

**IN THE UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF VERMONT**

UNITED STATES OF AMERICA)

VS.)

DONALD FELL)
_____)

CRIMINAL 5:01-cr-00012

**DEFENDANT DONALD FELL'S DEFENDANT
MOTION TO PRECLUDE THE DEATH PENALTY AS
A PUNISHMENT BECAUSE THE DEATH PENALTY, IN AND OF
ITSELF, CONSTITUTES AN UNCONSTITUTIONAL PUNISHMENT**

Now Comes Donald Fell, through his undersigned counsel and moves this Honorable Court for an order dismissing and/or striking the Amended Notice Of Intent To Seek Penalty Of Death. (Doc. 609).

For the reasons set forth more fully in the accompanying memorandum in support, the administration of the federal death penalty involves three fundamental constitutional defects: (1) serious unreliability, (2) arbitrariness in application, and (3) unconscionably long delays that undermine the death penalty's penological purpose. Perhaps as a result, (4) most places within the United States have abandoned its use under evolving standards of decency.

WHEREFORE, for the reasons described in greater detail in the accompanying Memorandum, Mr. Fell respectfully requests this Court to dismiss and/or to strike the Amended Notice Of Intent To Seek Penalty Of Death on the ground that the federal death penalty, in and of itself, constitutes a legally prohibited cruel and unusual punishment prohibited by both the Fifth and Eighth Amendments.

Dated at San Francisco, California, this 16th day of November, 2015.

Respectfully Submitted,

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I hereby certify that on November 16, 2015, I electronically filed with the Clerk of

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UNITED STATES DISTRICT COURT
FOR THE
DISTRICT OF VERMONT

UNITED STATES OF AMERICA)	
)	
Plaintiff,)	No. 5:01-CR-00012
)	
v.)	
)	
DONALD FELL)	Dept: Hon. Geoffrey W. Crawford
)	District Court Judge
Defendant.)	

**MEMORANDUM IN SUPPORT OF DEFENDANT DONALD
FELL'S MOTION TO PRECLUDE THE DEATH PENALTY AS
A PUNISHMENT BECAUSE THE DEATH PENALTY, IN AND OF
ITSELF, CONSTITUTES AN UNCONSTITUTIONAL PUNISHMENT**

TABLE OF CONTENTS

I. INTRODUCTION 1

II. PROCEDURAL HISTORY 6

III. ARGUMENT 7

 A. General Fifth and Eighth Amendment Principles 7

 1. Inherently Barbaric Punishments 8

 2. Excessive and Disproportionate Punishments 9

 3. Arbitrary or Discriminatory Punishments 11

 B. Almost 40 Years of Studies, Surveys, and Experience Strongly Indicate That The Procedural Protections Built Into The Federal Death Penalty Have Failed To Achieve Their Goal Of Reliable, Rational, Consistent, Fair, Non-Arbitrary, and Non-Discriminatory Application of The Death Penalty. 18

 1. “Cruel”—Lack of Reliability 18

 2. “Cruel”—Arbitrariness 35

 a. The Problem in General 35

 b. More Than 25 Years Of Experience With The Federal Death Penalty Has Demonstrated That It Operates In An Arbitrary, Capricious, Irrational And Discriminatory Manner. 37

 1. Introduction: the failure of the federal death penalty experiment 37

 2. The federal death penalty is imposed and carried out in an arbitrary and capricious manner that is akin to being struck by lightning: Revisiting the constitutional premise of *Furman v. Georgia* in the context of the federal death penalty. 39

 3. The federal death penalty as actually sought and imposed and what the figures mean. 47

4. The absence of a principled basis for distinguishing between cases where the federal death penalty is imposed from cases where it is not imposed renders the federal death penalty unconstitutional.	50
5. The Federal Death Penalty is unevenly applied on a regional basis and suffers from intractable problems of racial discrimination in the targeting of minority and male defendants and a demonstrated race/gender-of-victim effect.	60
a. Introduction.	60
b. The 2000 DOJ Study	62
c. The persistent capricious circumstance of region.	68
d. The continuing and unabated practice of targeting males and minorities for the federal death penalty, the long-documented “white-victim effect,” and the emergence of a “white female victim effect” further demonstrate the arbitrary and irrational operation of the federal death penalty.	75
(1) <i>The law on race and the death penalty.</i>	77
(2) <i>The effect of gender of defendant, and of race and gender of victim in the application of the FDPA.</i>	84
3. “Cruel”-Other Sources of Unreliability and Arbitrariness	94
a. Arbitrariness Produced by Prosecutorial Discretion	94
b. Arbitrariness and Unreliability Induced by Doomed Efforts to Predict Future Danger	101
4. “Cruel”- Excessive Delays	105
5. “Unusual”- Decline in Use of the Death Penalty Under Evolving Standards of Decency	112
6. The Doctrine of <i>Stare Decisis</i>	126
IV. CONCLUSION	130

TABLE OF AUTHORITIES

Cases

Andrews v. Davis
798 F.3d 759 (9th Cir. 2015) 74

Arave v. Creech
507 U.S. 463 (1993) 102

Arizona v. Rumsey
467 U.S. 203 (1984) 126

Arlington Heights v. Metropolitan Housing Dev. Corp.
429 U.S. 252 (1977) 81

Atkins v. Virginia
536 U.S. 304 (2002) 9, 10, 20, 49

Barnette v. West Virginia Board of Education
47 F. Supp. 251 (S.D. West Virginia) 127

Batson v. Kentucky
476 U.S. 79 (1986). 81

Baze v. Rees
553 U.S. 35, 128 S.Ct. 1520, 170 L.Ed.2d 420 (2008) 9, 16, 110, 128

Bolling v. Sharpe
347 U.S. 497 (1954) 81

Bordenkircher v. Hayes
434 U.S. 357, 98 S.Ct. 663, 54 L.Ed.2d 604 (1978) 95

Bowers v. Hardwick
478 U.S. 186 (1986) 122

Bullington v. Missouri
451 U.S. 430 (1981) 82

Bush v. Gore
531 U.S. 98, 121 S.Ct. 525, 148 L.Ed.2d 388 (2000) 74

Chandler v. United States
 193 F.3d 1297 (11th Cir. 1999) 27

Chandler v. United States
 218 F.3d 1305 (11th Cir. 2000) 27

Chapman v. United States
 500 U.S. 453 (1991) 7

Coker v. Georgia
 433 U.S. 584 (1977) 9

Coleman v. Balkcom
 451 U.S. 949 (1981) 109, 111

Davis v. Ayala
 135 S. Ct. 2187 (2015) 107

DeGarmo v. Texas
 474 U.S. 973 (1985) 95, 97

Eddings v. Oklahoma
 455 U.S. 104 (1982) 11, 36, 50

Enmund v. Florida
 458 U.S. 782 (1982) 9, 10

Ford v. Wainwright
 477 U.S. 399 (1986) 29

Furman v. Georgia
 408 U.S. 238 (1972) *passim*

Gardner v. Florida
 430 U.S. 349 (1977) 5

Gebhart v. Belton
 87 A.2d 862 (Del. Ch. 1952) 127

Glossip v. Gross
 135 S.Ct. 2726 (2015) *passim*

Godfrey v. Georgia
 446 U.S. 420 (1980) 12, 16, 36

Gomez v. Fierro
 519 U.S. 918 (1996) 109

Graham v. Collins
 506 U.S. 461 (1993) 83

Graham v. Collins
 506 U.S. 461 (1993) 12

Graham v. Florida
 560 U.S. 48 (2010) 8-10

Gregg v. Georgia
 428 U.S. 153 (1976) *passim*

Hall v. Florida
 134 S.Ct. 1986 (2014) *passim*

Hartman v. Moore
 547 U.S. 250 (2006) 13

Herrera v. Collins
 506 U.S. 390 (1993) 28

Hunter v. Erickson
 393 U.S. 385 (1969) 81

In re Kemmler
 136 U.S. 436 (1890) 8

In re Medley
 134 U.S. 160 (1890) 108

In re Morris
 363 F.3d 891 (9th Cir. 2004) 98

Johnson v. Bredesen
 558 U.S. 1067 (2009) 107

Jones v. Chappell
 31 F.Supp.3d 1050 (C.D.Cal.2014) 109

Jurek v. Texas
 428 U.S. 262 (1976) 101

Kansas v. Marsh
 548 U.S. 163 (2006) *passim*

Kennedy v. Louisiana
 554 U.S. 407 (2008) *passim*

Kervin v. Barnes
 787 F.3d 833 (7th Cir. 2015) 108

Lackey v. Texas
 514 U.S. 1045 (1995) 111

Lawrence v. Texas
 539 U.S. 558 (2003) 122, 129

Lockett v. Ohio
 438 U.S. 586 (1978) 82

Lowenfield v. Phelps
 484 U.S. 231 (1988) 12

Mario Dion Woodward v. Alabama
 134 S. Ct. 405 (2013) 129

McCleskey v. Kemp
 481 U.S. 279 (1987) 13, 17, 75, 77, 78

Miller v. Alabama
 132 S. Ct. 2455 (2012) 58, 121

Morgan v. Illinois
 504 U.S. 719 (1992) 28

Morris v. Ylst
 447 F.3d 735(9th Cir. 2006) 97

Obergefell v. Hodges
 135 S. Ct. 2584 (2015) 122, 126

Payne v. Tennessee
 501 U.S. 808 (1991) 126, 127

Penry v. Lynaugh
 492 U.S. 302 (1989) 121, 129

People v. Anderson
6 Cal.3d 628, 493 P.2d 880, 100 Cal.Rptr. 152 (1972) 109

People v. Seumanu
61 Cal. 4th 1293, 355 P.3d 384, 438 (2015) 5, 42

Pulley v. Harris
465 U.S. 37 (1984) 58, 95, 96

Ring v. Arizona
536 U.S. 584 (2002) 17

Roberts v. Louisiana
428 U.S. 325 (1976) 82

Roper v. Simmons
543 U.S. 551 (2005) *passim*

Rose v. Mitchell
443 U.S. 545 (1979) 82

Simmons v. South Carolina
512 US 154 (1994) 101

Solem v. Helm
463 U.S. 277, 103 S.Ct. 3001, 77 L.Ed.2d 637 (1983) 96

Stanford v. Kentucky
492 U.S. 361 (1989) 120, 129

State v. Santiago
318 Conn. 1, 122 A.3d 1 (Conn. 2015) *passim*

Sykes v. United States
131 S.Ct. 2267 (2011) 4

Thompson v. McNeil
556 U.S. 1114 (2009) 108

Thompson v. Oklahoma
487 U.S. 815 (1988) 10, 49, 109, 123

Trop v. Dulles
356 U.S. 86 (1958) 3, 5, 58, 109, 112

Tuilaepa v. California
 512 U.S. 967 (1994) 12, 14, 16

Turner v. Murray
 476 U.S. 28 (1986) 15, 82

United States v. Barnette
 211 F.3d 803 (4th Cir. 2000) 34

United States v. Bass
 266 F.3d 532 (6th Cir. 2001) 65

United States v. Bernard
 299 F.3d 467 (5th Cir. 2002) 33

United States v. bin Laden
 126 F. Supp.2d 256 (S.D.N.Y. 2000) 65, 74

United States v. Buckendahl
 251 F.3d 753 (8th Cir. 2001) 74

United States v. Butz
 517 F. Supp. 1167 (S.D.N.Y. 1981) 14

United States v. Caro
 597 F.3d 608 (4th Cir. 2010) 45

United States v. Causey
 185 F.3d 407 (5th Cir. 1999) 34

United States v. Chanthadara
 230 F.3d 1237 (10th Cir. 2000) 34, 64

United States v. City of Philadelphia
 644 F.2d 187 (3rd Cir. 1980) 127

United States v. Cooya
 No. 4:08-CR-70, 2011 WL 3608611 (M.D. Pa. Aug. 16, 2011) 99

United States v. Ebron
 683 F.3d 105 (5th Cir. 2012) 33

United States v. Fell
 217 F.Supp.2d 469 (2002) 5, 6

United States v. Fell
 360 F.3d 135 (2d Cir. 2004) 6, 33

United States v. Fell
 372 F. Supp. 2d 753 (D. Vt. 2005) 6

United States v. Fell
 531 F.3d 197 (2d Cir. 2008) 6, 33

United States v. Fell
 571 F.3d 264 (2d Cir. 2009) 43, 67

United States v. Hager
 731 F.3d 167 (4th Cir. 2013) 33

United States v. Hammer
 404 F. Supp. 2d 676 (M.D. Pa. 2005) 32

United States v. Hammer
 564 F.3d 628 (3d Cir. 2009) 32

United States v. Hardy
 762 F. Supp. 2d 849 (E.D. La. 2010) 31

United States v. Higgs
 353 F.3d 281 (4th Cir.2003) 58

United States v. Jacques
 2011 WL 1675417 (D.Vt. May 4, 2011) 13

United States v. Jacques
 684 F.3d 324 (2nd Cir. 2012) 33

United States v. Johnson
 900 F.Supp.2d 949 (N.D.Iowa,2012) 74

United States v. Jones
 132 F.3d 232 (5th Cir. 1998) 41, 42, 58

United States v. Lighty
 616 F.3d 321 (4th Cir. 2010) 33

United States v. Littrell
 478 F. Supp. 2d 1179 (C.D. Cal. 2007) 99

United States v. McCullah
76 F.3d 1087 (10th Cir. 1996) 34

United States v. Mitchell
502 F.3d 931 (9th Cir. 2007) 58

United States v. Montgomery
635 F.3d 1074 (8th Cir. 2011) 33

United States v. Pepin
514 F.3d 193 (2nd Cir. 2008) 33

United States v. Purkey
428 F.3d 738 (8th Cir. 2005) 33

United States v. Quinones
313 F.3d 49 (2d Cir. 2002) 7, 33

United States v. Redondo-Lemos
955 F.2d 1296 (9th Cir.1992) 97, 98

United States v. Runyon
707 F.3d 475 (4th Cir. 2013) 33

United States v. Sampson
2015 WL 6511247 (D. Mass. Oct. 28, 2015) *passim*

United States v. Sampson
275 F. Supp. 2d 49 (D. Mass. 2003) *passim*

United States v. Sampson
335 F. Supp. 2d 166 (D. Mass. 2004) 104

United States v. Stitt
250 F.3d 878 (4th Cir. 2001) 34

United States v. Taveras
424 F.Supp.2d 446 (E.D.N.Y. 2006) 101, 104

United States v. Troya
733 F.3d 1125 (11th Cir. 2013) 33

United States v. Webster
162 F.3d 308 (5th Cir. 1998) 34

United States v. White
405 F.2d 838 (7th Cir. 1969) 127

United States v. Whitten
610 F.3d 168 (2nd Cir. 2010) 33

Walker v. Georgia
129 S.Ct. 453 (2008) 58

Walton v. Arizona
497 U.S. 639 (1990) 17, 45

Wayte v. United States
470 U.S. 598 (1985) 13, 95

Weems v. United States
217 U.S. 349, 30 S.Ct. 544, 54 L.Ed. 793 (1910) 4, 112

Weinberger v. Wisenfeld
420 U.S. 636 (1975) 81

Woodson v. North Carolina
428 U.S. 280 (1976) *passim*

Yick Wo v. Hopkins
118 U.S. 356 (1886) 78

Zant v. Stephens
462 U.S. 862 (1983) 39, 83

United States Constitution

Amendment X *passim*

Amendment XIII *passim*

I. INTRODUCTION

On the last day of the last Term, Justices Breyer and Ginsburg issued a clarion call for reconsideration of the constitutionality of the death penalty, aligning themselves with the views of several other justices who have expressed similar sentiments in the four decades since the Court reversed its earlier decision that capital punishment violates the Eighth Amendment. See *Glossip v. Gross*, ___ U.S. __; 135 S.Ct. 2726, 2755-2780 (2015)(Breyer and Ginsburg, JJ., dissenting). In support of their conclusion that “the death penalty, in and of itself, now likely constitutes a legally prohibited ‘cruel and unusual punishmen[t]’ ”, these Justices wrote:

In 1976, the Court thought that the constitutional infirmities in the death penalty could be healed; the Court in effect delegated significant responsibility to the States to develop procedures that would protect against those constitutional problems. Almost 40 years of studies, surveys, and experience strongly indicate, however, that this effort has failed. Today's administration of the death penalty involves three fundamental constitutional defects: (1) serious unreliability, (2) arbitrariness in application, and (3) unconscionably long delays that undermine the death penalty's penological purpose. Perhaps as a result, (4) most places within the United States have abandoned its use.

