

Responses to oversight questions from Senator Feingold:

1. Have the Department of Justice internal protocols and procedures for federal death penalty cases changed since June 7, 2001, when several formal amendments to the U.S. Attorney’s Manual provisions governing such cases were announced? Please list and explain any such changes.

The internal protocol and procedures for federal death penalty cases appear in chapter 9–10.000 of the United States Attorney Manual. No revisions have been made since June 2001, but the Department is presently considering revisions to the protocol. The proposed revisions will clarify existing procedures, create mechanisms to more closely manage cases, and expedite decision-making for certain categories of cases in which the Justice Department will not likely seek the death penalty.

2. Please list all individuals who serve on the Attorney General’s Review Committee on Capital Cases (“review committee”), or who have served on the review committee since January 20, 2001. Explain how and why those individuals were selected for the committee, including a discussion of their particular qualifications for analyzing whether the death penalty should sought. For former members of the committee, please indicate why they no longer serve on the committee, and who was selected to replace them.

The Committee has two standing members, a Deputy Assistant Attorney General from the Criminal Division or other senior attorney with capital experience from the Criminal Division and the career Chief of the Capital Case Unit. Additional Committee members are assigned on a rotating basis from two pools. The first pool includes selected attorneys in the Office of the Deputy Attorney General; the second pool includes Assistant United States Attorneys with capital trial experience from approximately half a dozen United States Attorneys’ Offices around the country. One representative from each pool is named to the Committee for every case. The Committee members were selected based on their abilities to synthesize facts and to fairly and uniformly evaluate arguments regarding the application of the Federal death penalty statutes.

Current Committee Members	Former Committee Members
<p><u>ODAG representative:</u> Joan Meyer</p> <p>Alternates: Mark Grider Stuart Nash Thomas Monheim Steven Campbell David Woll</p>	<p>Christopher A. Wray* Paul Murphy* Uttam Dhillon*</p> <p>Mythili Raman* Kevin O’Connor* Michael Scudder* John Irving* Michael Purpura*</p>

Mary Lee Warren, Deputy Assistant Attorney General, Criminal Division	
Margaret P. Griffey Chief, Capital Case Unit	
<u>Assistant U.S. Attorney representatives:</u> Johnny Gasser Steve Holtshouser Debra Long-Doyle Mark Miller Tanya Pierce	

* These individuals are no longer on the Committee because they are no longer with the Office of the Deputy Attorney General.

- How often does the review committee meet and what is the format for these meetings? For example, is there a regular agenda or is each meeting organized around the specifics of an individual case up for review? Does the review committee have any policy-setting or information-gathering functions other than consideration of individual cases?

The Committee does not have any policy-setting or information-gathering functions other than consideration of individual cases. For a further explanation, please refer to the attached Death Penalty Protocol Instruction Memorandum. This Instruction Memorandum is available online to United States Attorney Offices.

- Please detail the process followed by the Justice Department, including the review committee, upon receipt of a U.S. Attorney's recommendation whether to seek the death penalty in a particular case. Include in your answer whether records of review committee meetings are kept and whether the committee makes written recommendations.

The process is described in the attached Death Penalty Protocol Instruction Memorandum.

All information relevant to the death penalty determination, including that provided by defense counsel and the U.S. Attorney's Office, discussed at the meeting is reflected in the Committee's recommendation memorandum to the Attorney General.

- Please detail the process followed by the Deputy Attorney General and Attorney General upon receipt of the review committee's recommendation. Specifically, what role does the Deputy Attorney General play. Include in that answer how the review committee conveys its recommendation, whether there is any personal meeting between the Deputy Attorney General, Attorney General, and the committee, and how the Attorney General's final decision is recorded.

The process is explained in the attached Death Penalty Protocol Instruction Memorandum.

The Committee's recommendation memorandum, the U.S. Attorney's submission, any defense submission, and any other pertinent documents are forwarded to the Deputy Attorney General and the Attorney General. The documents are organized in an indexed "AG notebook." The notebook is initially received by the Office of the Deputy Attorney General, where it is assigned to a staff member who did not serve on the Committee for the case. The staff member prepares a brief analysis and recommendation that is forwarded along with the AG notebook to the Deputy Attorney General's Chief of Staff. The Chief of Staff makes a separate recommendation to the Deputy Attorney General. The Deputy Attorney General then makes a separate recommendation to the Attorney General. The Deputy Attorney General's recommendation is conveyed to the Attorney General in the AG notebook. A staff member in the Office of the Attorney General reviews the recommendations of the U.S. Attorney, the Committee, and the Deputy Attorney General, and presents the case to the Attorney General. The Attorney General's decision is memorialized in a letter addressed to the prosecuting U.S. Attorney. The letter states whether the Attorney General has authorized the U.S. Attorney to seek the death penalty.

