Capital of Capital Punishment," 45 Houston Law Review 807 (2008).

[51] . See D. McCord, "What's Messing With Texas Death Sentences?" pub. by Drake University Law School (2010).

[52] . N. Phillips, "In life and death cases, costly mistakes," Philadelphia Inquirer, October 23, 2011.

[53] . See *Final Report of the Pennsylvania Supreme Court Committee on Racial and Gender Bias in the Justice System* (1999) 201, 218.

Pennsylvania has the fourth largest death row in the country. During the 39 years since the death penalty was reinstated, there have been 3 executions, all of inmates who waived their appeals. Despite the fact that only 4% of counties there have had a case result in an execution, the whole state pays for much of this expensive and often biased system, which has amassed a death row of 200 inmates. Years of appeals, with the high costs of security needed for death row, have mostly led to overturned cases, with sentences ultimately reduced to life terms. In reality, the death penalty is functioning only as a very expensive form of life-without-parole incarceration.

MARICOPA (PHOENIX) – A Reckless Crusade

Maricopa County in Arizona ranks fourth among counties in the country in the number of inmates on death row. A few years ago its chief prosecutor created an immense crisis when he decided to use the death penalty more aggressively than his predecessors or other prosecutors in the state. At the height of his term, Maricopa County Attorney Andrew Thomas had 149 death penalty cases pending, far more than could be handled by the courts or the defense bar.[54] On a per capita basis Maricopa County had four times as many cases pending as Los Angeles, California, and Harris County (Houston), Texas, both known for their high use of capital punishment.[55]

Arizona is one of many states that include a catch-all aggravating factor, allowing crimes that are "especially heinous, cruel, or depraved" to be capitally charged. The Maricopa County Attorney alleged that aggravator in 78% of its capitally-charged cases.[56]

Andrew Thomas resigned as County Attorney, and in 2012 he was unanimously disbarred by the Arizona Supreme Court for numerous instances of abuse of power.[57] The statement of probable cause in the disbarment proceedings, though not necessarily related to his pursuit of the death penalty, provide a stark picture of his professional character:

> Ethical violations by respondent, as described by Independent Bar Counsel, are far-reaching and numerous. Evidence thus far adduced portrays a reckless, four-year campaign of corruption and power abuse by respondent as

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[54] . C. Dupont and L. Hammond, "Capital Case Crisis in Maricopa County, Arizona: A Response From the Defense," 95 Judicature 216 (2012).

[55] . *Id.*

[56] . *Id.* at 217.

[57] . R. Stern, "Andrew Thomas and Lisa Aubuchon Disbarred," Phoenix New Times, April 10, 2012.

> a public official, undertaken at enormous and mostly wasteful cost to the taxpayers... Motivation for much of the alleged impropriety appears retaliatory, intended to do personal harm to the reputations of judges, county supervisors and other county officials... Actions by respondent appear intent on intimidation, focused on political gain, and appear fully disconnected from professional and prosecutorial standards long associated with the administration of justice ....[58]

In 2010 Thomas made an unsuccessful run for state Attorney General and plans to run for governor in 2014. After his departure, the crisis in death penalty prosecutions subsided. He was succeeded by William Montgomery, who has pushed for more executions and the elimination of federal habeas corpus review, which he called "unnecessary." He also recommended defunding the Federal Public Defender's Office, which represents death row inmates in such proceedings.[59]

ORLEANS PARISH (NEW ORLEANS) – Innocence and Misconduct

The majority of counties ("parishes") in Louisiana have no one on the state's death row and have had no cases resulting in an execution since the death penalty was reinstated in 1976.[60] About 14% of the executions in Louisiana are from cases originating in New Orleans, and about 9% of its death row population comes from that parish. However, even more significant than the number of death judgments from New Orleans is the number found to be in error. According to Professor Liebman's study, cases from New Orleans had a 73% error rate, higher than the national average and the highest among Louisiana's parishes with at least 600 homicides in the 23-year study period.[61]

For 30 years (1973-2003) the District Attorney in Orleans Parish, the person responsible for death-penalty decisions, was Harry Connick, Sr. During his tenure, four death row inmates were exonerated and freed from death row. The basis for the wrongful

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[58] In re Andrew Thomas, Probable Cause Order, State Bar of Arizona (Dec. 6, 2010), available at <http://vvoice.vo.llnwd.net/e14/5718388.0.pdf>.

[59] . See *Dupont,* note 54 above, at 220.

[60] . From DPIC's databases, 25 of Louisiana's 64 parishes have someone on death row; 14 have had an execution. See notes 11 & 15, above.