I shall describe each of these considerations, emphasizing changes that have occurred during the past four decades. For it is those changes, taken together with my own 20 years of experience on this Court, that lead me to believe that the death penalty, in and of itself, now likely constitutes a legally prohibited “cruel and unusual punishmen[t].” U.S. Const., Amdt. 8.

Id. at 2755-56.

Less than two months later, the Connecticut Supreme Court, relying extensively on the analysis of Justices Breyer and Ginsburg, held that “the death penalty... is so out of step with our contemporary standards of decency as to violate the state constitutional ban on excessive and disproportionate punishment.” *State v. Santiago*, 318 Conn. 1, 45-46, 122 A.3d 1 (Conn. 2015),

reconsideration denied, 319 Conn. 912 (2015).¹ The *Glossip* dissent was cited in *Santiago* for a number of factual and legal propositions critical to the *Santiago* court’s holding, including: (1) “[n]otably, by 2012, less than 2 percent of the nation’s counties accounted for all of the death sentences imposed nationwide” (318 Conn. at 80); (2) “between 1973 and 1995, state and federal courts found errors in more than two thirds of the capital cases that they reviewed” (*Id.* at 93 n. 96); (3) “[s]tatistical analyses have demonstrated to a near certainty that innocent Americans have been and will continue to be executed in the post-*Furman* era” (*Id.* at 104); and (4) “court[s], not legislature[s] ultimately must determine whether capital punishment comports with evolving standards of decency because [these] are quintessentially judicial matters ... [that] concern the infliction—indeed the unfair, cruel, and unusual infliction—of a serious punishment [on] an individual.” (*Id.* at 138-39).

The first federal death penalty case to begin to come to grips with the current realities of the death penalty as outlined in the *Glossip* dissent was *United States v. Sampson*, ___F.Supp. 2d ___, 2015 WL 6511247, at *21 (D. Mass. Oct. 28, 2015). There, although Judge Wolf denied the defendant’s multiple challenges to the FDPA on the pre-*Glossip* record presented in that case, he nevertheless concluded, citing the *Glossip* dissent and his own prior ruling on the issue, that “[t]he court remains concerned, however, about the potential rate of error in federal capital cases generally and the risk of the execution of the innocent particularly”. Judge Wolf elaborated:

Although the court did not find in 2003 that the objective indicia of contemporary standards justified invalidating the FDPA, it did agree with other courts that “the FDPA, like state death penalty statutes, will inevitably result in the execution of innocent people.” [*United States v. Sampson*, 275 F. Supp. 2d 49, 81

¹ Although decided on state constitutional grounds, *Santiago* expressly ruled that “when construing the state constitutional freedom from cruel and unusual punishment, we broadly adopt the framework that the federal courts have used to evaluate eighth amendment challenges.” *Santiago*, at 45-46.

(D.Mass. 2003)]. Several Justices of the Supreme Court have since expressed similar concerns. See, e.g., *Glossip*, 135 S.Ct. at 2756-59 (Breyer, J., dissenting) (noting that the number of exonerations in capital cases has increased from 60 in 2002 to 115 in 2015); [*Kansas v. Marsh*, 548 U.S. 163, 207-08 (Souter, J., dissenting)] (“ Today, a new body of facts must be accounted for in deciding what, in practical terms, the Eighth Amendment guarantees should tolerate, for the period starting in 1989 has seen repeated exonerations of convicts under death sentences, in numbers never imagined before the development of DNA tests.”). In June 2015, Justice Breyer, joined by Justice Ginsburg, dissented from a decision finding Oklahoma's method of execution constitutional. Referencing much of the evidence that Sampson presented to this court concerning the Rate of Error Motion, Justice Breyer called for “full briefing” on the question of “whether the death penalty violates the Constitution,” in part because some current information concerning alleged arbitrariness was not available when the issue was decided previously. See *Glossip*, 135 S.Ct. at 2755; see also *Id.* at 2759-64. This court, respectfully, suggests that factfinding in a district court, in an appropriate case, should precede any such “briefing”.

Id. at *20.

Judge Wolf therefore ruled: “Sampson has not identified disputed material facts with the specificity required to justify an evidentiary hearing on the motion alleging general arbitrariness....Nor, on the current record, has the court found that his evidence, if accepted as true, justifies finding capital punishment generally, or the FDPA particularly, unconstitutional. However, Sampson's motion for an evidentiary hearing on this issue, and therefore this motion, are being denied without prejudice to possible reconsideration if a future, focused presentation persuades the court that a hearing is justified.” *Id.*

In a section of his lengthy opinion entitled “The Role of the District Court in Eighth Amendment Litigation”, Judge Wolf concluded:

...[T]he Court has repeatedly held that courts must look to “ 'evolving standards of decency that mark the progress of a maturing society' ” in deciding whether the Eighth Amendment permits a particular punishment for a particular crime. *Hall v. Florida*, 134 S.Ct. 1986, 1992 (2014) (quoting *Trop v. Dulles*, 356 U.S. 86, 101 (1958)); *Roper v. Simmons*, 543 U.S. 551, 560-61 (2005). The question of whether standards of decency have materially changed since the Supreme Court decided an issue is a factual question. See, e.g., *Kansas v. Marsh*, 548 U.S. 163, 207-

11 (2006) (Souter, J., dissenting). Factfinding is, in the first instance at least, typically done based on evidence presented in the district courts, where the adversary process operates to test that evidence and material disputes are decided by a trial judge or jury. See *Sykes v. United States*, 131 S.Ct. 2267, 2286 (2011) (Scalia, J., dissenting); see also Allison Orr Larsen, *The Trouble with Amicus Facts*, 100 Va. L. Rev. 1757 (2014); Adam Liptak, *Seeking Facts, Justices Settle for What Briefs Tell Them*, N.Y. Times, Sept. 2, 2014, at A10.

Therefore, if there has been a material change in facts relevant to the evolving standards analysis--a question initially for the trial courts—an issue is not foreclosed by Supreme Court precedent because the Supreme Court has not decided the matter in dispute. Rather, the district court is deciding a distinguishable case and controversy. As this court wrote in 2003, when the Supreme Court held that the death penalty was not per se unconstitutional in *Gregg v. Georgia*, 428 U.S. 153 (1976), “the Court also implicitly acknowledged that future developments might challenge the basis of its decision.” *Sampson I*, 275 F. Supp. 2d at 72 (citing *Gregg*, 428 U.S. at 187 (plurality op. of Stewart, Powell, and Stevens, JJ.)). Accordingly, in evaluating Sampson's 2014 challenges to the death penalty, the court has examined the alleged facts on which Sampson relies and decided whether they are significantly different than the facts in the cases in which the Supreme Court or the First Circuit decided the analogous issue. If there is no significant difference in the facts, this court must follow the higher court's holdings. If there might be a significant difference in the proven facts, this court has both the authority and the obligation to decide whether new facts have been proven and, if so, whether they are material in the sense that they require a different conclusion.

Id., at *4.

Later in the opinion, the court reiterated: “The Supreme Court recently stated that “it is settled that capital punishment is constitutional.” *Glossip*, 135 S.Ct. at 2732. However, as explained earlier, if there is proof that the facts on which the Supreme Court decided an issue have materially changed, then the issue is not the same and prior decisions would not dictate the outcome.” *Id.* at *8.

In other words, the constitutional guarantee against excessive punishment is “not fastened to the obsolete but may acquire meaning as public opinion becomes enlightened by a humane justice.” *Weems v. United States*, 217 U.S. 349, 378, 30 S.Ct. 544, 54 L.Ed. 793 (1910); see also *Hall v. Florida*, supra, 134 S.Ct. at 1992 (“[t]he Eighth Amendment's protection of dignity reflects

the [n]ation we have been, the [n]ation we are, and the [n]ation we aspire to be”); *United States v. Sampson*, 275 F. Supp. 2d 49, 86 (D. Mass. 2003)(“It will... be incumbent on courts in future cases to monitor the reactions of legislatures and juries to the mounting evidence that death penalty statutes have resulted in death sentences and executions of innocent individuals much more often than previously understood.”); *United States v. Fell*, 217 F.Supp.2d 469, 477 (2002)(The Supreme Court has “ acknowledged an ongoing ‘obligation to re-examine capital-sentencing procedures against evolving standards of procedural fairness in a civilized society.’”)(quoting *Gardner v. Florida*, 430 U.S. 349, 357 (1977)); *State v. Santiago*, 318 Conn. at 47 (“Because the legal standard is an evolving one, it is both necessary and appropriate for us to consider the issue anew, in light of relevant recent developments, when it is raised.”)(citing *Trop*, *Weems*, and *Hall*); *People v. Seumanu*, 61 Cal. 4th 1293, 1369, 355 P.3d 384, 438 (2015)(“[A]lthough we have consistently, and recently, rejected the Eighth Amendment/delay claim, doctrine can evolve. This is especially true when interpreting the Eighth Amendment, which was ratified in 1791. The United States Supreme Court has recognized that the notion of cruel and unusual punishment is not a concept carved in 18th-century stone, instead explaining that although ‘the words of the [Eighth] Amendment are not precise, ... their scope is not static. The Amendment must draw its meaning from the evolving standards of decency that mark the progress of a maturing society.’”)(quoting *Trop*).

Mr. Fell asks this Court to apply this same flexible Eighth Amendment standard here, and to rule, based on the recent developments outlined in the *Glossip* and *Santiago* opinions, as supplemented by the factual showing made herein and at any evidentiary hearing to be ordered by the Court, that the federal death penalty, in and of itself, constitutes a legally prohibited cruel and unusual punishment prohibited by both the Fifth and Eighth Amendments.

II. PROCEDURAL HISTORY

In October 2001, the government agreed to forego capital charges against Mr. Fell based on substantial mitigating evidence that had been uncovered relating to his mental health and impaired capacity at the time of the events; his mental health history and background; his assistance to authorities; the fact that he was only 20 years old at the time of the charged crime and did not have a substantial prior criminal history. *United States v. Fell*, 531 F.3d 197, 206 (2d Cir. 2008). This agreement was reached after extensive negotiations with the United States Attorney's Office of Vermont; however, the Attorney General of the United States rejected it "upon the advice of his standing committee of the Department of Justice that reviews death-eligible prosecutions." *Id.*

Thereafter, on January 30, 2002, the government filed a Notice of Intent to Seek the Death Penalty. (Doc. 32.) On May 28, 2002, Mr. Fell's counsel moved to declare the Federal Death Penalty Act (FDPA) unconstitutional raising twelve separate challenges. (Doc. 44.) This Court granted the motion on the ground that "the FDPA's § 3593(c)'s direction to ignore the rules of evidence when considering information relevant to death penalty eligibility" violates the Sixth Amendment's guarantee of confrontation and the Fifth Amendment's guarantee of due process (Doc. 70). *See U.S. v. Fell*, 217 F. Supp. 2d 469, 473 (D. Vt. 2002).

The government appealed and the Second Circuit reversed finding the Constitution did not require adherence to the Federal Rules of Evidence. *United States v. Fell*, 360 F.3d 135 (2d Cir. 2004). On remand this Court considered the remaining issues raised in Mr. Fell's original motion, which included one of the issue presented here regarding the unconstitutional rate of error in capital punishment. At that time, 2002, Mr. Fell's counsel framed the challenge by arguing the FDPA was unconstitutional because "it fails to avoid sentences of death for the factually and legally innocent" (Doc. 44). *United States v. Fell*, 372 F. Supp. 2d 753, 755-56 (D. Vt. 2005). In 2002, the facts in

support of this argument did not exist and the claim was thus denied based on the Second Circuit's decision in *United States v. Quinones*, 313 F.3d 49 (2d Cir. 2002). *Id.*

As discussed below the facts that now exist in support of this and other claims are “significantly different than the facts” relied upon by Mr. Fell’s counsel in 2002. *See United States v. Sampson*, 2015 WL 6511247, *4-5 (D. Mass. Oct. 28, 2015) (holding that if “there might be a significant difference in the proven facts, this court has both the authority and the obligation to decide whether new facts have been proven and, if so, whether they are material in the sense that they require a different conclusion.”).

Facing a new trial, Mr. Fell again respectfully requests this Court to examine the issue and arguments in light of the new and overwhelming evidence of unconstitutionality in capital punishment including the Federal Death Penalty Act and strike the notice of death or, in the alternative, grant an evidentiary hearing so the facts in dispute may be developed and proven. *See Sampson*, 2015 WL 6511247, at *21 (suggesting that the district court is the appropriate place for such briefing on this issue).