The Committee does not meet in person with the Deputy Attorney General or the Attorney General. There is, however, frequent communication between all of those involved in the review process, including U.S. Attorneys' Offices, CCU attorneys, Committee members, and those involved in the review process in the Offices of the Deputy Attorney General and the Attorney General. These communications may concern the bases of the U.S. Attorney's and Committee's recommendations as well as evidentiary issues.

6. What happens if the DOJ entities involved—the U.S. Attorney, the review committee, the Deputy Attorney General, and the Attorney General—do not all agree? Prior to the Attorney General issuing his final decision, is there any process in place for discussion of the sources of disagreement? Particularly in those cases where the Attorney General is going to overrule the recommendation of the U.S. Attorney, how is that decision conveyed? Is there a written form in each instance detailing the rationale for why the U.S. Attorney's recommendation is being overruled?

The review process permits and encourages communication between the U.S. Attorney's Office and the reviewing officials within the Department. The Committee's recommendations are communicated to the prosecution team. Certain recommendations may prompt further discussion between the Committee and the prosecutors, who have a continuing right to supply the Committee with supplementary documents and information in support of their position. The U.S. Attorney's Office typically has multiple opportunities to present its position to the Deputy Attorney General and various members of his staff. U.S. Attorneys' Office may also communicate directly with staff members in the Office of the Attorney General. The written documentation of the Attorney General's reasons for seeking the death penalty in each case is contained in the recommendation memoranda by the U.S. Attorney's Office, the Committee, and the Office of the Deputy Attorney General. The reasons for overruling a recommendation in a

particular case are conveyed to the U.S. Attorney's Office.

7. How are records on the entire death penalty review process maintained? How extensive are the records on each case?

“Baseline” and working files are created for each incoming case. The baseline file contains all documents submitted and created in the course of reviewing the case, including the AG notebook materials after a decision has been made by the Attorney General. Some documents may have been forwarded electronically and exist in a computer file. Certain information concerning the case and defendant and non-decisional (demographic) information is maintained in a restricted-access database. The baseline files, computer files, and database are maintained by the Capital Case Unit. The records in each case may be quite extensive depending on the complexity of the case and number of defendants submitted for review.

8. On an aggregate and annual basis covering 2001 to 2006, in how many death-eligible cases did U.S. Attorneys request authorization to seek the death penalty? Of those, in how many cases did the review committee agree or disagree with a U.S. Attorney's recommendation? In how many of these cases did the Attorney General follow the U.S. Attorney's recommendation and/or the review committee's recommendation?
12. With respect to Questions 8 through 11, please also provide a breakdown of the race/ethnicity of the defendants and the race/ethnicity of the victims.

The requested information is provided in the tables and accompanying explanatory notes set forth below.

- a. Submissions by U.S. Attorneys requesting authorization to seek the death penalty

U.S. Attorney Requests for Authorization to Seek the Death Penalty
Defendant Race/Ethnicity

	White	Black	Hispanic	Other	Total
2001	7	13	2	0	22
2002	5	10	4	2	21
2003	9	15	5	3	32
2004	8	14	8	1	31
2005	7	5	4	0	16
2006	10	17	7	0	34

**U.S. Attorney Requests for Authorization to Seek the Death Penalty
Victim Race/Ethnicity**

	White	Black	Hispanic	Other	Total
2001	11	8	3	0	22
2002	9	12	3	4	28
2003	16	9	4	6	35
2004	12	12	6	2	32
2005	7	9	3	0	19
2006	8	19	10	3	40

- b. Recommendations by the Attorney General’s Review Committee in cases where the U.S. Attorney requested authorization to seek the death penalty.

**Attorney General’s Review Committee Recommendations
Concurring with a U.S. Attorney Request for Authorization to Seek the Death Penalty
Defendant Race/Ethnicity**

	White	Black	Hispanic	Other	Total
2001	7	9	2	0	18
2002	5	9	4	2	20
2003	9	15	5	3	32
2004	6	13	8	1	28
2005	7	5	2	0	14
2006	10	13	7	0	30

**Attorney General’s Review Committee Recommendations
Concurring with a U.S. Attorney Request for Authorization to Seek the Death Penalty
Victim Race/Ethnicity**

	White	Black	Hispanic	Other	Total
2001	9	7	3	0	19
2002	9	8	3	4	24
2003	16	9	4	6	35
2004	11	11	6	2	30
2005	7	9	0	0	16
2006	8	17	10	3	38

Attorney General's Review Committee Recommendations
 Disagreement with a U.S. Attorney Request for Authorization to Seek the Death Penalty
 Defendant Race/Ethnicity

	White	Black	Hispanic	Other	Total
2001	0	4	0	0	4
2002	0	1	0	0	1
2003	0	0	0	0	0
2004	2	1	0	0	3
2005	2	0	2	0	4
2006	0	4	0	0	4

Attorney General's Review Committee Recommendations
 Disagreement with a U.S. Attorney Request for Authorization to Seek the Death Penalty
 Victim Race/Ethnicity

	White	Black	Hispanic	Other	Total
2001	3	1	0	0	4
2002	0	4	0	0	4
2003	0	0	0	0	0
2004	1	1	0	0	2
2005	0	1	3	0	4
2006	0	2	0	0	2

- c. Decisions by the Attorney General in cases where the U.S. Attorney requested authorization to seek the death penalty.