[61] . See *Liebman Part II*, note 21 above, at 304.

convictions in all four cases was prosecutorial misconduct:

- **Dan Bright** was convicted mostly on the testimony of one witness, a convicted felon who, in violation of his parole, was drunk on the day of the crime. However, the witness's criminal record was not revealed to the defense. Bright was freed in 2004 after all charges against him were dismissed.[62]

- **Shareef Cousin** was sentenced to death for a crime he allegedly committed at age 16. His conviction was overturned because the prosecution mishandled and improperly used key evidence. In 1999 all charges were dismissed.[63] One of the prosecutors was disciplined for his actions.

- **Curtis Kyles** was tried five times before the prosecution finally dismissed charges. The U.S. Supreme Court overturned his only conviction because the prosecution withheld extensive evidence. Kyles was freed in 1998.[64]

- **John Thompson's** conviction was overturned when a Louisiana appellate court found the prosecution intentionally withheld exculpatory evidence Thompson could have used in his defense.[65] Thompson later sued the parish for compensation for the 18 years he wrongfully spent in prison, including 14 on death row. Although he initially won a monetary award, the U.S. Supreme Court ultimately reversed it, holding the individual violations did not establish "an official government policy" of misconduct.[66]

Four Justices dissented from the ruling denying compensation, with Justice Ginsburg writing an opinion sharply criticizing Connick's practices, especially his refusal to turn over key evidence to the defense, as required under the Supreme Court's previous decision in *Brady v. Maryland*:

> From the top down, the evidence showed, members of the District Attorney's Office, including the District Attorney himself, misperceived *Brady*'s compass and therefore inadequately attended to their disclosure obligations.

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[62] . See generally DPIC's Innocence List, with links to descriptions of individual cases and supporting sources, at http://www.deathpenaltyinfo.org/innocence-and-death-penalty.

[63] . *Id.*

[64] . *Id.*

[65] . *Id.*

[66] . Connick v. Thompson, 131 S. Ct. 1350 (2011).

> Throughout the pretrial and trial proceedings against Thompson, the team of four engaged in prosecuting him for armed robbery and murder hid from the defense and the court exculpatory information Thompson requested and had a constitutional right to receive. The prosecutors did so despite multiple opportunities, spanning nearly two decades, to set the record straight. Based on the prosecutors' conduct relating to Thompson's trials, a fact trier could reasonably conclude that inattention to *Brady* was standard operating procedure at the District Attorney's Office.[67]

ALAMEDA (OAKLAND-HAYWARD, CA) – Splitting the County

In many states, significant differences have been noted between the use of the death penalty in one county compared to other counties within the same state, such as between Baltimore County and Baltimore City in Maryland. In Alameda County, California, however, a recent study revealed sharp discrepancies between the way the death penalty was applied within two parts of the same county.

A recent study headed by Professor Steven Shatz of the University of San Francisco School of Law[68] looked at the application of the death penalty in what was designated as "North County" (the city of Oakland) and "South County" (mainly the city of Hayward) within Alameda County, which ranks fourth among California counties in the number of inmates currently on death row. Although North County had by far the higher number of murders, the death penalty was more likely to be sought in South County, even when controlling for similar cases. The authors of the study noted that North County has a much higher percentage of African-American residents (30%) than South County (5%), and murder victims in North County tend to be black (71% of victims), whereas murder victims in South County tend to be white (50% of victims, whereas only 16% of the victims were black).[69]

The study's conclusions come as no surprise to those who study racial disparities in the death penalty. A considerable body of research conducted over many years in multiple states have consistently come to the conclusion that defendants are

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[67] . *Id.* at 1370 (Ginsburg, J., dissenting).

[68] . S. Shatz and T. Dalton, "Challenging The Death Penalty With Statistics: *Furman*, *McCleskey*, And A Single County Case Study," 34 Cardozo Law Review 1227 (2013).

[69] . *Id.* at 1263.

much more likely to be sentenced to death if they kill a white person than if they kill a black person.[70] The same appears true in Alameda County, though there it also manifests along geographical lines within the county. The study concluded, "In both aggravated murder cases and ordinary murder cases, the District Attorney of Alameda County initially sought the death penalty significantly more often for South County murders (where victims are mostly white) than for North County murders."[71] The authors calculated that "the chance of the defendant being charged with death was roughly two and a half times greater if the murder was in South County rather than North County."[72] When the cases were eventually tried, the disparities grew even greater.