III. ARGUMENT

A. General Fifth and Eighth Amendment Principles

The Due Process Clause of the Fifth Amendment prohibits the imposition of punishment on the basis of “arbitrary distinction[s].” *Chapman v. United States*, 500 U.S. 453, 465 (1991). “In the capital punishment context, ‘arbitrariness’ has a procedural component and a substantive component.” *Sampson*, 2015 WL 6511247, at *14 . Procedurally, “[b]ecause of the uniqueness of the death penalty, *Furman* ...held that it could not be imposed under sentencing procedures that created a substantial risk that it would be inflicted in an arbitrary and capricious manner.” *Gregg*, 428 U.S. at 188. The high service rendered by this requirement is “to require legislatures to write

penal laws that are evenhanded, nonselective, and nonarbitrary, and to require judges to see to it that general laws are not applied sparsely, selectively, and spottily to unpopular groups.” *Sampson*, 2015 WL 6511247, at *14. Substantively, “a defendant's sentence may still be ‘arbitrary and capricious’ if it is sought or imposed based on impermissible considerations of immutable characteristics, such as race.” *Id.*

The Eighth Amendment imposes additional restrictions on the infliction of punishment. As summarized in *Santiago* at * 19, the Eighth Amendment establishes the minimum standards for what constitutes impermissibly cruel and unusual punishment. Specifically, the United States Supreme Court has indicated that at least three types of punishment may be deemed unconstitutionally cruel: (1) inherently barbaric punishments; (2) excessive and disproportionate punishments; and (3) arbitrary or discriminatory punishments.²

1. Inherently Barbaric Punishments

First, the Eighth Amendment categorically prohibits the imposition of inherently barbaric punishments. *Graham v. Florida*, 560 U.S. 48, 59 (2010). This prohibition is directed toward manifestly and unnecessarily cruel punishments, such as torture and other wanton infliction of physical pain. See, e.g., *Gregg v. Georgia*, 428 U.S. 153, 170–72 (1976) (opinion announcing judgment); *In re Kemmler*, 136 U.S. 436, 447. (1890). In the context of capital punishment, the Eighth Amendment also bars particular modes of execution that present a substantial or objectively

² In addition, some members of the United States Supreme Court have suggested that a punishment may be so unusual that it runs afoul of the Eighth Amendment on that basis alone. See, e.g., *Glossip*, 135 S.Ct. at 2774 (Breyer and Ginsburg, JJ., dissenting)(executions could be so infrequently carried out that they “ ‘would cease to be a credible deterrent or measurably to contribute to any other end of punishment in the criminal justice system ... when imposition of the penalty reaches a certain degree of infrequency, it would be very doubtful that any existing general need for retribution would be measurably satisfied’ ”)(quoting *Furman v. Georgia*, 408 U.S. 238, 311(1972) (White, J., concurring)).

intolerable risk of inflicting severe pain. *Baze v. Rees*, 553 U.S. 35, 50, 52, 128 S.Ct. 1520, 170 L.Ed.2d 420 (2008) (opinion announcing judgment).

2. Excessive and Disproportionate Punishments

Second, the Eighth Amendment mandates that punishment be proportioned and graduated to the offense of conviction. See *Graham v. Florida*, *supra*, at 59. In the capital punishment context, the United States Supreme Court has held, for example, that the death penalty is categorically excessive and disproportionate when imposed on certain classes of offenders. See, e.g., *Roper v. Simmons*, 543 U.S. 551, 568(2005) (prohibiting execution of individuals who were under eighteen years of age when they committed capital crimes); *Atkins v. Virginia*, 536 U.S. 304, 321 (2002) (execution of intellectually disabled individuals was held to be unconstitutional). The court also has concluded that capital punishment is never warranted for non-homicide crimes against individuals. See, e.g., *Kennedy v. Louisiana*, 554 U.S. 407, 446 (2008) (death penalty was held to be disproportionate punishment for child rape); *Enmund v. Florida*, 458 U.S. 782, 797(1982) (Eighth Amendment does not permit execution of defendant who did not kill or intend to kill but who played minor role in felony in course of which murder was committed by others); *Coker v. Georgia*, 433 U.S. 584, 592 and n. 4 (1977) (plurality opinion) (sentence of death for rape of adult woman was held to be grossly disproportionate and excessive punishment).

A court engages in a two stage analysis in determining whether a challenged punishment is unconstitutionally excessive and disproportionate. *Enmund v. Florida*, *supra*, 458 U.S. at 788–89. First, the court looks to “objective factors” to determine whether the punishment at issue comports with contemporary standards of decency. *Id.*, at 788. These objective indicia include “the historical development of the punishment at issue,” legislative enactments, and the decisions of prosecutors

and sentencing juries. *Id.*; see also *Roper v. Simmons*, supra, 543 U.S. at 563; *Thompson v. Oklahoma*, 487 U.S. 815, 821–22 (1988).

This objective evidence of contemporary social mores, however, does not wholly determine the issue. “Although legislative measures adopted by the people’s chosen representatives provide one important means of ascertaining contemporary values, it is evident that legislative judgments alone cannot be determinative of Eighth Amendment standards since that Amendment was intended to safeguard individuals from the abuse of legislative power.” *Gregg v. Georgia*, supra, 428 U.S. at 174 n. 19 (opinion announcing judgment). Because the Eighth Amendment imposes “a restraint [on] the exercise of legislative power”; *Id.*, at 174, the United States Supreme Court repeatedly has emphasized that courts must conduct a second stage of analysis in which they bring their own independent judgments to bear, giving careful consideration to the reasons why a civilized society may accept or reject a given penalty. See, e.g., *Hall v. Florida*, ___U.S. ___, 134 S.Ct. 1986, 1993, 1999–2000 (2014); *Atkins v. Virginia*, supra, 536 U.S. at 312; *Thompson v. Oklahoma*, supra, 487 U.S. at 822–23. “Although the judgments of legislatures, juries, and prosecutors weigh heavily in the balance, it is for [the court] ultimately to judge whether the [constitution] permits imposition of the death penalty....” *Enmund v. Florida*, supra, 458 U.S. at 797. A court’s independent analysis must be informed not only by judicial precedents, but also by its own understanding of the rights secured by the constitution. *Kennedy v. Louisiana*, supra, 554 U.S. at 434. This analysis necessarily encompasses the question of whether the penalty at issue promotes any of the penal goals that courts and commentators have recognized as legitimate: deterrence, retribution, incapacitation, and rehabilitation. E.g., *Graham v. Florida*, supra, 560 U.S. at 71. A sentence materially lacking any legitimate penological justification would be nothing more than the “gratuitous infliction of

suffering” and, by its very nature, disproportionate. *Gregg v. Georgia*, supra, at 183 (opinion announcing judgment).³

3. Arbitrary or Discriminatory Punishments

Third, the Eighth Amendment prohibits punishments that are imposed in an “arbitrary and unpredictable fashion....” *Kennedy v. Louisiana*, supra, 554 U.S. at 436. The ultimate punishment must be reserved for the very worst offenders, and may not be “wantonly [or] ... freakishly imposed.” *Furman v. Georgia*, supra, 408 U.S. at 310 (Stewart, J., concurring). In *Eddings v. Oklahoma*, 455 U.S. 104, 112 (1982), the Court referred to the other side of this approach, requiring “that capital punishment be imposed fairly, and with reasonable consistency, or not at all.” More recently in *Kennedy v. Louisiana*, supra, the Court warned, “When the law punishes by death, it risks its own sudden descent into brutality, transgressing the constitutional commitment to decency and restraint.” 554 U.S. at 420. For that reason, the Court wrote, “[C]apital punishment must ‘be limited to those offenders who commit ‘a narrow category of the most serious crimes’ and whose extreme culpability makes them ‘the most deserving of execution.’” *Id.* In the context of capital punishment, the United States Supreme Court has indicated that there are two dimensions to this rule.

On the one hand, in *Furman v. Georgia*, 408 U.S. 238, 239–40 (1972), in which the Court held, in a per curiam opinion, that capital punishment as then applied violated the Eighth

³ Some justices of the United States Supreme Court have suggested that these considerations—whether a punishment is excessive or disproportionate, whether it comports with contemporary standards of decency and dignity, and whether it satisfies any legitimate penological goals—represent three distinct elements or prongs of the Eighth Amendment analysis. See, e.g., *Furman v. Georgia*, 408 U.S. 238, 330–32, 92 S.Ct. 2726, 33 L.Ed.2d 346 (1972) (Marshall, J., concurring). However, as correctly pointed out in *Santiago*, “[w]hether these considerations are treated as distinct elements or merely as distinct components of a common element, however, is merely semantic and ultimately immaterial, because it is clear that a sentence's failure to satisfy any of these requirements would render it unconstitutional under the eighth amendment.” *State v. Santiago*, 318 Conn. at 22 n. 18.

Amendment, and four years later in *Gregg v. Georgia*, supra, 428 U.S. 153, 96 S.Ct. 2909 in which the court held that Georgia's revamped capital punishment statute did not offend the United States constitution; *Id.*, at 206–207, 96 S.Ct. 2909 (opinion announcing judgment); the Court established the principle that a capital sentencing scheme must provide the sentencing authority sufficient guidance as to which crimes and criminals are death worthy to ensure that the death penalty is not imposed in an arbitrary or freakish manner. *Id.*, at 192–95 (opinion announcing judgment). “To pass constitutional muster, a capital sentencing scheme must genuinely narrow the class of persons eligible for the death penalty and must reasonably justify the imposition of a more severe sentence on the defendant compared to others found guilty of murder.” *Lowenfield v. Phelps*, 484 U.S. 231, 244 (1988). “This means that if a [s]tate wishes to authorize capital punishment it has a constitutional responsibility to tailor and apply its law in a manner that avoids the arbitrary and capricious infliction of the death penalty. Part of a [s]tate's responsibility in this regard is to define the crimes for which death may be the sentence in a way that obviates standardless [sentencing] discretion.... It must channel the sentencer's discretion by clear and objective standards that provide specific and detailed guidance, and that make rationally reviewable the process for imposing a sentence of death.” *Godfrey v. Georgia*, 446 U.S. 420, 428 (1980) (plurality opinion).

It goes without saying, moreover, that the Eighth Amendment is offended not only by the random or arbitrary imposition of the death penalty, but also by the greater evils of racial discrimination and other forms of pernicious bias in the selection of who will be executed. See, e.g., *Tuilaepa v. California*, 512 U.S. 967, 973 (1994) (guarding against bias or caprice in sentencing is “controlling objective” of court's review); see also *Graham v. Collins*, 506 U.S. 461, 484 (1993) (Thomas, J., concurring) (racial prejudice is “the paradigmatic capricious and irrational sentencing factor”); *Furman v. Georgia*, supra, 408 U.S. at 242, 92 S.Ct. 2726 (Douglas, J., concurring) (one

aim of English Declaration of Rights of 1689, in which Eighth Amendment language originated, was to forbid discriminatory penalties); *Furman v. Georgia*, supra, at 310, 92 S.Ct. 2726 (Stewart, J., concurring) (“if any basis can be discerned for the selection of these few to be sentenced to die, it is the constitutionally impermissible basis of race”). The Eighth Amendment, then, requires that any capital sentencing scheme determine which defendants will be eligible for the death penalty on the basis of legitimate, rational, nondiscriminatory factors.

On the other hand, the United States Supreme Court also has insisted that, at the sentencing stage, juries must have unlimited discretion to assess “the character and record of the individual offender and the circumstances of the particular offense as a constitutionally indispensable part of the process of inflicting the penalty of death.” *Woodson v. North Carolina*, 428 U.S. 280 (1976) (opinion announcing judgment). The Court in *Woodson* held that this sort of individualized sentencing determination is necessary to arrive at a just and appropriate sentence and to honor the Eighth Amendment’s “fundamental respect for humanity....” *Id.* The Court also has consistently indicated that the government has broad discretion as to whom to prosecute and what charge to file. See, e.g., *Hartman v. Moore*, 547 U.S. 250, 263 (2006); *McCleskey v. Kemp*, 481 U.S. 279, 296–97 (1987); *Wayte v. United States*, 470 U.S. 598, 607 (1985). “As currently construed, then, the federal constitution simultaneously requires that states narrowly limit and carefully define which offenders are eligible for capital punishment, while, paradoxically, also giving prosecutors and juries, respectively, virtually unfettered discretion whether actually to charge defendants with capital crimes and whether to sentence convicted offenders to death.” *Santiago*, 318 Conn. at 25.

Most of the challenges to the FDPA have been met with the response that the Act is constitutional because it contains the safeguards articulated in *Gregg*. See e.g., *United States v. Sampson*, 2015 WL 6511247 * 18; *United States v. Jacques*, 2011 WL 1675417 * 3 (D.Vt. May 4,

2011). The constitutional problem with this response is that it ignores the actual experience of utilizing these particular safeguards.⁴ As articulated in *Glossip*, “the Court in effect delegated significant responsibility to the States [and Congress] to develop procedures that would protect against those constitutional problems. Almost 40 years of studies, surveys, and experience strongly indicate, however, that this effort has failed.” *Id.* at 2755, And as was held in *Santiago*,

[I]t has become apparent that the dual federal constitutional requirements applicable to all capital sentencing schemes—namely, that the jury be provided with objective standards to guide its sentence, on the one hand, and that it be accorded unfettered discretion to impose a sentence of less than death, on the other—are fundamentally in conflict and inevitably open the door to impermissible racial and ethnic biases.

318 Conn. at 14.

The question is whether this individualized sentencing requirement inevitably allows in through the back door the same sorts of caprice and freakishness that the court sought to exclude in *Furman*, or, worse, whether individualized sentencing necessarily opens the door to racial and ethnic discrimination in capital sentencing. In other words, is it ever possible to eliminate arbitrary and discriminatory application of capital punishment through a more precise and restrictive definition of capital crimes if prosecutors always remain free not to seek the death penalty for a particular defendant, and juries not to impose it, for any reason whatsoever? We do not believe that it is.

Id. at 108-109.

In support of this conclusion, the *Santiago* court aptly noted that “the United States Supreme Court itself has expressed serious doubts as to whether its own commandments can be reconciled.” *Id.* at 109. In *Tuilaepa*, the Court recognized that “[t]he objectives of these two inquiries can be in some tension....” *Id.* at 973. Fourteen years later, in *Kennedy*, the Court again acknowledged that “[t]he tension between general rules and case-specific circumstances has produced results not

⁴ “Indeed, in the pursuit of our judicial mission, hardly a day passes without the forceful reminder of Mr. Justice Holmes (*The Common Law* p. 1) that “The life of the law has not been logic: it has been experience.” *United States v. Butz*, 517 F. Supp. 1167, 1168 (S.D.N.Y. 1981)

altogether satisfactory.” *Kennedy v. Louisiana*, supra, 554 U.S. at 436. “Our response to this case law,” the Court frankly conceded, “is still in search of a unifying principle....” *Id.*, at 437. See also, *Turner v. Murray*, 476 U.S. 28, 35(1986) (plurality opinion) (“[b]ecause of the range of discretion entrusted to a jury in a capital sentencing hearing, there is a unique opportunity for racial prejudice to operate”).