Attorney General Decision
 Approving a U.S. Attorney Request for Authorization to Seek the Death Penalty
 Defendant Race/Ethnicity

	White	Black	Hispanic	Other	Total
2001	7	9	2	0	18
2002	5	9	4	2	20
2003	8	15	5	3	31
2004	7	13	8	1	29
2005	7	5	2	0	14

2006	10	13	7	0	30
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Attorney General Decision
Approving a U.S. Attorney Request for Authorization to Seek the Death Penalty
Victim Race/Ethnicity

	White	Black	Hispanic	Other	Total
2001	9	7	3	0	19
2002	9	8	3	4	24
2003	15	9	4	6	34
2004	11	10	6	2	29
2005	7	9	0	0	16
2006	8	17	10	3	38

Attorney General Decisions
Overruling a U.S. Attorney Request for Authorization to Seek the Death Penalty
Defendant Race/Ethnicity

	White	Black	Hispanic	Other	Total
2001	0	4	0	0	4
2002	0	1	0	0	1
2003	1	0	0	0	1
2004	1	2	0	0	3
2005	2	0	2	0	4
2006	0	4	0	0	4

Attorney General Decision
Overruling a U.S. Attorney Request for Authorization to Seek the Death Penalty
Victim Race/Ethnicity

	White	Black	Hispanic	Other	Total
2001	3	1	0	0	4
2002	0	4	0	0	4
2003	1	0	0	0	1
2004	2	2	0	0	4
2005	0	1	3	0	4
2006	0	2	0	0	2

Explanatory notes:

- i. Defendants and victims are categorized by year based on the date of the U.S. Attorney's initial submission to the Department for a decision concerning that defendant and victim.
- ii. Race and ethnicity designations are made using the same methodology followed in the Department's September 2000 survey. See U.S. Department of Justice, *The Federal Death Penalty System: A Statistical Survey*, at T-xv, T-xvi (Sept. 12, 2000).
- iii. A particular defendant is not counted more than once within a single year in a table, despite the fact that permission to seek the death penalty against that defendant may have been requested in more than one case or with respect to more than one victim. Likewise, a single victim is not counted more than once in a single year in a table, despite the fact that permission to seek the death penalty may have been requested against more than one defendant for that victim's murder.

A particular defendant may be counted more than once over successive tables reflecting agreement or disagreement with the U.S. Attorney's request by the review committee or the Attorney General. In some instances, the Committee or the Attorney General may have agreed with the U.S. Attorney's request for a particular defendant with regard to certain counts or victims, but disagreed with the U.S. Attorney's request with regard to other counts or victims. In such a situation, the defendant will be counted in tables reflecting the review committee's or Attorney General's agreement with the U.S. Attorney's request, and separately counted in tables reflecting the review committee's or Attorney General's disagreement with the U.S. Attorney's request.

Likewise, a particular victim may be counted more than once over successive tables reflecting agreement or disagreement with the U.S. Attorney's request by the review committee or the Attorney General. In some instances, the Committee or the Attorney General may have agreed with the U.S. Attorney's request involving one defendant and victim, but disagreed with the U.S. Attorney's request with regard to another defendant's participation in the murder of the same victim. In such a situation, the victim will be counted in tables reflecting the review committee's or Attorney General's agreement with the U.S. Attorney's request, and separately counted in tables reflecting the review committee's or Attorney General's disagreement with the U.S. Attorney's request.

- iv. The foregoing data do not include cases in which the Attorney General has not made a decision (*e.g.*, cases in which a decision has been deferred because the defendant is a fugitive or for other reasons, and cases still under review).
- v. In a small number of cases, the review committee did not make a death penalty recommendation because it was evenly divided or because it recommended that a decision be deferred. As a result, the number of cases in which the committee made a recommendation is slightly lower than the number of cases that were submitted for review and decided by the Attorney General.

vi. The foregoing data reflect initial requests and decisions to seek the death penalty, and does not reflect subsequent requests and decisions to withdraw a death penalty notice following an initial decision to seek the death penalty. That information, however, is provided separately below.