Racial discrimination in the use of the death penalty is deplorable anywhere, but its presence in some of the counties responsible for the bulk of death sentences and executions in this country is particularly disturbing. It confirms the findings by Professor Liebman in his *Broken System* research: the counties that produce the most death sentences are responsible for a disproportionate part of the errors in capital cases. Thus many taxpayers across the U.S. are not only paying for a government practice they choose not to use, but are also paying for embarrassing, illegal behavior by those spending the highest percentage of these state resources.

Other counties in the country, such as Baltimore County (Maryland), Orange County (California), and DeKalb County (suburban Atlanta, Georgia) have been known both for their aggressive use of the death penalty and for their high reversal rates.[73] These counties pass on the high financial costs of capital prosecutions to the rest of their state and cause backlogs in the appellate courts, which are forced to spend an inordinate amount of time and resources on capital cases, thereby reducing the resources available to handle other criminal and civil matters.

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[70] . See *id.* at 1244-51 collecting such studies.

[71] . *Id.* at 1268 (parenthetical added).

[72] . *Id.* at 1266.

[73] . See *Liebman Minority Practice*, note 5 above, at 297 n.192 (100% reversal rate).

VII. Conclusion

Since 2000 the use of the death penalty has been in sharp decline in much of the country. The public is voicing its evolving opinion through jury verdicts, the selection of candidates who favor repeal of capital punishment, and even in selecting prosecutors who refrain from frequent use of the death penalty.

The vast majority of counties in the U.S. have no one on death row and have not had a case resulting in an execution in over 45 years. The people on death row today, and the inmates who have been executed since 1976, come mostly from a small minority of counties where seeking death sentences has been a high priority.

This peculiar exercise of discretion results in enormous expenses being passed on to taxpayers across the state. Moreover, the correlation between the high use of the death penalty and a high rate of error means that courts in these states will be occupied for years with costly appeals and retrials. The process frequently ends in a sentence of life imprisonment, a result that readily could have been obtained with far less expense. In this lengthy, cumbersome and expensive process, the entire justice system, and the taxpayers who support it, are shortchanged.

Some states have recently chosen to opt out of this process, at great savings to their taxpayers. As the death penalty is seen more as the insistent choice of a few at tremendous cost to the many, more states are likely to follow that course.

Appendix: Two Percent of Counties Responsible for 52% of Executions Since 1976

State	County	Executions 1976-2012	2012 Population - U.S. Census
TX	Harris	116	4,253,700
TX	Dallas	50	2,453,843
OK	Oklahoma	38	741,781
TX	Tarrant	37	1,880,153
TX	Bexar	36	1,785,704
TX	Montgomery	16	485,047
OK	Tulsa	15	613,816
TX	Jefferson	14	251,813
MO	St. Louis County	13	1,000,438
MO	St. Louis City	12	318,172
TX	Brazos	11	200,665
AZ	Maricopa	11	3,942,169
TX	Nueces	11	347,691
AZ	Pima	11	992,394
TX	Potter	11	122,335
OH	Hamilton	10	802,038
AL	Jefferson	10	660,009
FL	Miami-Dade	10	2,591,035
AL	Mobile	10	413,936
DE	New Castle	9	546,076
VA	Prince William	9	430,289
TX	Smith	9	214,821
SC	Charleston	8	365,162
VA	Chesterfield	8	323,856
NV	Clark	8	2,000,759
TX	Lubbock	8	285,760
TX	Travis	8	1,095,584
VA	Virginia Beach City	8	447,021
OH	Cuyahoga	7	1,265,111
FL	Duval	7	879,602
TX	McLennan	7	238,707
TX	Cameron	6	415,557
OK	Comanche	6	126,390
TX	Galveston	6	300,484
MO	Jackson	6	677,377

DE	Kent	6	167,626
FL	Orange	6	1,202,234
OH	Summit	6	540,811
GA	Bibb	5	156,462
TX	Bowie	5	93,148
TX	Collin	5	834,642
IL	Cook	5	5,231,351
TX	Denton	5	707,304
TX	El Paso	5	827,398
VA	Fairfax	5	1,118,602
TX	Gregg	5	122,658
VA	Hampton City	5	136,836
IN	Marion	5	918,977
NC	Mecklenburg	5	969,031
GA	Muscogee	5	198,413
TX	Navarro	5	47,979
FL	Pinellas	5	921,319
VA	Pittsylvania	5	62,807
VA	Portsmouth City	5	96,470
TX	Taylor	5	133,473
SC	Aiken*	4	162,812
TX	Anderson*	4	58,190
MD	Baltimore*	4	817,455
TX	Brazoria*	4	324,769
AL	Calhoun*	4	117,296
MO	Callaway*	4	44,305
GA	Chatham*	4	276,434
TOTAL INMATES EXECUTED		693	
TOTAL POPULATION OF TOP 2% COUNTIES			49,758,097
US Population 2012			313,914,040
% of total U.S. Population			15.9%