“In fact, in the four decades since the United States Supreme Court struck down the death penalty (as then applied) in *Furman* and then resuscitated it four years later in *Gregg*, at least one-half dozen members of that court—jurists of all jurisprudential stripes—have concluded that the demands of *Furman*, on the one hand, and of *Woodson* and *Lockett*, on the other, are, ultimately, irreconcilable.” *Santiago*, 318 Conn. at 109-110. In *Furman* itself, of the five concurring justices, two (Justices Brennan and Marshall) took the position that capital punishment is so inherently arbitrary as to constitute cruel and unusual punishment under all circumstances, and a third (Justice Douglas) opined that any nonmandatory capital sentencing scheme would be inherently subject to discrimination and hence unconstitutional. See *Furman v. Georgia*, supra, 408 U.S. at 255 (Douglas, J., concurring) (“we know that the discretion of judges and juries in imposing the death penalty enables the penalty to be selectively applied, feeding prejudices against the accused if he is poor and despised, and lacking political clout, or if he is a member of a suspect or unpopular minority, and saving those who by social position may be in a more protected position”); *Id.*, at 294 (Brennan, J., concurring) (“[n]o one has yet suggested a rational basis that could differentiate ... the few who die from the many who go to prison”); *Id.*, at 365 (Marshall, J., concurring) (“committing to the untrammelled discretion of the jury the power to pronounce life or death in capital cases is ... an open invitation to discrimination” [internal quotation marks omitted]).

Justice Marshall elaborated on this “fundamental defect” in the Court's Eighth Amendment jurisprudence in *Godfrey v. Georgia*, supra, 446 U.S. at 420:

[A]ppellate courts are incapable of guaranteeing the kind of objectivity and evenhandedness that the Court contemplated and hoped for in *Gregg*. The disgraceful distorting effects of racial discrimination and poverty continue to be painfully visible in the imposition of death sentences.... The task of eliminating arbitrariness in the infliction of capital punishment is proving to be one which our criminal justice system—and perhaps any criminal justice system—is unable to perform....

The ... inability to administer ... capital punishment ... in an evenhanded fashion is ... symptomatic of a deeper problem that is proving to be genuinely intractable....

[T]he task of selecting in some objective way those persons who should be condemned to die is one that remains beyond the capacities of the criminal justice system. For this reason, I remain hopeful that even if the Court is unwilling to accept the view that the death penalty is so barbaric that it is in all circumstances cruel and unusual punishment forbidden by the Eighth and Fourteenth [a]mendments, it may eventually conclude that the effort to eliminate arbitrariness in the infliction of that ultimate sanction is so plainly doomed to failure that it—and the death penalty—must be abandoned altogether.” (Citations omitted; footnotes omitted.)

Id., at 439–42 (Marshall, J., concurring in the judgment).

Both Justices Stevens and Blackmun have reached similar conclusions. See *Baze v. Rees*, supra, 553 U.S. at 85 (Stevens, J., concurring in the judgment)(“[a] ... significant concern is the risk of discriminatory application of the death penalty”); *Tuilaepa v. California*, supra, 512 U.S. at 991–92 (Blackmun, J., dissenting) (“One of the greatest evils of leaving jurors with largely unguided discretion is the risk that this discretion will be exercised on the basis of constitutionally impermissible considerations—primary among them, race.... For far too many jurors, the most important ‘circumstances of the crime’ are the race of the victim or the defendant.” [Citations omitted.]).

Justice Scalia, while drawing a different legal conclusion than his more liberal brethren, has been no less persuaded by the premise that the United States Supreme Court's *Furman* and

Woodson/Lockett lines of jurisprudence are fundamentally incompatible: “To acknowledge that ‘there perhaps is an inherent tension’ between this line of cases and the line stemming from *Furman*, *McCleskey v. Kemp*, 481 U.S., at 363...(BLACKMUN, J., dissenting), is rather like saying that there was perhaps an inherent tension between the Allies and the Axis Powers in World War II. And to refer to the two lines as pursuing “twin objectives,” *Spaziano v. Florida*, 468 U.S., at 459...is rather like referring to the twin objectives of good and evil. They cannot be reconciled.” *Walton v. Arizona*, 497 U.S. 639, 664 (1990)(Scalia, J., concurring in part and concurring in the judgment), overruled in part on other grounds by *Ring v. Arizona*, 536 U.S. 584(2002).

And now, Justices Breyer and Ginsburg have added their voices to this consensus, declaring that:

Four decades ago, the Court believed it possible to interpret the Eighth Amendment in ways that would significantly limit the arbitrary application of the death sentence. See *Gregg*, 428 U.S., at 195, 96 S.Ct. 2909 (joint opinion of Stewart, Powell, and Stevens, JJ.) (“[T]he concerns expressed in *Furman* that the penalty of death not be imposed in an arbitrary or capricious manner can be met”). But that no longer seems likely.

Glossip v. Gross, 135 S. Ct. at 2762 (Breyer and Ginsburg, JJ., dissenting).

It is also clear, based on the analysis conducted in both the *Glossip* dissent and in *Santiago*, that there are numerous other flaws in the current administration of the death penalty. As will now be demonstrated, these flaws are not restricted to state death penalty schemes and apply specifically to the FDPA, rendering any death sentence under it unconstitutional.

B. Almost 40 Years of Studies, Surveys, and Experience Strongly Indicate That The Procedural Protections Built Into The Federal Death Penalty Have Failed To Achieve Their Goal Of Reliable, Rational, Consistent, Fair, Non-Arbitrary, and Non-Discriminatory Application of The Death Penalty.⁵

The *Glossip* dissent and the *Santiago* opinion provide a very current roadmap of the multiple problems with the administration of the death penalty nationwide. By definition, these problems extend to the FPDA, which utilizes the same procedural mechanisms that have produced such a morass in the state death penalty systems. As Justices Breyer and Ginsburg point out, “[a]lmost 40 years of studies, surveys, and experience strongly indicate... that [the death penalty] effort has failed. Today’s administration of the death penalty involves three fundamental constitutional defects: (1) serious unreliability, (2) arbitrariness in application, and (3) unconscionably long delays that undermine the death penalty’s penological purpose. Perhaps as a result, (4) most places within the United States have abandoned its use.” *Glossip v. Gross*, 135 S.Ct. at 2755-56.

1. “Cruel”—Lack of Reliability

The Court has specified that the finality of death creates a “qualitative difference” between the death penalty and other punishments (including life in prison). *Woodson*, 428 U.S., at 305, 96 S.Ct. 2978 (plurality opinion). That “qualitative difference” creates “a corresponding difference in the need for reliability in the determination that death is the appropriate punishment in a specific case.” *Ibid.* “There is increasing evidence, however, that the death penalty as now applied lacks that requisite reliability.” *Glossip v. Gross*, 135 S.Ct. at 2756 (Breyer and Ginsburg, JJ., dissenting). “Unlike 40 years ago, we now have plausible evidence of unreliability that (perhaps due to DNA evidence) is stronger than the evidence we had before. In sum, there is significantly more research-based evidence today indicating that courts sentence to death individuals who may well be actually

⁵ If the government disputes the accuracy of the factual basis underlying this argument, a hearing is requested at which counsel will prove their assertions.

innocent or whose convictions (in the law's view) do not warrant the death penalty's application.” *Id.* at 2759. See also, *Kansas v. Marsh*, 548 U.S. at 207–211 (Souter, J., dissenting) (DNA exonerations constitute “a new body of fact” when considering the constitutionality of capital punishment); *State v. Santiago*, 318 Conn. at 106 (“In concluding that the death penalty is unconstitutional... we recognize that the legal and moral legitimacy of any future executions would be undermined by the ever present risk that an innocent person will be wrongly executed.”).

This new research-based evidence has several different components. First, “despite the difficulty of investigating the circumstances surrounding an execution for a crime that took place long ago, researchers have found convincing evidence that, in the past three decades, innocent people have been executed.” *Id.* at 2756. ⁶ See also, *State v. Santiago*, 318 Conn. at 104 (“Statistical analyses have demonstrated to near certainty that innocent Americans have been and will continue to be executed in the post-*Furman* era.”). As was held in *Santiago*,

⁶ Citing, Liebman, *Fatal Injustice; Carlos DeLuna's Execution Shows That a Faster, Cheaper Death Penalty is a Dangerous Idea*, L.A. Times, June 1, 2012, p. A19 (describing results of a 4-year investigation, later published as The Wrong Carlos: Anatomy of a Wrongful Execution (2014), that led its authors to conclude that Carlos DeLuna, sentenced to death and executed in 1989, six years after his arrest in Texas for stabbing a single mother to death in a convenience store, was innocent); Grann, *Trial By Fire: Did Texas Execute An Innocent Man?* The New Yorker, Sept. 7, 2009, p. 42 (describing evidence that Cameron Todd Willingham was convicted, and ultimately executed in 2004, for the apparently motiveless murder of his three children as the result of invalid scientific analysis of the scene of the house fire that killed his children). See also, e.g., *Press Release: Gov. Ritter Grants Posthumous Pardon in Case Dating Back to 1930s*, Jan. 7, 2011, p. 1 (Colorado Governor granted full and unconditional posthumous pardon to Joe Arridy, a man with an IQ of 46 who was executed in 1936, because, according to the Governor, “an overwhelming body of evidence indicates the 23-year-old Arridy was innocent, including false and coerced confessions, the likelihood that Arridy was not in Pueblo at the time of the killing, and an admission of guilt by someone else”); R. Warden, *Wilkie Collins's The Dead Alive: The Novel, the Case, and Wrongful Convictions* 157–158 (2005) (in 1987, Nebraska Governor Bob Kerrey pardoned William Jackson Marion, who had been executed a century earlier for the murder of John Cameron, a man who later turned up alive; the alleged victim, Cameron, had gone to Mexico to avoid a shotgun wedding).

Of course, all punishment is tainted by the possibility of error. Capital punishment, however, is especially problematic. When we impose capital punishment on a convicted murderer, there cannot be any room for error since the murderer can never be brought back to life afterward if error is discovered at some later date. If there remains a substantial risk of error, as demonstrated by advances in scientific testing in cases [in which] a person has been sentenced beyond a reasonable doubt in a fair trial, then we have good reason on retributivist grounds to reject capital punishment in favor of an alternative sanction.

Id. at 105-06.

Second, “the evidence that the death penalty has been wrongly *imposed* (whether or not it was carried out), is striking.” *Glossip v. Gross*, 135 S.Ct. at 2756 (Breyer and Ginsburg, JJ., dissenting)(emphasis in original). In deciding in 2002 that it is no longer constitutional to execute the mentally retarded, the Supreme Court wrote that “we cannot ignore the fact that in recent years a disturbing number of inmates on death row have been exonerated.” *Atkins*, 536 U.S. at 320 n. 25. “At that time, there was evidence of approximately 60 exonerations in capital cases...Since 2002, the number of exonerations in capital cases has risen to 115. ...[or]... under a slightly different definition of exoneration, the number of exonerations since 1973 [has risen] to 154.... Last year, in 2014, six death row inmates were exonerated based on actual innocence. All had been imprisoned for more than 30 years (and one for almost 40 years) at the time of their exonerations.” *Glossip v. Gross*, 135 S.Ct. at 2756.⁷

Third, “exonerations occur far more frequently where capital convictions, rather than ordinary criminal convictions, are at issue. Researchers have calculated that courts (or State Governors) are 130 times more likely to exonerate a defendant where a death sentence is at issue.

⁷ Citing National Registry of Exonerations, *Exonerations in the United States, 1989–2012*, pp. 6–7 (2012), and Death Penalty Information Center (DPIC), *Innocence: List of Those Freed from Death Row*, online at <http://www.deathpenaltyinfo.org/innocence-and-death-penalty>. It should be noted that since *Glossip* was decided on June 29, 2015, two more exonerations have been listed on DPIC’s List of Those Freed From Death Row.

They are nine times more likely to exonerate where a capital murder, rather than a noncapital murder, is at issue.” *Glossip v. Gross*, 135 S.Ct. at 2757.⁸ One factor explaining the higher rate of wrongful convictions in a capital case is that “the crimes at issue in capital cases are typically horrendous murders, and thus accompanied by intense community pressure on police, prosecutors, and jurors to secure a conviction. This pressure creates a greater likelihood of convicting the wrong person.” *Id.*⁹

Other factors also create a greater likelihood of wrongful conviction and sentencing in a capital case. One is the practice of death-qualification, which “ ‘skews juries toward guilt and death’ ”. *Id.* at 2758.¹⁰ “Another is the more general problem of flawed forensic testimony.” *Id.*¹¹ “The Federal Bureau of Investigation (FBI), for example, recently found that flawed microscopic hair analysis was used in 33 of 35 capital cases under review; 9 of the 33 had already been executed.

⁸ Citing, Exonerations 2012 Report 15–16, and nn. 24–26.

⁹ Citing Gross, Jacoby, Matheson, Montgomery, & Patil, *Exonerations in the United States 1989 Through 2003*, 95 J. Crim. L. & C. 523, 531–533 (2005); Gross & O’Brien, *Frequency and Predictors of False Conviction: Why We Know So Little, and New Data on Capital Cases*, 5 J. Empirical L. Studies 927, 956–957 (2008) (noting that, in comparing those who were exonerated from death row to other capital defendants who were not so exonerated, the initial police investigations tended to be shorter for those exonerated); see also B. Garrett, *Convicting the Innocent: Where Criminal Prosecutions Go Wrong* (2011) (discussing other common causes of wrongful convictions generally including false confessions, mistaken eyewitness testimony, untruthful jailhouse informants, and ineffective defense counsel).

¹⁰ Quoting Rozelle, *The Principled Executioner: Capital Juries’ Bias and the Benefits of True Bifurcation*, 38 Ariz. S.L.J. 769, 772–793, 807 (2006) (summarizing research and concluding that “[f]or over fifty years, empirical investigation has demonstrated that death qualification skews juries toward guilt and death”)

¹¹ “In general, both the prosecution and the defense rely more extensively on experts in death penalty cases than in other federal criminal cases.” Judicial Conference of the United States, Committee on Defender Services, Subcommittee on Federal Death Penalty Cases, *Federal Death Penalty Cases: Recommendations Concerning The Cost And Quality of Defense Representation* (May 1998) at 14.

FBI, National Press Releases, *FBI Testimony on Microscopic Hair Analysis Contained Errors in at Least 90 Percent of Cases in Ongoing Review*, Apr. 20, 2015. See also Hsu, *FBI Admits Errors at Trials: False Matches on Crime–Scene Hair*, Washington Post, Apr. 19, 2015, p. A1 (in the District of Columbia, which does not have the death penalty, five of seven defendants in cases with flawed hair analysis testimony were eventually exonerated).” *Id.*

Not cited in *Glossip*, but nevertheless highly relevant in a capital case such as the present one in which the FBI provided most, if not all, of the forensic testimony against Mr. Fell at his first trial, is another recent scandal implicating not only the FBI, but the entire Department of Justice. See, United States Department of Justice, Office of the Inspector General, *An Assessment of the 1996 Department of Justice Task Force Review of the FBI Laboratory* (July 2014)(“2014 OIG Report”).¹² According to this Report, in 1997, the DOJ learned that that the FBI crime lab had engaged in massive flawed forensic work, including the “use of scientifically unsupportable analysis and overstated testimony by [13] FBI Lab examiners in criminal prosecutions.” *Id.* at 1. A 1997 OIG report led to the deployment of a Criminal Division Task Force to identify, review, and follow-up on some 7,609 cases linked to the 13 problematic FBI examiners. But the Task Force’s and the FBI’s process moved slowly, and the Task Force’s findings were not disclosed to the public and to those individuals who had been convicted by that tainted evidence. The results were staggering: It took the FBI nearly five years to identify the 64 death-row defendants whose cases involved analysis or testimony from one or more of the 13 examiners – and with respect to the cases the FBI knew of, it only notified local prosecutors and allowed them to determine what should be disclosed to defendants.