In several cases included in the foregoing data as instances where the Attorney General authorized the U.S. Attorney to seek the death penalty, U.S. Attorneys subsequently requested and received authorization to withdraw the notice of intention to seek the death penalty. The race/ethnicity breakdowns for cases falling in this group are as follows; the defendants and victims are categorized by the year of the U.S. Attorney's initial request to seek the death penalty:

Defendant Race/Ethnicity

	White	Black	Hispanic	Other	Total
2001	0	2	2	0	4
2002	1	2	0	1	4
2003	4	3	3	0	10
2004	2	1	0	1	4
2005	4	0	0	0	4
2006	0	1	0	0	1

Victim Race/Ethnicity

	White	Black	Hispanic	Other	Total
2001	1	0	0	0	1
2002	3	2	0	2	7
2003	4	1	2	0	7
2004	0	1	0	2	3
2005	3	0	0	0	3
2006	2	1	0	0	3

In several other cases included in the foregoing data as instances where the Attorney General authorized the U.S. Attorney to seek the death penalty, U.S. Attorneys subsequently requested, but were denied, authorization to withdraw the notice of intention to seek the death penalty. The race/ethnicity breakdowns for cases falling in this group are as follows; the defendants and victims are categorized by the year of the U.S. Attorney's initial request to seek the death penalty:

Defendant Race/Ethnicity

	White	Black	Hispanic	Other	Total
2001	1	2	0	0	3
2002	0	2	0	1	3
2003	1	0	0	0	1
2004	0	1	0	1	1
2005	0	0	0	0	0
2006	0	1	0	0	1

Victim Race/Ethnicity

	White	Black	Hispanic	Other	Total
2001	9	1	0	2	12
2002	1	2	0	0	3
2003	3	0	0	0	3
2004	0	1	0	0	1
2005	0	0	0	0	0
2006	0	2	0	0	2

9. On an aggregate and annual basis covering 2001 to 2006, in how many death-eligible cases did U.S. Attorneys not recommend seeking the death penalty? Of those, in how many cases did the review committee agree or disagree with the recommendation? In how many cases did the Attorney General follow the U.S. Attorney's recommendation and/or the review committee's recommendation?
12. With respect to Questions 8 through 11, please also provide a breakdown of the race/ethnicity of the defendants and the race/ethnicity of the victims.

The requested information is provided in the tables and accompanying explanatory notes set forth below.

- a. Submissions by U.S. Attorneys requesting authorization not to seek the death penalty

**U.S. Attorney Requests for Authorization Not to Seek the Death Penalty
Defendant Race/Ethnicity**

	White	Black	Hispanic	Other	Total
2001	24	66	59	12	161

2002	30	70	68	12	180
2003	25	57	57	10	149
2004	16	71	72	20	179
2005	17	71	80	7	175
2006	34	92	102	12	240

**U.S. Attorney Requests for Authorization Not to Seek the Death Penalty
Victim Race/Ethnicity**

	White	Black	Hispanic	Other	Total
2001	25	54	65	5	149
2002	30	39	42	11	122
2003	26	33	74	8	141
2004	14	51	84	11	160
2005	16	56	85	10	167
2006	24	60	110	8	202

- b. Recommendations by the Attorney General’s Review Committee in cases where the U.S. Attorney requested authorization not to seek the death penalty.

**Attorney General’s Review Committee Recommendations
Concurring with a U.S. Attorney Request for Authorization Not to Seek the Death Penalty
Defendant Race/Ethnicity**

	White	Black	Hispanic	Other	Total
2001	20	58	59	12	149
2002	28	63	68	10	169
2003	22	50	54	10	136
2004	14	69	71	19	173
2005	17	65	79	7	168
2006	27	80	93	10	210

**Attorney General’s Review Committee Recommendations
Concurring with a U.S. Attorney Request for Authorization Not to Seek the Death Penalty
Victim Race/Ethnicity**

	White	Black	Hispanic	Other	Total
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2001	22	47	64	4	137
2002	28	33	42	8	111
2003	20	31	73	8	132
2004	13	50	85	11	159
2005	16	48	83	10	157
2006	20	47	107	6	180

Attorney General's Review Committee Recommendations
Disagreement with a U.S. Attorney Request for Authorization Not to Seek the Death Penalty
Defendant Race/Ethnicity

	White	Black	Hispanic	Other	Total
2001	4	8	1	0	13
2002	2	7	0	2	11
2003	2	6	3	0	11
2004	2	3	1	1	7
2005	0	4	1	0	5
2006	7	12	8	2	29

Attorney General's Review Committee Recommendations
Disagreement with a U.S. Attorney Request for Authorization Not to Seek the Death Penalty
Victim Race/Ethnicity

	White	Black	Hispanic	Other	Total
2001	3	8	2	1	14
2002	2	8	0	3	13
2003	5	3	23	0	31
2004	2	3	0	1	6
2005	1	5	2	0	8
2006	6	17	7	2	32

- c. Decisions by the Attorney General in cases where the U.S. Attorney requested authorization not to seek the death penalty.