62 counties out of 3,143 counties in the U.S. = 2% of U.S. counties
693 inmates executed out of 1,320 executed since 1976 = 52% of inmates executed

*The first 55 of the 62 counties listed were the counties with the largest numbers of executed inmates. There were more than 7 counties with exactly 4 inmates executed, so the last 7 counties were chosen alphabetically.
(Correction: The original (printed) version of this report had 686 executions from the top 62 counties. Mecklenburg County (NC) was added to the list and Clay County (MO) was removed. A few counties had either 1 execution added or 1 subtracted. The percentage of the U.S. population from the top 62 counties had been 15.6%.)

Two Percent of Counties Responsible for 56% of Death Row

State	County	Inmates on Death Row - Jan. 1, 2013	2012 Population - U.S. Census
CA	Los Angeles	228	9,962,789
TX	Harris	101	4,253,700
PA	Philadelphia	88	1,547,607
AZ	Maricopa	81	3,942,169
CA	Riverside	76	2,268,783
NV	Clark	61	2,000,759
CA	Orange	61	3,090,132
FL	Duval	60	879,602
CA	Alameda	43	1,554,720
CA	San Diego	40	3,177,063
CA	San Bernardino	37	2,081,313
CA	Sacramento	35	1,450,121
TN	Shelby	33	940,764
TX	Dallas	31	2,453,843
FL	Miami-Dade	31	2,591,035
AL	Jefferson	30	660,009
OH	Hamilton	28	802,038
OK	Oklahoma	28	741,781
CA	Santa Clara	28	1,837,504
AZ	Pima	26	992,394
FL	Hillsborough	25	1,277,746
FL	Pinellas	25	921,319
FL	Broward	23	1,815,137
OH	Cuyahoga	23	1,265,111
CA	Kern	23	856,158
FL	Orange	23	1,202,234
TX	Tarrant	19	1,880,153
CA	Contra Costa	18	1,079,597
LA	East Baton Rouge	18	444,526
TX	Bexar	17	1,785,704
AL	Houston	17	103,402
MO	St. Louis County	17	1,000,438
FL	Volusia	17	496,950
LA	Caddo	16	257,093
CA	Fresno	16	947,895

CA	Tulare	16	451,977
CA	Ventura	16	835,981
FL	Polk	15	616,158
AL	Mobile	14	413,936
CA	San Mateo	14	739,311
NV	Washoe	14	429,908
NC	Forsyth	13	358,137
OK	Tulsa	13	613,816
PA	Berks	12	413,491
OH	Franklin	12	1,195,537
FL	Seminole	12	430,838
TX	Hidalgo	11	806,552
FL	Lake	11	303,186
AL	Montgomery	11	230,149
PA	Allegheny	10	1,229,338
FL	Bay	10	171,903
FL	Brevard	10	547,307
TN	Davidson	10	648,295
LA	Jefferson	10	433,676
OH	Lucas	10	437,998
CA	San Joaquin	10	702,612
CA	Santa Barbara	10	431,249
AL	Talladega	10	81,762
NC	Wake	10	952,151
PA	York	10	437,846
NC	Buncombe*	9	244,490
GA	Cobb*	9	707,442
TOTAL DEATH ROW INMATES		1,755	
TOTAL POPULATION OF TOP 62 (2%) COUNTIES			77,426,635
US Population 2012			313,914,040
% of total US Population			24.7%

62 counties out of 3,143 counties in the U.S. = 2% of U.S. counties
1,755 Inmates out of 3,125 on death row = 56% of inmates

*The first 60 of the 62 counties listed were the counties with the largest numbers of death row inmates. There were more than 2 counties with exactly 9 death row inmates, so the last two counties were chosen alphabetically.

The Death Penalty Information Center is a non-profit organization serving the media and the public with analysis and information on issues concerning capital punishment. The Center provides in-depth reports, issues press releases, conducts briefings for journalists, and serves as a resource to those working on this issue. The Center is funded through the generosity of individual donors and foundations, including the Roderick MacArthur Foundation, the Open Society Foundations, the Atlantic Philanthropies, and the Proteus Action League.