¹² Available at <https://oig.justice.gov/reports/2014/e1404.pdf>.

At least three inmates were executed before their cases were identified for further review—for one of them, it literally cost him his life. An independent scientist later determined that the FBI lab analysis that led to the 1997 execution of Benjamin H. Boyle in Texas was scientifically unsupportable and the testimony incorrect. See OIG 2014 Report at 51. Because the DOJ and the FBI did not immediately alert state authorities that Mr. Boyle’s convictions might be called into question, prosecutors did not delay the execution. The OIG reports that “but for” that tainted testimony, “*Boyle would not have been convicted of the capital offense that rendered him eligible for the death penalty.*” *Id.* at 52, 66-67, 86 (emphasis added). Two other capital defendants, Michael Lockhart and Gerald Stano, were executed before their cases were identified for Task Force Review.

There was little to no public knowledge of this colossal failure until a series of articles published in the Washington Post in April 2012 generated a public outcry.¹³ The account was indeed scathing:

The documents and interviews tell a story of how the Justice Department’s promise to protect the rights of defendants became in large part an exercise in damage control that left some prisoners locked away or in the dark for years longer than necessary. The Justice Department continues to decline to release the names of defendants in the affected cases. . . .

The Justice Department’s decision to allow prosecutors to decide what to disclose to defendants was criticized at the time and allowed most of the process to remain secret. But by cloaking cases in anonymity, failing to ensure that defendants were notified of troubles with their cases and neglecting to publicly report problems or recommend solutions, the task force obscured problems from further study.

¹³ See Spencer S. Hsu, *Convicted defendants left uninformed of forensic flaws found by Justice Dept.*, The Washington Post (Apr. 16, 2012), available at https://www.washingtonpost.com/local/crime/convicted-defendants-left-uninformed-of-forensic-flaws-found-by-justice-dept/2012/04/16/gIQAWTcgMT_story.html; Spencer S. Hsu, *DOJ review of flawed FBI forensics processes lacked transparency*, The Washington Post (Apr. 17, 2012), available at https://www.washingtonpost.com/local/crime/doj-review-of-flawed-fbi-forensics-processes-lacked-transparency/2012/04/17/gIQAFegIPT_story.html.

Hsu, *DOJ review of flawed FBI forensics processes lacked transparency*, supra n.13.

The full extent of the failures not only by the FBI, but also by the DOJ in not notifying defendants and the defense bar once it became aware that active capital convictions were jeopardized and leaving that process in the hands of prosecutors, was not known until July 2014, when the first report reviewing the Task Force's conduct was published. The report concluded that the Task Force and the FBI "did not take sufficient steps to ensure that the capital cases were the Task Force's top priority. . . . [w]e found evidence that the independent scientists' reports were forwarded to capital defendants in only two cases. The department should have handled all death penalty cases with greater priority and urgency." *OIG 2014 Report*, at i-ii.¹⁴

Perhaps more disturbingly, the report indicates that the FBI and DOJ have still not yet provided case-specific notice to all 26 defendants currently on death row or awaiting retrial that they were convicted and sentenced to death based on potentially tainted FBI evidence. See *Id.* at 82. Similarly, the report recommended that the some 2,900 currently and previously incarcerated non-capital defendants whose cases were reviewed by the Task Force be notified. See *Id.* at 83. The initial revelation of the FBI and DOJ's transgressions has already led to the exoneration of three individuals from death row: Donald Gates, Santae Tribble, and Kirk Odom. See *Id.* at 5. It appears all but certain that this information will lead to the exoneration of more individuals, including some on death row. The lesson from this critical failure of the FBI and the DOJ is apparent – people have been executed based on evidence now known to be hopelessly unreliable.

¹⁴ In response to the *OIG's 2014 Assessment*, disturbingly, the DOJ expressed disagreement with the *OIG's* conclusion that it was a mistake to delegate to prosecutors the sole "responsibility for making appropriate disclosures to defendants or defense counsel" when confronted with the fact that an independent scientist had concluded that evidence in their own cases was tainted. *Department Response to *OIG Report**, July 9, 2014 at 4, available at *2014 *OIG Report** at 131.

In light of these and other factors, “researchers estimate that about 4% of those sentenced to death are actually innocent.” *Id.*¹⁵ In other words, approximately 1 in 25 capital defendants in the United States are sentenced to death for crimes they did not commit. Prior to these studies, as recently as 2006, Justice Scalia expressed his belief that that rate was in fact just 0.027%. *Kansas v Marsh*, 548 U.S. 163, 182 (2006) (Scalia, J., concurring).¹⁶ The 2014 National Academy of Science study and the 2007 Risinger study demonstrate beyond reasonable dispute that Justice Scalia’s estimate is not correct. Therefore, what was unknown just ten years ago now has gained widespread acceptance in the legal and scientific communities: that there is about a 4%, or a 1 in 25, rate at which capital defendants are found guilty of crimes that they did not commit.

Given this rate of error and the sheer number of exonerations in capital cases, which is steadily increasing, there is ample basis to conclude, as Judge Wolf did recently in *United States v.*

¹⁵ Citing Gross, O'Brien, Hu, & Kennedy, *Rate of False Conviction of Criminal Defendants Who Are Sentenced to Death*, 111 *Proceeding of the National Academy of Sciences* 7230 (2014) (full-scale study of all death sentences from 1973 through 2004 estimating that 4.1% of those sentenced to death are actually innocent); Risinger, *Innocents Convicted: An Empirically Justified Factual Wrongful Conviction Rate*, 97 *J. Crim. L. & C.* 761 (2007) (examination of DNA exonerations in death penalty cases for murder-rapes between 1982 and 1989 suggesting an analogous rate of between 3.3% and 5%).

Additional studies cited in the *Santiago* opinion (p. 104-05) on this same point include: H. Bedau & M. Radelet, *Miscarriages of Justice in Potentially Capital Cases*, 40 *Stan. L.Rev.* 21, 36 (1987) (citing high rate of error in death penalty cases); D. Benson et al., *Executing the Innocent*, 3 *Ala. C.R. & C.L. L.Rev.*, no. 2, 2013 at 3 (“We know ... that [the] intolerable event [of executing an innocent person] takes place with some regularity in ... death penalty jurisdictions” [emphasis omitted]); U. Bentele, *Does the Death Penalty, by Risking Execution of the Innocent, Violate Substantive Due Process?*, 40 *Hous. L.Rev.* 1359, 1365 (2004) (“[s]ince capital punishment was given a renewed seal of approval in 1976, more than [100] people have been sentenced to death [and have been] subsequently found to be innocent”).

¹⁶ Justice Scalia arrived at this number based on a quotation from a district attorney in Oregon, who took the number of exonerations a study had found in capital and noncapital cases (340), multiplied it by “roughly a factor of ten” (4000) – to “give the professor the benefit of the doubt” – and then divided that by 15 million “felony convictions” over that time period. *Id.* at 197-198. The 2007 Risinger article persuasively discusses the several empirical errors employed in Justice Scalia’s calculation, and in using it as an estimation of a capital error rate.

Sampson, 2015 WL 6511247, at *20, that “the FDPA, like state death penalty statutes, will inevitably result in the execution of innocent people.”

The notion that the problem of wrongful capital convictions and sentences is confined to the state systems and that the federal capital punishment system is somehow immune from such problems is just plain wrong. As Judge Wolf correctly pointed out in rejecting the government’s argument that “similar errors and injustices could not occur in the federal courts”:

The government's confidence that the FDPA will never lead to the execution of innocent individuals is not shared by the only federal judge to have presided over an FDPA prosecution in Massachusetts. Judge Ponsor conducted the trial of Kristen Gilbert, a nurse convicted of murdering four of her patients and attempting to murder three others. She was sentenced to life in prison in 2001. Judge Ponsor later wrote regarding the Gilbert trial that:

The experience left me with one unavoidable conclusion: that a legal regime relying on the death penalty will inevitably execute innocent people—not too often, one hopes, but undoubtedly sometimes. * * * * * I have a hard time imagining anything as complicated as a capital trial being repeated very often, even by the best system, without an innocent person eventually being executed.

A–90, A–95, Michael Ponsor, “*Life, Death and Uncertainty*,” Boston Globe, July 8, 2001, at D2.

Commonsense, the experience to date in this case, and evidence from other cases combine to persuade this court that Judge Ponsor's prediction is prophetic. Federal judges, like state judges, are human and, therefore, fallible. Indeed, many federal judges have previously been state judges. Jurors in federal cases are essentially the same citizens who serve as jurors in state cases. In addition, many federal cases, including the instant case, result from investigations conducted primarily, if not exclusively, by state and local law enforcement agents.

United States v. Sampson, 275 F. Supp. 2d 49, 78 (D. Mass. 2003)

Indeed, there were significant doubts about the innocence of David Ronald Chandler, the very first federal defendant to have been sentenced to death in the era of the “modern” (post-1988) death-penalty. Mr. Chandler was originally sentenced to death in 1991. In 1999, the Eleventh

Circuit vacated his death sentence on grounds of ineffective assistance of counsel at the penalty phase. *Chandler v. United States*, 193 F.3d 1297 (11th Cir. 1999). That opinion was itself vacated, however, by a 6-5 vote of the Court sitting en banc, and the sentence of death was re-affirmed. *Chandler v. United States*, 218 F.3d 1305 (11th Cir. 2000) (en banc). After the Supreme Court denied certiorari review, and citing Attorney General Reno's serious concerns about whether Mr. Chandler was actually innocent of the crime for which he had been prosecuted and condemned to death, President Clinton, on January 20, 2001, commuted Mr. Chandler's death sentence to one of life imprisonment, noting that "the defendant's principal accuser later changed his testimony, casting doubt on the defendant's guilt." W.J. Clinton, *My Reasons for the Pardons*, N.Y. Times, February 18, 2001

While there is likely room for argument as to whether the defendant in every cited exoneration case was factually innocent, DNA evidence, not available at the time of the *Gregg* decisions, has put the lie to any Pollyannaish view that innocent people are not convicted and sentenced to death. The notion that all these statistics and exonerations are wrong-headed is unimaginable. Innocent people have been, and there is no evidence suggesting they will not continue to be, convicted and sentenced to death - that alone should end the discussion in a democratic society. And, more disturbingly, it is likely that innocent people have been executed. See *Glossip* 136 S.Ct. at 2756. Just as the presence of one juror on the panel who would automatically vote for the death penalty is "one too many," *Morgan v. Illinois*, 504 U.S. 719, 734, n. 8 (1992), the wrongful conviction - much less execution - of even one person is "one too many." It is axiomatic that "the execution of a legally and factually innocent person would be a constitutionally intolerable event."

Herrera v. Collins, 506 U.S. 390, 419 (1993)(O'Connor, J., concurring).¹⁷ Indeed, “[t]he execution of a person who can show [that] he is innocent comes perilously close to simple murder.” *State v. Santiago*, 318 Conn. at 104. (Internal quotation marks omitted.)

Naturally, the unmasking of wrongful convictions through DNA or other scientific evidence has prompted investigations to determine what went wrong. Reexamination of the DNA-exoneration cases has brought into sharp focus the roots of many of these systemic breakdowns, including faulty forensics, mistaken eyewitness testimony, perjury from jailhouse informants or those trying to protect themselves or others, inadequate investigation and representation by defense counsel, the suppression of evidence by the police or prosecution, and race prejudice. See, *State v. Santiago*, 318 Conn. at 104 (“Unfortunately, numerous studies have found that errors can and have been made repeatedly in the trial of death penalty cases because of poor representation, racial prejudice, prosecutorial misconduct, or simply the presentation of erroneous evidence.”). The summaries of exoneration compilations referenced above demonstrate that these flaws are not easily exposed and the very real risk they may never be.¹⁸

¹⁷ “In *Herrera*, a majority of the Justices stated that the execution of an innocent person would violate the Constitution.” *United States v. Sampson*, 275 F. Supp. 2d 49, 76 (D. Mass. 2003).

¹⁸ Rather than demonstrating some divined ability of the “system” to ultimately self-correct, it is clear that some exonerations occur only as the result of “fortuitous or improbable events.” Warden, *How and Why Illinois Abolished the Death Penalty*, 30 Law and Ineq. (Minnesota Journal of Law and Inequality) 245, 247 (2012). When officials attempted to proffer a similar rationalization after one highly-publicized exoneration, the Chicago Tribune rejoined in an editorial by recounting the work of a network of “volunteers,” whose work prevented a potentially wrongful execution. “That’s not a ‘system,’ but happenstance: the charity of concerned strangers and sheer luck.” Editorial, *Fatal Flaws of Capital Punishment*, CHI. TRIB., Feb 11, 1999, at 26, cited in Warden, *supra*, at 257-58. And, of course, the self-correcting arguments ignore the fact that many of those exonerated often spend years and sometimes decades on dehumanizing death rows before the miscarriage is brought to light. *Infra*. If “[E]ven one day in prison would be a cruel and unusual punishment for the ‘crime’ of having a common cold,” *Robinson v. California*, 370 U.S. 660, 667 (1972), so much more so for an innocent

Further complicating matters is that most capital cases do not involve DNA testimony. Common sense debunks any pie-in-the-sky fantasy that these same problems discovered in the DNA cases do not also present an unacceptable risk of miscarriages in the numerous capital cases not involving DNA or other scientific evidence capable of providing clear-cut exonerations.

While many of these same concerns are present in any criminal case, two considerations magnify their importance in capital cases. First, as pointed out above, these reliability adulterators are more likely to present themselves in capital cases which are “typically horrendous murders, and thus accompanied by intense community pressure on police, prosecutors, and jurors to seek a conviction.” *Glossip*, 135 S. Ct. at 2757-58 (Breyer, J., dissenting).

The second differentiating feature is obvious – the finality of the punishment. This qualitative difference between death and any other punishment resides at the core of the Eighth Amendment jurisprudence of capital punishment. Justice Stewart’s observation in *Woodson v. North Carolina*, 428 U.S. at 305-06, that “the penalty of death is qualitatively different from a sentence of imprisonment” has been repeatedly acknowledged in the ensuing years by the Court, see e.g., *Gregg*, 428 U.S. at 187 (“the death penalty is unique in its severity and irrevocability.”); *Ford v. Wainwright*, 477 U.S. 399, 411 (1986)(“this especial concern is a natural consequence of the knowledge that execution is the most irremediable and unfathomable of penalties.”); *Roper v. Simmons*, 543 U.S. at 568 (“Because the death penalty is the most severe punishment, the Eighth Amendment applies to it with special force.”).