**Attorney General Decisions
Approving a U.S. Attorney Request for Authorization Not to Seek the Death Penalty
Defendant Race/Ethnicity**

	White	Black	Hispanic	Other	Total
2001	23	55	57	12	147
2002	26	62	65	10	163
2003	23	50	54	10	137
2004	15	69	72	20	176
2005	17	69	79	7	172
2006	28	84	96	11	219

**Attorney General Decisions
Approving a U.S. Attorney Request for Authorization Not to Seek the Death Penalty
Victim Race/Ethnicity**

	White	Black	Hispanic	Other	Total
2001	23	48	64	3	138
2002	28	32	41	8	109
2003	22	31	73	8	134
2004	14	49	85	11	159
2005	16	54	83	10	163
2006	21	51	107	8	187

**Attorney General Decisions
Overruling a U.S. Attorney Request for Authorization Not to Seek the Death Penalty
Defendant Race/Ethnicity**

	White	Black	Hispanic	Other	Total
2001	1	11	3	0	15
2002	4	8	3	2	17
2003	2	8	3	0	13
2004	1	3	0	0	4
2005	0	2	1	0	3

2006	6	8	6	1	21
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Attorney General Decisions
Overruling a U.S. Attorney Request for Authorization Not to Seek the Death Penalty
Victim Race/Ethnicity

	White	Black	Hispanic	Other	Total
2001	2	7	3	3	15
2002	2	8	3	3	16
2003	4	3	23	1	31
2004	1	4	0	0	5
2005	1	2	2	0	5
2006	5	14	3	0	22

Explanatory notes:

- i. Explanatory notes i through v of the response to Question 8 apply to this response.
- ii. The foregoing data do not include cases in which the U.S. Attorney was authorized not to seek the death penalty without referral to the Attorney General for a decision (*e.g.*, cases in which the only evidence of guilt was the defendant's protected proffer).
- iii. A U.S. Attorney's initial request to accept a plea agreement under which the government would agree not to seek the death penalty, and any decision approving such a request, are counted as recommendations and decisions not to seek the death penalty within this response. The response to Question 15 separately deals with instances in which the Attorney General approved or overruled a U.S. Attorney's request to enter into such a plea agreement.
- iv. The foregoing data reflect decisions on initial requests not to seek the death penalty, and does not reflect subsequent requests and decisions to withdraw a death penalty notice following an initial decision to seek the death penalty. That information is provided below.

In several cases included in the foregoing data as instances where the Attorney General authorized the U.S. Attorney to seek the death penalty, U.S. Attorneys subsequently requested and received authorization to withdraw the notice of intention to seek the death penalty. The race/ethnicity breakdowns for cases falling in this group are as follows; the defendants and victims are categorized by the year of the U.S. Attorney's initial request not to seek the death penalty:

Defendant Race/Ethnicity

	White	Black	Hispanic	Other	Total
2001	0	5	1	0	6
2002	1	5	1	1	8
2003	0	5	1	0	6
2004	1	0	0	0	1
2005	0	0	0	0	0
2006	0	0	2	0	2

Victim Race/Ethnicity

	White	Black	Hispanic	Other	Total
2001	1	2	2	1	6
2002	1	6	1	1	9
2003	0	2	2	0	4
2004	1	0	0	0	1
2005	0	0	0	0	0
2006	0	0	2	0	2

v. The foregoing data also do not reflect subsequently-denied requests to seek the death penalty following an initial decision by the Attorney General authorizing the U.S. Attorney not to seek the death penalty.

10. On an aggregate and annual basis covering 2001 to 2006, in how many cases in which the Attorney General agreed with the U.S. Attorney's recommendation to seek the death penalty was a death sentence imposed?
12. With respect to Questions 8 through 11, please also provide a breakdown of the race/ethnicity of the defendants and the race/ethnicity of the victims.

The requested information is provided in the tables and accompanying explanatory notes set forth below.

- a. Cases where the death penalty was imposed following a decision by the Attorney General approving a U.S. Attorney request to seek the death penalty.

Defendant Race/Ethnicity

	White	Black	Hispanic	Other	Total
2001	2	1	0	0	3
2002	3	2	0	0	5
2003	5	3	0	0	8
2004	2	0	3	0	5
2005	0	3	0	0	3
2006	0	0	0	0	0

Victim Race/Ethnicity

	White	Black	Hispanic	Other	Total
2001	5	1	2	0	8
2002	6	1	0	0	7
2003	7	1	0	0	8
2004	4	0	2	0	6
2005	1	3	0	0	4
2006	0	0	0	0	0

b. Cases where the death penalty was not imposed following a decision by the Attorney General approving a U.S. Attorney request to seek the death penalty.

