

Myths about the death penalty and plea bargains

MYTH #1: The death penalty is necessary to obtain plea bargains and severe sentences.

- **FACT: States without the death penalty still succeed in obtaining severe sentences.**
- In New Jersey, prosecutors noted that repealing the death penalty in 2007 made no difference in their ability to obtain guilty pleas.
- In Kansas, the “BTK” Killer, Dennis Rader, was finally arrested in 2005. Charged with ten homicides, the state could not seek the death penalty because it was not in effect at the time of the deaths. Rader, however, pled guilty and was given 10 consecutive life sentences.

MYTH #2: Innocent people don’t accept plea bargains.

- **FACT: DNA evidence has shown that innocent people sometimes accept plea bargains.**
- According to the Innocence Project, 29% of DNA exonerations involved false confessions, and 12% involved guilty pleas by innocent defendants.
- After a 1985 murder in Beatrice, Nebraska, six people were arrested and threatened with the death penalty. Five pled guilty to avoid execution. The “Beatrice Six” spent over two decades in prison until DNA proved their innocence and the Governor pardoned them in 2009.
- Over sixty past state and federal prosecutors, judges, and law enforcement officials in Illinois urged the Governor to repeal the death penalty in 2011, noting that “using the death penalty as an instrument of coercion has led to false pleas and erroneous convictions.”



MYTH #3: Plea bargains save taxpayer dollars.

- **FACT: Threatening the death penalty makes cases more costly, even those ending in a plea deal.**
- In Kansas, defense and district court costs for capital cases ending in a plea deal are still higher than for similar cases going to trial where the death penalty is not sought (\$146,858 v. \$120,517). Studies in other states, such as Georgia, have arrived at similar findings.

- Some death penalty cases go to trial, incur the high costs of a capital trial, yet result in life without parole, due to a jury's decision or a death sentence later being overturned. In such cases, capital trials represent a more costly path for obtaining a life without parole sentence.
 - In May 2019, the United States Supreme Court upheld the award of \$28.1 million in damages to the Beatrice Six in a civil rights lawsuit. That amount is three times the annual county budget and has led to hike property taxes by the maximum the law allows.
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MYTH #4: Using the death penalty to obtain plea deals should raise no concerns for prosecutors.

FACT: Threatening defendants with the death penalty can lead to ethically questionable practices and risk innocent people going to prison.

- The plea bargaining system encourages prosecutors to “overcharge” at the start of the case in an effort to get defendants to accept a plea.
 - Plea bargains allow prosecutors to “cure” evidentiary defects in their cases by avoiding trial.
 - Plea bargains are often obtained in questionable circumstances where defendants are under stress - this can cause defendants to plead guilty to crimes that they did not commit.
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MYTH #5: There is fairness in application of plea bargains.

- **FACT: The plea bargain process often can lead to inequitable outcomes.**
 - The government, with near-infinite resources and funding, can coerce guilty pleas from defendants who are often represented by underfunded public defenders.
 - In cases involving co-defendants, one can get the death penalty while the other does not. The less culpable defendant, who sometimes had little to do with a murder, can end up on death row when the other defendant agrees to a lesser sentence in exchange for testifying against his or her co-defendant.
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SUMMARY

The benefits of using the death penalty to obtain plea deals are largely illusory. Such plea deals do not save the state money. More importantly, they raise the risk of innocent suspects confessing because they fear the death penalty.

States around the country have shown that they can obtain severe sentences that keep dangerous individuals removed from society, without having to threaten defendants with the death penalty. Likewise, Kansas can respond to crime effectively without resorting to the death penalty in the plea bargaining process.