Finally, “if we expand our definition of ‘exoneration’ (which we limited to errors suggesting the defendant was actually innocent) and thereby also categorize as ‘erroneous’ instances in which courts failed to follow legally required procedures, the numbers soar. Between 1973 and 1995, _____ individual being imprisoned for decades under death row conditions.

courts identified prejudicial errors in 68% of the capital cases before them. Gelman, Liebman, West, & Kiss, *A Broken System: The Persistent Patterns of Reversals of Death Sentences in the United States*, 1 J. Empirical L. Studies 209, 217 (2004). State courts on direct and postconviction review overturned 47% of the sentences they reviewed. *Id.*, at 232. Federal courts, reviewing capital cases in habeas corpus proceedings, found error in 40% of those cases. *Id.*” *Glossip*, 135 S. Ct. at 2758-2759 (Breyer, J., dissenting). See also, *State v. Santiago*, 218 Conn. at 104 (Gelman study, demonstrating “extremely high error rates”, was relevant to the Court’s conclusion that the death penalty was unconstitutional).

The federal system has not done better at avoiding constitutional error underlying death sentences. In *United States v. Sampson*, the court observed in 2003 that 5 of 31 federal death sentences (at the time) had been reversed. See 275 F. Supp. 2d at 78. When the court in *Sampson* returned to this issue on October 28, 2015, that number was 17 out of 73 defendants, including Mr. Fell’s case. *United States v. Sampson*, 2015 WL 6511247, at *19 (D. Mass. Oct. 28, 2015) .¹⁹ The vast majority of these reversals came after 2003: David Paul Hammer, Cr. No. 4:96-239 (M.D. Pa.) (*Brady* violation); David Lee Jackson, No. 05-CR-51 (E.D. Tex.) (*Brady* violation); John Johnson, Cr. No. 2:04-17 (E.D. La.)(trial error, including improper argument by the government); Ronell Wilson, Cr. No. 1:04-1016 (E.D.N.Y.) (trial error, including improper argument by the government); Angela Johnson, Cr. No. 01-3046 (N.D. Iowa) (ineffective assistance of counsel); Darryl Johnson, Cr. No. 96-379 (N.D. Ill.) (trial error); Richard Stitt, Cr. No. 98-47 (E.D. Va.) (ineffective assistance of counsel); George Lecco and Valerie Friend, Cr. No. 2:05-107 (S.D.W.V.) (as to both, juror

¹⁹ Citing Death Penalty Information Center, Federal Death Row Prisoners, available at <http://www.deathpenaltyinfo.org/federal-death-row-prisoners>.

misconduct); Gary Sampson, Cr. No. 01-cr-10384 (D. Mass.) (juror misconduct); and of course this case (juror misconduct).²⁰

Significantly, two of these cases were overturned upon the revelation of federal investigatory and prosecutorial misconduct. First, in 2013 it came to light that the death sentence of David Lee Jackson in 2007 in the Eastern District of Texas was tainted by a *Brady* violation. At the § 2255 stage, Jackson raised an *Atkins* claim. In connection with the discovery for that claim, it was revealed that the government did not disclose at the first trial evidence from the Bureau of Prisons that Mr. Jackson had been diagnosed by a BOP psychiatrist with paranoid schizophrenia, nor that he underwent a change in psychotropic medication. In a court filing, the government confessed to the *Brady* violation, admitting both that this information had been withheld, and that it “was relevant to multiple issues in the sentencing phase,” including “allowing counsel to more effectively cross-examine certain of the government’s penalty-phase witnesses” as well as constituting “relevant mitigating evidence.” *Jackson v. United States*, No. 1:09-cv-1039-RC, Govt’s Resp. Pet’r Supplement to Pet. For Collateral Relief, D.E. 171, at 4 (E.D. Tx. 3/22/2013). On March 25, 2013 the district court accepted the agreement of the parties to settle the case and vacated the judgment of death. See *Id.* D.E. 172.

Second, in *United States v. Hammer*, 404 F. Supp. 2d 676, 801 (M.D. Pa. 2005), the district court granted a § 2255 petition to vacate a death sentence in an FDPA case on the ground that the United States Attorney’s Office violated its *Brady* obligations in failing to turn over 33 FBI 302

²⁰ For summaries of these cases, see DPIC, Federal Death Row Prisoners. Additionally, Paul Hardy had been sentenced to death in 1996, and his sentence was overturned by the Fifth Circuit in 1999. Prior to his resentencing, on November 24, 2010, the district court held that Hardy suffered from an intellectual disability, and thus *Atkins* prohibited his execution, and ordered he be sentenced to life in prison. See *United States v. Hardy*, 762 F. Supp. 2d 849, 905 (E.D. La. 2010).

statements that summarized interviews with prison inmates. See also *United States v. Hammer*, 564 F.3d 628, 631 (3d Cir. 2009) (summarizing procedural history). Mr. Hammer had been sentenced to death for the killing (by strangulation) of another inmate, Andrew Marti. In particular, the government had argued that the fact that Mr. Hammer braided his sheets into ropes supported the “substantial planning and premeditation” aggravating factor. The jury agreed, recommending a sentence of death in 1998. See *Hammer*, 404 F. Supp. 2d at 690, 799.

On September 29, 2005, the 29th day of an evidentiary hearing on Mr. Hammer’s Third Amended § 2255 Petition, the government for the first time revealed the 33 FBI 302’s that it had had in its possession since the beginning of the case, which among other things contained statements that Mr. Hammer was known to braid sheets into ropes for consensual sexual bondage. See *Id.*²³ The district court found that the suppressed 302’s were both exculpatory and material, because a juror reasonably could have found that the braiding sheets into ropes was evidence of his preparation for sexual activity, not the murder of Mr. Marti. See *Id.* at 798-99. On July 17, 2014, after a resentencing trial before Judge Slomsky, Mr. Hammer received a sentence of life imprisonment without possibility of parole. See Cr. No. 4:96-0239, D.E. 1770 (M.D. Pa. 7/17/2014).

Looking at the results of appellate review of federal capital cases in the Second Circuit is also a telling indication that legal errors at the district court level are a common occurrence in these legally complicated cases. In the six FDPA decisions that the Second Circuit has so far rendered, it has found that one or more legal errors occurred in the district court in all of them. See, *United States v. Jacques*, 684 F.3d 324 (2nd Cir. 2012); *United States v. Whitten*, 610 F.3d 168 (2nd Cir. 2010); *United States v. Fell*, 531 F. 3d 197, 230 (2nd Cir, 2008); *United States v. Pepin*, 514 F.3d 193 (2nd Cir. 2008); *United States v. Fell*, 360 F.3d 135 (2nd Cir. 2004); *United States v. Quinones*, 313 F.3d 49 (2nd Cir. 2002).

In other circuits, appellate courts reviewing federal death penalty cases have also found a variety of errors at the trial level. See e.g., *United States v. Troya*, 733 F.3d 1125, 1136-38 (11th Cir. 2013)(error in excluding defense expert’s testimony on future nondangerousness, which should have been admitted as both mitigation and rebuttal); *United States v. Hager*, 731 F.3d 167, 206 (4th Cir. 2013)(district court’s and prosecutor’s use of present tense to describe defendant’s supposed lack of remorse, in jury instructions and summation, was error); *United States v. Runyon*, 707 F.3d 475, 492-99 (4th Cir. 2013)(finding error in introduction at sentencing of videotape of an interrogation of the defendant in which police confronted him with the evidence and facts of the crime and urged him to confess and show remorse by making references to his religion and ethnicity, and defendant, for the most part, kept silent.); *United States v. Ebron*, 683 F.3d 105, 153 (5th Cir. 2012)(erroneous finding of substantial-planning aggravating factor); *United States v. Bernard*, 299 F.3d 467, 484-487 (5th Cir. 2002)(jury’s invalid finding of pecuniary-gain aggravating factor (based on insufficient evidence) was error.); *United States v. Montgomery*, 635 F.3d 1074, 1091-92 (8th Cir. 2011)(summation remarks criticizing the decision to have defendant’s children testify in mitigation were improper); *United States v. Lighty*, 616 F.3d 321, 363 (4th Cir. 2010)(finding or assuming district court erred in excluding mitigating evidence); *United States v. Purkey*, 428 F.3d 738, 757-759 (8th Cir. 2005)(error in preventing defense psychologist from opining that defendant suffered from fetal alcohol syndrome and in refusing to allow cross examination of government expert); *United States v. Stitt*, 250 F.3d 878, 898-899(4th Cir. 2001)(erroneous admission of victim-impact evidence in rebuttal); *United States v. Chanthadara*, 230 F.3d 1237, 1264-1268 (10th Cir. 2000)(two errors — faulty instruction on pecuniary gain and six jurors’ exposure to newspaper headline conveying that district judge had referred to defense theory as a “smokescreen” — were prejudicial enough to require new sentencing hearing.); *United States v. Barnette*, 211 F.3d 803, 825 (4th Cir.

2000)(erroneous exclusion of surebuttal testimony by defense mental-health expert was not harmless); *United States v. Webster*, 162 F.3d 308, 326 (5th Cir. 1998)(erroneous instruction on “substantial planning” aggravator); *United States v. Causey*, 185 F.3d 407, 423 (5th Cir. 1999)(reversing two codefendants’ convictions on one of three capital counts (because of lack of evidence on an essential element); *United States v. McCullah*, 76 F.3d 1087, 1102 (10th Cir. 1996). (erroneous admission at trial of defendant’s coerced statements to government informant was not harmless as to sentence).

The fact that constitutional error is discovered in so many federal capital cases, sometimes through assiduous investigation, sometimes through little more than happenstance, compels the conclusion that the federal capital sentencing system is incapable of identifying and remedying every instance of serious constitutional error. See *Sampson I*, 275 F. Supp. 2d at 79 n.12 (collecting cases in which one or more Supreme Court Justices perceived there was harmful error in a capital case, but executions occurred anyway).

Given the many sources of inaccuracy and error, whether from investigators, prosecutors, jurors, witnesses, or even the defendant’s own counsel, it is simply unrealistic to believe that the federal death penalty system is capable of identifying and remedying them with the constitutionally requisite accuracy and reliability. The lack of reliability in a procedure with a demonstrated, non-negligible and potentially non-remediable risk of condemnation of factually and legally innocent targets cannot be harmonized with a 21st Century Eighth Amendment. See, *Hall v. Florida*, supra, 134 S.Ct. at 1992 (“[t]he Eighth Amendment’s protection of dignity reflects the [n]ation we have been, the [n]ation we are, and the [n]ation we aspire to be”).

2. “Cruel”—Arbitrariness

a. The Problem in General

“The arbitrary imposition of punishment is the antithesis of the rule of law.” *Glossip v. Gross*, 135 S.Ct. at 2759 (Breyer and Ginsburg, JJ., dissenting). For that reason, Justice Potter Stewart (who supplied critical votes for the holdings in *Furman v. Georgia*, 408 U.S. 238(1972) (per curiam), and *Gregg*) found the death penalty unconstitutional as administered in 1972:

These death sentences are cruel and unusual in the same way that being struck by lightning is cruel and unusual. For, of all the people convicted of [death-eligible crimes], many just as reprehensible as these, the[se] petitioners are among a capriciously selected random handful upon which the sentence of death has in fact been imposed.”

Furman, 408 U.S., at 309–310 (concurring opinion).

See also *Id.*, at 310(“[T]he Eighth and Fourteenth Amendments cannot tolerate the infliction of a sentence of death under legal systems that permit this unique penalty to be so wantonly and so freakishly imposed”); *Id.*, at 313 (White, J., concurring) (“[T]he death penalty is exacted with great infrequency even for the most atrocious crimes and ... there is no meaningful basis for distinguishing the few cases in which it is imposed from the many cases in which it is not”).

When the death penalty was reinstated in 1976, the Court acknowledged that the death penalty is (and would be) unconstitutional if “inflicted in an arbitrary and capricious manner.” *Gregg*, 428 U.S., at 188 (joint opinion of Stewart, Powell, and Stevens, JJ.). see also *Id.*, at 189 (“[W]here discretion is afforded a sentencing body on a matter so grave as the determination of whether a human life should be taken or spared, that discretion must be suitably directed and limited so as to minimize the risk of wholly arbitrary and capricious action”); *Godfrey v. Georgia*, 446 U.S. at 428 (plurality opinion) (similar).

The Court has consequently sought to make the application of the death penalty less arbitrary by restricting its use to those whom Justice Souter called “ ‘the worst of the worst.’ ” *Kansas v. Marsh*, 548 U.S., at 206, 126 S.Ct. 2516 (dissenting opinion); see also *Roper v. Simmons*, 543 U.S. 551, 568, 125 S.Ct. 1183, 161 L.Ed.2d 1 (2005) (“Capital punishment must be limited to those offenders who commit a narrow category of the most serious crimes and whose extreme culpability makes them the most deserving of execution”)

However, “[d]espite the *Gregg* Court's hope for fair administration of the death penalty, 40 years of further experience make it increasingly clear that the death penalty is imposed arbitrarily, i.e., without the ‘reasonable consistency’ legally necessary to reconcile its use with the Constitution's commands.” *Glossip v. Gross*, 135 S.Ct. at 2760 (Breyer and Ginsburg, JJ., dissenting), quoting *Eddings v. Oklahoma*, 455 U.S. 104, 112, (1982). “Thorough studies of death penalty sentences support this conclusion. . . . Such studies indicate that the factors that most clearly ought to affect application of the death penalty—namely, comparative egregiousness of the crime—often do not. Other studies show that circumstances that ought *not* to affect application of the death penalty, such as race, gender, or geography, often *do*.” *Id.* (emphasis in original). “Thus, whether one looks at research indicating that irrelevant or improper factors—such as race, gender, local geography, and resources—do significantly determine who receives the death penalty, or whether one looks at research indicating that proper factors—such as “egregiousness”—do not determine who receives the death penalty, the legal conclusion must be the same: The research strongly suggests that the death penalty is imposed arbitrarily.” *Id.* at 2762. “The studies bear out my own view, reached after considering thousands of death penalty cases and last-minute petitions over the course of more than 20 years. I see discrepancies for which I can find no rational explanations.” *Id.* at 2763. In short, “the constitutionality of capital punishment rests on its limited

application to the worst of the worst...[a]nd this extensive body of evidence suggests that it is not so limited.” *Id.* See also, *State v. Santiago*, 318 Conn. at 106-07 (“[Another] reason that our state’s capital punishment system fails to achieve its retributive goals is that the selection of which offenders live and which offenders die appears to be inescapably tainted by caprice and bias.... To the extent that the ultimate punishment is imposed on an offender on the basis of impermissible considerations such as his, or his victim’s, race, ethnicity, or socio-economic status, rather than the severity of his crime, his execution does not restore but, rather, tarnishes the moral order.”).