Defendant Race/Ethnicity

	White	Black	Hispanic	Other	Total
2001	2	6	0	0	8
2002	1	5	4	1	11
2003	1	9	1	0	11
2004	2	6	4	0	12
2005	3	2	0	0	5
2006	0	1	0	0	1

Victim Race/Ethnicity

	White	Black	Hispanic	Other	Total
2001	3	6	1	0	10

2002	1	7	3	2	13
2003	8	7	1	1	17
2004	6	1	1	0	8
2005	1	4	0	0	5
2006	0	0	1	0	1

Explanatory notes:

- i. Explanatory notes i through v of the response to Question 8 apply to this response.
- ii. The response to Question 8 provides data on defendants and victims for whom the Attorney General approved seeking the death penalty, and also provides data on defendants and victims for whom the Attorney General later authorized the U.S. Attorney to withdraw the death penalty notice. Those data, however, do not correlate in all instances to the data provided in the present response, for several reasons. For a number of defendants and victims, the trial has not occurred; the present response is limited to cases in which the trial-level litigation has concluded. Additionally, defendants and victims in cases involving multiple defendants or victims may be counted more than once over the successive tables contained in the response to Question 8 and the present response. The Attorney General in some instances allowed the U.S. Attorney to withdraw a death penalty notice with respect to some but not all defendants involved in killing the same victim or victims, or allowed the U.S. Attorney to withdraw a death penalty notice with respect to some but not all victims killed by the same defendant or defendants. In such instances, the defendants or victims may be counted in Question 9 as ones for whom the death penalty notice was withdrawn, but also counted as individuals for whom the death penalty was sought in the present response.
11. On an aggregate and annual basis covering 2001 to 2006, in how many cases in which the Attorney General overruled the U.S. Attorney's recommendation not to seek the death penalty, was a death sentence imposed?
12. With respect to Questions 8 through 11, please also provide a breakdown of the race/ethnicity of the defendants and the race/ethnicity of the victims.

The requested information is provided in the tables and accompanying explanatory notes set forth below.

- a. Cases where the death penalty was imposed following a decision by the Attorney General overruling a U.S. Attorney request not to seek the death penalty.

Defendant Race/Ethnicity

	White	Black	Hispanic	Other	Total
2001	1	0	0	0	1
2002	1	0	0	1	2
2003	0	0	0	0	0
2004	0	1	0	0	1
2005	0	0	0	0	0
2006	2	0	0	0	2

Victim Race/Ethnicity

	White	Black	Hispanic	Other	Total
2001	1	0	0	0	1
2002	1	0	0	2	3
2003	0	0	0	0	0
2004	0	1	0	0	1
2005	0	0	0	0	0
2006	1	0	0	0	1

b. Cases where the death penalty was not imposed following a decision by the Attorney General overruling a U.S. Attorney request not to seek the death penalty.

Defendant Race/Ethnicity

	White	Black	Hispanic	Other	Total
2001	0	5	2	0	7
2002	2	3	2	0	7
2003	2	3	2	0	7
2004	0	1	0	0	1
2005	0	1	0	0	1
2006	0	1	0	0	1

Victim Race/Ethnicity

	White	Black	Hispanic	Other	Total
2001	1	1	1	2	5
2002	0	5	2	0	7
2003	4	1	20	1	26
2004	0	1	0	0	1
2005	0	2	0	0	2
2006	0	1	0	0	1

Explanatory notes:

- i. Explanatory notes i through v of the response to Question 8 apply to this response.

- ii. The response to Question 9 provides data on defendants and victims for whom the Attorney General overruled a U.S. Attorney's request not to seek the death penalty, and also provides data on defendants and victims for whom the Attorney General later authorized the U.S. Attorney to withdraw the death penalty notice. Those data, however, do not correlate in all instances to the data provided in the present response, for several reasons. For a number of defendants and victims, the trial has not occurred; the present response is limited to cases in which the trial-level litigation has concluded. Additionally, defendants and victims in cases involving multiple defendants or victims may be counted more than once over the successive tables contained in the response to Question 9 and the present response. The Attorney General in some instances allowed the U.S. Attorney to withdraw a death penalty notice with respect to some but not all defendants involved in killing the same victim or victims, or allowed the U.S. Attorney to withdraw a death penalty notice with respect to some but not all victims killed by the same defendant or defendants. In such instances, the defendants or victims may be counted in Question 9 as ones for whom the death penalty notice was withdrawn, but also counted as individuals for whom the death penalty was sought in the present response.

13. On an aggregate and annual basis covering 2001 to 2006, in how many cases has the Attorney General authorized U.S. Attorneys to seek the death penalty in local jurisdictions in which capital punishment is not available for the crime at issue?

The government has tried and sought the death penalty for 26 defendants in non-death penalty states, obtaining death sentences for 8 of these defendants.

	2001	2002	2003	2004	2005	2006	total
Defendants	3	4*	8**	1	1	9***	26
Death Sentences	1	3	1	1	0	2	8

* The notice of intent to seek the death penalty was dismissed in one of these cases.