As will be seen, each of the factors identified in *Glossip* and *Santiago* as determinative of the issue of arbitrariness has relevance to the constitutionality of the Federal Death Penalty Act as administered.

b. More Than 25 Years Of Experience With The Federal Death Penalty Has Demonstrated That It Operates In An Arbitrary, Capricious, Irrational And Discriminatory Manner.

1. Introduction: the failure of the federal death penalty experiment

A “modern” federal death penalty has been in effect for more than 25 years.²¹ There are presently 59 men and 1 woman under an active federal sentence of death. (Declaration of Federal Death Penalty Resource Counsel Director Kevin McNally, Fell Motion Appendix 0080-92)(hereinafter “App.”).²² Some of them have been there for more than 20 years. Over the past

²¹On November 18, 1988 Congress enacted a federal death penalty as part of the Anti-Drug Abuse Amendments (“ADAA”), authorizing capital punishment for murders occurring in the context of drug trafficking. 21 U.S.C. § 848(e). The reach of the federal death penalty was later expanded when, on September 13, 1994, President Clinton signed into law the Federal Death Penalty Act of 1994 (“FDPA”), 18 U.S.C. § 3591 *et seq.* In March, 2006, the procedural provisions of the ADAA, 21 U.S.C. §§ 848(g), were repealed.

²² As indicated in Mr. McNally’s declaration, the Federal Death Penalty Resource Counsel Project assists court appointed and defender attorneys charged with the defense of capital cases in the federal courts. The Project is funded and administered under the Criminal Justice Act by the Defender Services Office of the Administrative Office of the United States

quarter of a century, in hundreds of federal capital trials around the country, the federal death penalty has revealed itself to be arbitrary, capricious, irrational, discriminatory in impact and, in the final analysis, fundamentally incapable of answering in a rational and predictable way the profound question of who should live and who should die. This Court should strike it down.

To summarize what is to follow:

- Only a tiny handful of those federal defendants who could face the federal death penalty ever do.
- The theoretically national federal death penalty is, in reality, a regional death penalty, heavily pursued in the South and virtually ignored in the rest of the nation.
- From its earliest days to the present, the FPD has consistently and disproportionately targeted members of minority groups.
- Of the few defendants actually targeted for death, nearly half (234/498) have been simply permitted to enter plea agreements that take death off the table.
- Of the cases that proceed to trial, two-thirds of defendants are spared the death penalty by juries or judges.
- There has been a sharp drop in the number of cases authorized by the Attorney General for capital prosecution, a sharp drop in the number of capital trials, and an even sharper drop in the numbers of death verdicts returned by juries.
- Approximately one-third of federal death sentences have been set aside on direct appeal or in proceedings brought pursuant to 28 U.S.C. § 2255.
- Despite the fact that federal death-row inmates have only one round of direct appeal and one round of collateral review, there are federal death row inmates who have been there for more than 20 years.
- There has been a presidential clemency grant to one federal death row inmate because of concerns he was innocent.
- In the past 27 years there have been just three federal executions, the most recent of which took place more than 12 years ago, a circumstance stripping the FDP of any valid penalogical purpose.

Courts. Detailed information about the administration of the federal death penalty is available on the Project's website (<https://www.capdefnet.org/fdprc/>).

2. The federal death penalty is imposed and carried out in an arbitrary and capricious manner that is akin to being struck by lightning: Revisiting the constitutional premise of *Furman v. Georgia* in the context of the federal death penalty.

As indicated above, in 1972, when the Supreme Court in *Furman*, citing the arbitrary and capricious imposition of capital punishment across the land, struck down all existing death-penalty schemes as incompatible with the guarantees of the Eighth and Fourteenth Amendments to the United States Constitution, the random and capricious imposition of the penalty was best captured in the comparison drawn in *Furman* by Justice Stewart between receiving a sentence of death and being struck by lightning:

These death sentences are cruel and unusual in the same way that being struck by lightning is cruel and unusual. For, of all the people convicted of rapes and murders, . . . many just as reprehensible as these, the petitioners are among a capriciously selected handful upon whom the sentence of death has in fact been imposed. My concurring Brothers have demonstrated that, if any basis can be discerned for the selection of these few to be sentenced to die, it is the constitutionally impermissible basis of race . . . I simply conclude that the Eighth and Fourteenth Amendments cannot tolerate the infliction of a sentence of death under legal systems that permit this unique penalty to be so wantonly and so freakishly imposed.

Furman, 408 U.S. at 309-10 (Opinion of Stewart, J., concurring; citations and footnotes omitted).

In *Zant v. Stephens*, 462 U.S. 862 (1983), the Court stated:

A fair statement of the consensus expressed by the Court in *Furman* is that “where discretion is afforded a sentencing body on a matter so grave as the determination of whether a human life should be taken or spared, that discretion must be suitably directed and limited so as to minimize the risk of wholly arbitrary and capricious action.”

Members of the *Furman* Court also found that the death penalty was fraught with invidious and irrational selectivity, “feeding prejudices against the accused if he is poor and despised, and lacking political clout, or if he is a member of a suspect or unpopular minority” *Furman*, 408

U.S. at 255 (Douglas, J., concurring). Justice White, who concurred in the result, highlighted the infrequent utilization of the death penalty:

That conclusion, as I have said, is that the death penalty is exacted with great infrequency even for the most atrocious crimes and that there is no meaningful basis for distinguishing the few cases in which it is imposed from the many cases in which it is not.

408 U.S. at 313 (White, J., concurring). Justice White further concluded: “[C]ommon sense and experience tell us that seldom-enforced laws become ineffective measures for controlling human conduct and that the death penalty, unless imposed with sufficient frequency, will make little contribution to deterring those crimes for which it may be exacted.” *Id.* at 312. In fact, the infrequency with which defendants were targeted for capital punishment was noted by each of the five concurring Justices in the *Furman* majority. *See, Furman*, 408 U.S. at 248 n. 11 (Douglas, J., concurring); *Id.* at 291-95 (Brennan, J., concurring); *Id.* at 309-10 (Stewart, J., concurring); *Id.* at 312 (White, J., concurring); and, *Id.* at 354 n. 124 and 362-63 (Marshall, J., concurring).

In 1972, Justice Brennan, positing a nation of 200 million people that carries out 50 executions per year, noted that “when government inflicts a severe punishment no more than 50 times a year, the inference is strong that the punishment is not being regularly and fairly applied,” 408 U.S. at 294, and, “When the punishment of death is inflicted in a trivial number of the cases in which it is legally available, the conclusion is virtually inescapable that it is being inflicted arbitrarily. Indeed, it smacks of little more than a lottery system.” *Id.* We are now a nation of 320 million people. The last time this country carried out 50 or more executions was 2009. (Death Penalty Information Center, [Facts About the Death Penalty](#) (October 30, 2015), [App.](#) at 0001). In the more than 25 years since the return of the federal death penalty, out of a universe of thousands of potential federal capital cases, there have been 81 federal death verdicts. (McNally Dec., [App.](#)

at 0083). Just three federal prisoners have been executed. (*Id.*)²³ The FDPA suffers from the same vice as the systems condemned in *Furman* in that only a handful of federal defendants who are potentially eligible for capital punishment are ever targeted. And those who are targeted are rarely sentenced to death and even more rarely are they executed.

Recently, a federal court in California struck down the California death penalty on the basis, in part, that it was so rarely carried out. *See, Jones v. Chappell*, 31 F.Supp.3d 1050 (C.D. Ca. 2014).

The court concluded:

In California, the execution of a death sentence is so infrequent, and the delays preceding it so extraordinary, that the death penalty is deprived of any deterrent or retributive effect it might once have had. Such an outcome is antithetical to any civilized notion of just punishment.

²³ See also, Eric A. Tirschwell and Theodore Hertzberg, *Politics and Prosecution: a Historical Perspective on Shifting Federal Standards for Pursuing the Death Penalty in Non-Death Penalty States*, 12 U. PA. J. CONST. L. 57 (2009)(hereinafter “*Politics and Prosecution*”). The lead author of this article, a former United States Attorney in the Eastern District of New York, summarizes the statistical situation as of 2001:

Prison population figures recently published by the Bureau of Justice Statistics suggest that out of the more than 2.3 million people incarcerated in the United States, about 3,297 of them (0.1%) are awaiting execution. Of those 3,297, only fifty-five (1.7%) are on federal death row. Equally remarkable is the tiny number of federal executions compared to “stateside” executions. Since 1977, 1,173 people have been executed in the United States. Of those individuals, only three (0.3%) were federal convicts....As one commentator has noted, “the score of prisoners on federal death row are in some respects little more than a footnote.”

Id. at 59, quoting *John Brigham, Unusual Punishment: The Federal Death Penalty in the United States*, 16 WASH. U. J.L. & POL’Y 195, 209 (2004).

Since 2001, these numbers have remained relatively the same. According to the Bureau of Prisons, “at year end 2014, the United States held an estimated 1,561,500 prisoners in state and federal correctional facilities.” BOP, *Prisoners in 2014*, available at <http://www.bjs.gov/content/pub/pdf/p14.pdf>. According to DPIC, as of October 30, 2015, there were 3002 inmates awaiting execution (0.2 %). (App. at 0002). Of those 3002, only 61 (2 %) are on federal death row. *Id.* Since 1976, 1419 people have been executed. Of those individuals, still only three (0.2 %) were federal convicts.

Id. at 1063.²⁴

Even more recently, the Connecticut Supreme Court in *Santiago* struck down that state's death penalty for the same reason, in language that has direct application to the unconstitutional operation of the federal death penalty in non-death penalty states like Vermont:

In addition, aside from the inevitable delays, the sheer rarity with which death sentences are imposed and carried out in Connecticut—and, indeed, the entire northeastern United States—suggests that any conceivable deterrent value will be far less than in a state like Texas, for example, which carries out executions on a regular basis.²⁵

²⁴ As noted by the California Supreme Court in its recent decision in *People v. Seumanu*, 61 Cal. 4th 1293, 1368, 355 P.3d 384, 438 (2015), “[t]he state has appealed (*Jones*) to the Ninth Circuit Court of Appeals and, as of this writing, that appeal is pending. (*Jones v. Chappell* (9th Cir., Aug. 21, 2014, No. 14–56373).)” Despite the pendency of the appeal, the California Supreme Court, citing the *Glossip* dissent, invited further litigation of this claim in future habeas corpus proceedings, pointing out that “although we have consistently, and recently, rejected the Eighth Amendment/delay claim, doctrine can evolve” and “although this court has consistently rejected the Eighth Amendment/delay argument, defendant's reliance on the recently decided *Jones*... provides an opportunity to reconsider whether our prior position on this issue remains valid and supportable.” *Id.* See also, *State v. Santiago*, 318 Conn. at 99-100 (“[Another] reason the death penalty has lost its retributive mooring in Connecticut is that the lengthy if not interminable delays in carrying out capital sentences do not just undermine the death penalty's deterrent effect; they also spoil its capacity for satisfying retribution.”)(citing *Jones*). On November 11, 2015, the Ninth Circuit decided the appeal in *Jones*, ruling that the merits of the issue could not be reached because of habeas corpus technicalities. *Jones v. Chappell*, (9th Cir., November 11, 2015), Slip Opinion, at 28. The court did comment that “[m]any agree with Petitioner that California's capital punishment system is dysfunctional and that the delay between sentencing and execution in California is extraordinary.” But see, *Andrews v. Davis*, 798 F.3d 759, 790 (9th Cir. 2015)(the state court's rejection of *Andrews*'s *Lackey* delay claim was not an unreasonable application of *Furman* or *Gregg*, and reasonable jurists would not dispute the district court's conclusion to that effect.)(petition of rehearing and rehearing en banc is pending in *Andrews*).

²⁵ See also, *Politics and Prosecution* at 59 (“Since the creation of the American republic more than two centuries ago, the federal government has executed 340 people, whereas the State of Texas has executed more than that many in the past fifteen years.”). Indeed, just since 1976, Texas has executed 530 inmates. (App. at 0003). “On the other hand, the two multi-district federal circuits in which capital punishment is least prevalent are the First and Second Circuits, both of which are located in the northeast. The seven states that make up those two circuits—Connecticut, Maine, Massachusetts, New Hampshire, New York, Rhode Island, and Vermont—have collectively executed one person since 1976.” *Politics and Prosecution* at 87.

318 Conn. at 94; *Id.* at 139-140 (holding that capital punishment, as currently applied, violates the constitution of Connecticut because of “Connecticut's long, troubled history with capital punishment: the steady replacement by more progressive forms of punishment; the increasing inability to achieve legitimate penological purposes; the freakishness with which the sentence of death is imposed; the rarity with which it is carried out; and the [influence of] racial, ethnic, and socioeconomic [factors].”).

As Circuit Judge Calabresi persuasively argued in this very case,

What is going on here is that the existence of certain local values makes the imposition of the federal death penalty in states that do not have the death penalty truly uncommon. It is in that sense significantly more “unusual” than was the execution of 16- and 17-year-olds or the execution of the mentally retarded, before the Supreme Court found those practices to be “cruel and unusual” in *Roper*...and *Atkins*. In all of these categories, values that made a death sentence unusual were at work. In cases involving juvenile and mentally retarded defendants, the values were apparently related to the culpability of the offender. See, e.g., *Atkins*, 536 U.S. at 306... In cases from states without the death penalty, the constitutionally salient values are not just the “local” values, like the existence of substantial generalized opposition to capital punishment, but much more fundamentally the value and endurance of federalism itself—the recognition that we are part of a country, of a polity, that has to live with both Texan values and Northeastern values.

United States v. Fell, 571 F.3d 264, 289-290 (2d Cir. 2009)(Calabresi, J., dissenting from the denial of rehearing *en banc*).

According to *Santiago*, “Judge Alex Kozinski of the Ninth Circuit Court of Appeals puts the problem most plainly: ‘Rather than go through the competing considerations, let's cut to the meat of the coconut. The death penalty, as we now administer it, has no deterrent value because it is imposed so infrequently and so freakishly. To get executed in America these days you have to be not only a truly nasty person, but also very, very unlucky....’ *Id.* at 95, quoting, A. Kozinski & S. Gallagher, *Death: The Ultimate Run–On Sentence*, 46 Case W. Res. L.Rev. 1, 25 (1995).

This argument – that the federal death penalty should be struck down because it is so infrequently sought or imposed – should not be misunderstood as a call for more frequent use of the federal death penalty. As Justice Brennan stated in *Furman*:

The States claim, however, that this rarity is evidence not of arbitrariness, but of informed selectivity.