** The notices of intent to seek the death penalty were dismissed in three of these cases.

** Trial is pending for 7 defendants.

Explanatory notes:

- i. Defendants are categorized by year based on the date of the Attorney General’s decision to seek the death penalty.
- ii. The foregoing data do not include cases in which the government filed, but later withdrew, a notice of intention to seek the death penalty.

14. On an aggregate and annual basis covering 2001 to 2006, in how many cases has the Attorney General authorized the U.S. Attorneys to seek the death penalty in cases in which the crimes had already been prosecuted at the state or local level? In how many of those cases had the perpetrator already been imprisoned for the crime? In how many of those cases had the perpetrator already been imprisoned for life for the crime?

It would be difficult to retrospectively identify relevant cases from maintained information. It should be noted, however, that there are unlikely to have been many such cases. Before a crime that has been prosecuted at the state or local level can be prosecuted by the federal government, the prosecuting district must apply for and obtain a waiver of the Petite Policy. The Petite Policy forbids the initiation or continuation of a federal prosecution following a prior state or federal prosecution based on substantially the same act(s) or transaction(s) unless the prior prosecution left a substantial federal interest demonstrably unvindicated.

15. On an aggregate and annual basis covering 2001 to 2006, in how many cases in which the Attorney General overruled the U.S. Attorney's recommendation not to seek the death penalty, did the Attorney General's decision effectively negate a negotiated plea agreement between the defendant and U.S. Attorney's office?
17. With respect to questions 15 through 16, please provide a break down of the race ethnicity of the defendants and the race/ethnicity of the victims.

The data in the following table only include cases in which the U.S. Attorney specifically requested authorization of a plea agreement rather than authorization not to seek the death penalty. Sometimes cases are submitted as requests for authorization not to seek although tentative plea agreements have been reached. The data also reflect only the initial decisions by the Attorney General, not the decisions made in response to requests for reconsideration of an initial decision to seek or authorization to withdraw the death notice. Data pertaining to requests for reconsideration or authorization to withdraw the death notice are provided in response to question 16.

**Attorney General Decisions
Overruling an Initial Request by a U.S. Attorney for Authorization of a Plea Agreement Under
Which the Government Would Agree Not to Seek the Death Penalty
Defendant Race/Ethnicity**

	White	Black	Hispanic	Other	Total
2001	0	0	0	0	0
2002	0	1	1	0	2
2003	0	0	1	0	1
2004	0	1	0	0	1
2005	0	0	0	0	0
2006	1	0	0	0	1

**Attorney General Decisions
Overruling an Initial Request by a U.S. Attorney for Authorization of a Plea Agreement Under
Which the Government Would Agree Not to Seek the Death Penalty
Victim Race/Ethnicity**

	White	Black	Hispanic	Other	Total
2001	0	0	0	0	0
2002	0	2	1	0	3
2003	0	0	1	0	1
2004	0	1	0	0	1

2005	0	0	0	0	0
2006	1	0	0	0	1

Explanatory notes:

i. Explanatory notes i through v of the response to Question 8 apply to this response.

16. In how many cases has the Attorney General approved a plea agreement that takes capital punishment off the table? In how many instances has the Attorney General refused to approve a plea agreement that takes capital punishment off the table? In each instance in which the Attorney General refused to approve such a plea agreement, why did he make that decision?
17. With respect to questions 15 through 16, please provide a break down of the race ethnicity of the defendants and the race/ethnicity of the victims.

The requested information is provided in the tables and accompanying explanatory notes set forth below.

Decisions by the Attorney General
Approving a U.S. Attorney Request to Enter a Plea Agreement Under Which the Government
Would Withdraw a Previously-filed Notice of Intention to Seek the Death Penalty
Defendant and Victim Race/Ethnicity

	White	Black	Hispanic	Other	Total
Defendants	4	8	8	2	22
Victims	5	7	6	4	22

Decisions by the Attorney General
Overruling a U.S. Attorney Request to Enter a Plea Agreement Under Which the Government
Would Withdraw a Previously-filed Notice of Intention to Seek the Death Penalty
Defendant and Victim Race/Ethnicity

	White	Black	Hispanic	Other	Total
Defendants	4	8	2	1	15
Victims	10	10	4	2	26

18. Does the Attorney General rely on specific criteria that are consistently applied to determine whether to approve such plea agreements? If so, please provide those criteria.

The Department considers a variety of factors when a prospective plea agreement is at

issue, including, but not limited to, whether the defendant will cooperate in an investigation and prosecution, whether the defendant's cooperation and testimony is needed, any deterioration in the evidence since the initiation of the prosecution, and the balance of factors militating in favor of and against seeking the death penalty.

When there has already been an initial decision to seek the death penalty for a particular defendant, that decision will not normally be rescinded unless there is a change in the facts or circumstances that militated in favor of the capital prosecution at the time of the original decision. *See* U.S.A.M. 9-10.090 ("If the United States Attorney wishes to withdraw the notice [of intent to seek the death penalty], the United States Attorney shall advise the Assistant Attorney General for the Criminal Division of the reasons for that request, including any changes in facts or circumstances."). Following receipt of the U.S. Attorney's recommendation in the Criminal Division, the case is forwarded through the Office of the Deputy Attorney General to the Office of the Attorney General, who makes the final decision.

19. Between 2001 and 2006, what were the average and median time intervals between (a) indictment of the defendant for a death-eligible offense; (b) submission by the U.S. Attorney to the Department of Justice of a recommendation whether to seek the death penalty; and (c) a decision by the Attorney General whether to seek the death penalty.

The average and median time intervals between indictment and submission of cases by U.S. Attorneys to the Department of Justice cannot be calculated from information maintained by the Capital Case Unit.

The average and median times between the U.S. Attorney's submission of a case and a decision by the Attorney General are 103.2 days and 79 days, respectively. It should be noted that the time between submission and a decision by the U.S. Attorney can be influenced by a variety of factors including a defense request for more time to investigate and develop mitigating evidence, a request for additional information from the Capital Case Unit or the Committee, the complexity of the case, and the balance of aggravation and mitigation. Sometimes a case is opened when the Capital Case Unit receives an initial submission from an Assistant U.S. Attorney rather than the final recommendation of the U.S. Attorney. Initial submissions and consultation between the Capital Case Unit and the prosecuting United States Attorney's Office may precede a final submission by up to a period of years, for example, when a defendant is already incarcerated for a prior offense.

20. What steps does the Department take to track the monetary cost to the U.S. government of seeking the Federal death penalty in death-eligible cases? Please provide the average and median total cost (including investigative costs) to the Justice Department of seeking the death penalty in death-eligible cases between 2001 and 2006. Please also provide information on the average and median total cost (including investigative costs) to the Justice Department should an otherwise death-eligible case instead be brought as a non-capital case (*i.e.* where life without parole is sought).

The Department does not track or attempt to attribute specific sums to the capital review

process. The Department does not track these kinds of expenses for capital, or non-capital, cases.

21. Please identify the five U.S. Attorney offices that have brought the most death penalty cases since 2001. For each office, please provide the total staff and budget for each office for each year. For each office, please provide the number of defendants against whom the death penalty was sought since 2001 and the results of each case.

District	Total Defendants	Defendants for whom the Attorney General later authorized withdrawal of the death penalty notice	Defendants for whom a capital trial is pending	Defendants sentenced to death	Defendants not sentenced to death
C.D. Cal.	20	5	10	2	3
D. Md.	14	2	7	1	4
E.D.N.Y.	12	2	6	1	3
E.D. Va.	11	1	1	0	9
D.D.C.	9	0	2	0	7
W.D. Va.	9	4	0	1	4

Explanatory notes:

i. The defendants listed in the above table are those for whom the Attorney General authorized the U.S. Attorney to seek the death penalty.

22. Does the Department recommend to U.S. Attorney Offices administrative procedures for handling death penalty cases, such as the number of staff to allocate or the amount of resources to spend on experts? If so, what are those procedures?
23. Does the Department ever give specific instructions or recommendations on staffing or resources or recommendations on staffing or resources to be allocated in a particular case? If so, please indicate in what cases such instructions or recommendations were provided as well as the content and rationale for such instructions or recommendations.

The Department does not have standardized recommendations for U.S. Attorneys' Offices regarding administrative procedures for handling death penalty cases, such as the number of staff members to allocate to a capital case or the resources to expend on experts. As far as can be determined, neither has the Department given specific instructions or recommendations on staffing or resources that should be allocated to any particular capital case. U.S. Attorneys are generally entrusted with the core management decisions relating to cases they prosecute.

However, the Capital Case Unit provides training to individual districts and at the National Advocacy Center on the prosecution of capital cases and, in that context, discusses the

requirements of capital cases (for example, investigation relevant to the punishment phase). The Capital Case Unit also provides guidance and counsel on a case by case basis and, on the request of the prosecuting district, and as time and resources allow, assists by providing or drafting motion responses and in the actual trial of the case.

The Capital Case Unit also receives inquiries from the districts regarding expert witnesses and how they can defray such costs. Capital Case Unit personnel occasionally direct prosecuting districts to the Executive Office of United States Attorneys, which has funds for one-time litigation expenses to defray unusual expenses adherent to any particular case.

24. Finally, please provide the Subcommittee with a copy of the “Death Penalty Evaluation” form, the prosecution memorandum form, and the form for a recommendation not to seek the death penalty, referenced in the U.S. Attorney Manual 9-10.040 and 9-10.055.

The forms are attached.