Informed selectivity, of course, is a value not to be denigrated. Yet, presumably the States could make precisely the same claim if there were 10 executions per year, or five, or even if there were but one. That there may be as many as 50 per year does not strengthen the claim. When the rate of infliction is at that low level, it is highly implausible that only the worst criminals who commit the worst crimes are selected for this punishment. No one has yet suggested a rational basis that could differentiate in these terms the few who die from the many who go to prison. Crimes and criminals simply do not admit of a distinction that can be drawn so finely as to explain, on that ground, the execution of such a tiny sample of those eligible. Certainly the laws that provide for this punishment do not attempt to draw that distinction; all cases to which the laws apply are necessarily “extreme.”

408 U.S. at 293-94 (Brennan, J., concurring).

At the time *Furman* was decided, as the opinion itself reflects, 15-20% of convicted murderers and rapists were actually sentenced to death in those jurisdictions where the death penalty was available for such offenses. *Furman*, 408 U.S. at 386 n. 11 (Burger, C.J., dissenting, citing four sources to support the statistic). Justice Powell, also dissenting, cited similar statistics. *Id.* at 435 n. 19. For his part, Justice Stewart utilized Chief Justice Burger’s statistical analysis to lend further support to his ultimate conclusion that the death penalty was, indeed, in an Eighth Amendment sense, “unusual.” As stated by Circuit Judge Gregory of the Fourth Circuit, dissenting in a case where the federal death penalty was imposed:

When the government selects a few offenders from such a large pool for execution, it cannot further its legitimate penological interests; instead it merely inflicts gratuitous pain and suffering.

United States v. Caro, 597 F.3d 608, 636 (4th Cir. 2010) (Gregory, Cir.J., dissenting).

In *Furman*, arbitrariness and caprice were seen as the inevitable side-effects of a rarely-imposed punishment of death. This view is in harmony with Justice White's observations, premised on his experience reviewing hundreds of state and federal death-penalty cases in what was then 10 years on the Court:

That conclusion, as I have said, is that the death penalty is exacted with great infrequency even for the most atrocious crimes and that there is no meaningful basis for distinguishing the few cases in which it is imposed from the many cases in which it is not.

408 U.S. at 313 (White, J., concurring); *see also*, Justice Scalia's concurring observation in *Walton v. Arizona*, 497 U.S. 639, 658 (1990), *overruled on other grounds*, *Ring v. Arizona*, 536 U.S. 584 (2002), that the key opinions in *Furman* "focused on the infrequent and seeming randomness with which, under the discretionary state systems, the death penalty was imposed." In *Gregg*, the plurality reiterated this understanding of *Furman*, noting, "It has been estimated that before *Furman* less than 20% of those convicted of murder were sentenced to death in those States that authorized capital punishment." *Gregg v. Georgia*, 428 U.S. 153, 182 n. 26 (plurality opinion). This understanding was repeated in *Woodson v. North Carolina*, *supra*, 428 U.S. at 295 n.31.

After more than 25 years of experience with a post-*Gregg* federal death penalty, it is a simple truth that the federal death penalty is sought and imposed far more rarely than in the cases examined in *Furman*. Being sentenced to death in the federal system is truly akin to being struck by

lightning.²⁶ Indeed, as argued *infra*, no meaningful basis may be discerned for distinguishing those cases – even among the most extreme²⁷ – where death is imposed from those cases in which it is not.

In 2011, the Death Penalty Information Center published a report on this issue, entitled, *Struck by Lightning: The Continuing Arbitrariness of the Death Penalty Thirty-Five Years After Its Re-instatement in 1976* (Washington, DC 2011)(Copy appended at [App. 0005](#).) The report catalogues the arguments and collects the data for declaring the scheme of capital punishment that is practiced in our courts unconstitutional based on arbitrariness. It examines the facts of several extremely aggravated federal death penalty cases in which the death penalty was not sought or imposed (e.g., Eric Rudolph, Steven Flemmi, Oscar Veal, Joseph Massino, Vincent Basciano, Theodore Kaczynski, Zacharias Moussaoui, and Terry Nichols) and rightly points out that “[e]ven

²⁶See, G. Ben Cohen. & Robert J. Smith, *The Racial Geography of the Federal Death Penalty*, 85 Washington Law Rev. 425, 431 (2010) (“The infrequency of the federal death penalty – with 67 federal death sentences in the face of over 150,000 murders – makes death by lightning-strike look positively routine. Indeed, a federal death sentence is akin to winning (or in this instance losing) the lottery.”) (noting that there were 424 deaths by lightning in the years 1999–2008.) In August 2006 *National Geographic* published a chart setting out the odds of dying by various means. For example, there is a 1 in 5 chance of dying from heart disease, and a 1 in 84 chance of dying in a car accident. Far down the list is the chance of dying by lethal injection, 1 in 62,468. The next item on the list reported the odds of being killed by lightning as 1 in 79,746. *Id.* at p. 21.

²⁷In the District of Colorado, Timothy McVeigh was sentenced to death and executed for utilizing a truck bomb to blow up the Murrah Federal Building in Oklahoma City, killing 168 people and injuring hundreds. In the Southern District of New York, two men associated with Usama bin Laden and al-Qaeda were spared the death penalty after being convicted of simultaneous terrorist attacks, utilizing truck bombs, that destroyed two American embassies in East Africa, killing 224 – including 12 Americans – and injuring thousands. Zacharias Moussaoui was spared the death penalty in the Eastern District of Virginia despite a jury finding that he was responsible for the thousands of deaths that occurred as a result of the September 11, 2001 terrorist attacks. Eric Rudolph – the Olympics and abortion-clinic bomber – entered a guilty plea to a life sentence, as did Theodore Kaczynski, the Unabomber, as did Jared Loughner whose mass-shooting murder victims included a child and a federal judge. In Boston, in 2015, Dzhokhar Tsarnaev was sentenced to death for the bombing of the Boston Marathon where fewer people were killed than in other terrorism cases.

in cases evoking national fear, a death sentence is not a predictable result.” (App. at 0021). Highly relevant to cases such as Mr. Fell’s involving a retrial, the Report notes that “[n]ationally, the most comprehensive study of death penalty appeals found that two-thirds of death sentences were overturned, and upon reconsideration over 80% received an outcome of less than death. In all of these re-sentencings, the judgment went from ‘worst of the worst’ to something less severe—the difference between life and death.” (App. at 0015).²⁸ The Report quotes Illinois Gov. Pat Quinn’s statement upon signing the bill abolishing the death penalty in Illinois in 2011:

I have concluded that our system of imposing the death penalty is inherently flawed. The evidence presented to me by former prosecutors and judges with decades of experience in the criminal justice system has convinced me that it is impossible to devise a system that is consistent, that is free of discrimination on the basis of race, geography or economic circumstance, and that always gets it right.

App. at 007. As will be further demonstrated below, that quote succinctly describes why capital punishment, as currently applied in the federal system, violates the constitution.

3. The federal death penalty as actually sought and imposed and what the figures mean.

The current state of the post-*Gregg* federal death penalty, as it has been sought and imposed, is summarized in the following table:

²⁸ A case in point in the federal system is Angela Johnson. In 2005, Ms. Johnson was convicted of participating in the execution-style killing of two government informants, and three innocent bystanders, including a mother and her two young children, in furtherance of a large scale drug operation. In 2012, following her unsuccessful direct appeal, her death sentence was set aside in 2255 proceedings because of ineffective assistance of counsel. See, *Johnson v. United States*, 860 F.Supp.2d 663 (N.D. Iowa). The Department of Justice originally demanded a penalty retrial, but on December 17, 2014 filed a notice withdrawing its intent to seek the death penalty.

TABLE 1: THE STATUS AND DISPOSITION OF ALL POTENTIAL
FEDERAL CAPITAL CASES FROM 1988 TO 2015

• Total Potential Cases	3,992
• Total defendants authorized for capital prosecution	498
• Authorized defendants pleading guilty	
• and death withdrawn	234
• Pending Review by the Department of Justice	150
• Presently Pending or in Trial	11
• Trial: Life Sentence	154
• Trial: Death Sentence	81
• Executions	3
• Clemency	1
• Federal Death Row, Active Death Sentence	60

Source: Federal Death Penalty Resource Counsel Project Fact Sheet (App. 0078);
Declaration of Kevin McNally (App. 0080); Federal Death Penalty Resource Counsel
Project case summaries (App. 0101-0242).

Thus, subtracting those cases presently under review, the Department of Justice has authorized local prosecutors to seek the death penalty in approximately 13% of the cases where federal defendants are exposed to a capital prosecution. In *Furman*, the Court cited the infrequency with which the death penalty was sought and imposed as virtually guaranteeing the arbitrary and capricious application of the ultimate penalty. This conclusion was reached on the basis of a showing that, on a nation-wide basis, fewer than 20% of defendants convicted of capital crimes were actually sentenced to death. In the federal system, the figure is lower by a factor of 10. In fact, far fewer than 20% of those eligible for federal capital punishment are even *exposed* to the death penalty, by way of capital authorization, let alone actually sentenced to death. Taking the highest figure for actual death sentences returned against federal defendants by federal juries at 81, approximately 2.0% (81/3842) of all potentially death-eligible federal defendants were in fact

sentenced to death. In terms of federal executions to date – three – the figure is infinitesimal.²⁹ In terms of decisions reached by juries and judges, even in the case of defendants who qualify as the “worst of the worst” and therefore targeted for the federal death penalty, life sentences result in two-thirds of the cases that actually proceed through conviction to a penalty-phase. As noted *infra*, there are truly shocking regional variations in where death sentences are returned. Two-thirds of those who stand trial for their life in the Fifth Circuit are sentenced to death. In the Second Circuit the figure is 10 %.

Thus, utilizing an analysis that was persuasive to the Supreme Court in *Furman*, the federal death penalty is sought and imposed in an arbitrary, capricious and “unusual” manner. *Cf., Roper v. Simmons*, 543 U.S. 551, 567 (2005) (execution of juveniles violates the Eighth Amendment, in part because of “the infrequency of its use even where it remains on the books”); *Atkins v. Virginia*, 536 U.S. 304, 316 (2002) (execution of mentally retarded offenders violates the Eighth Amendment, in part because “even in those states that allow the execution of mentally retarded offenders, the practice is uncommon”); *see also, Thompson v. Oklahoma*, 487 U.S. 815, 822 n. 7 (1988) (plurality) (“[C]ontemporary standards, as reflected by the actions of legislatures and juries, provide an important measure of whether the death penalty is ‘cruel and unusual’ [in part because] whether an action is ‘unusual’ depends, in common usage, upon the frequency of its occurrence or the magnitude of its acceptance.”).

²⁹The baseline figure includes 11 authorized cases that are pending trial or re-trial. It is reasonable to predict that a certain number of those cases will be resolved by plea agreement and that a certain number will proceed to trial, with an overall statistical likelihood of very few resulting in death sentences. It is also reasonable to assume that some of the 60 federal inmates now under an active sentence of death will succeed in appellate or post-conviction challenges to their convictions or sentences.

Because the federal death penalty is so infrequently sought, imposed, or carried out, it operates in an unconstitutionally arbitrary and capricious manner. Whether the most accurate analogy is being struck by lightning or participating in, and losing, a deadly lottery, the federal death penalty does not operate in a rational manner. On this basis, the Court should strike it down.

4. The absence of a principled basis for distinguishing between cases where the federal death penalty is imposed from cases where it is not imposed renders the federal death penalty unconstitutional.

As indicated above, the Supreme Court has held that the constitution will not tolerate sentences of death that are imposed in a manner that is arbitrary or capricious. In *Eddings v. Oklahoma*, 455 U.S. 104, 112 (1982), the Court referred to the other side of this approach, requiring “that capital punishment be imposed fairly, and with reasonable consistency, or not at all.” More recently in *Kennedy v. Louisiana, supra*, the Court warned, “When the law punishes by death, it risks its own sudden descent into brutality, transgressing the constitutional commitment to decency and restraint.” 128 S.Ct. 2650. For that reason, the Court wrote, “[C]apital punishment must ‘be limited to those offenders who commit ‘a narrow category of the most serious crimes’ and whose extreme culpability makes them ‘the most deserving of execution.’” *Id.* In practice, the federal death penalty has failed to meet this constitutional standard and operates in an arbitrary and irrational manner. This point was made both in the *Glossip* dissent and in the Connecticut Supreme Court’s *Santiago* opinion.

An examination of the federal death penalty in operation shows that there is no consistency or predictability in the manner in which federal juries (and in three cases, federal judges) have imposed or declined to impose the federal death penalty or, indeed, which cases are allowed to plead out to life terms or less and which proceed to trial. The Federal Death Penalty Resource Counsel Project has posted on its website the verdict sheets reflecting findings in aggravation and mitigation

in the penalty-phases of virtually all completed federal death penalty prosecutions.³⁰ Those 214 verdict sheets offer clear insight into the hopelessly irremediable problem of arbitrariness and caprice that marks the administration of the federal death penalty system. There is no rhyme, reason, or predictability concerning who is sentenced to death and who is spared or who simply never has to face a jury on a life-or-death decision.

This argument is not refuted by simply pointing out that there are always difficulties inherent in comparing cases. A review of summaries of the cases³¹ and the verdict sheets on the Project's website should put that reflexive and simplistic argument to rest.

Some examples of the outcomes in federal capital cases follow:

- *United States v. Joseph Sablan and William Guerrero* (CDCA). Two inmates murdered a federal corrections officer at USP/Atwater in 2008. Both had prior murder convictions and were serving life sentences. One defendant had murdered a prison guard previously while serving a sentence in Guam. In 2015 both death notices were withdrawn and both defendants entered guilty pleas to life sentences.
- *United States v. Anthony Battle* (NDGA). In 1994 a federal inmate serving a life sentence for the murder of his wife on an army base killed a federal corrections officer at USP/Atlanta with a hammer. Tried, convicted, sentenced to death. Remains on death row 21 years later.
- *United States v. Roy C. Green* (CDCA). In 1997 defendant stabbed one federal corrections officer to death and seriously wounded a second. Three other officers were also seriously injured. Mr. Green has been declared incompetent and has never stood trial for this crime.
- *United States v. Naeem Williams* (D. Hawaii). From December 13, 2004, to July 16, 2005, the defendant, a member of the military, engaged with his wife in numerous acts of abuse and torture of their five year old special needs child, leading to her death from multiple injuries. On May 23, 2014, despite findings in aggravation that the defendant committed the offense in an especially heinous, cruel, or depraved manner that involved torture or serious physical abuse, that the victim was

³⁰ https://www.capdefnet.org/FDPRC/pubmenu.aspx?menu_id=803&id=5709.

³¹ A summary of all authorized federal capital cases, and how each case was disposed of has been supplied as part of the appendix to these motions. (App. 0101-0242)

particularly vulnerable, and that the defendant obstructed justice, the jury was unable to agree on a penalty verdict and the defendant was sentenced to life imprisonment.

- *United States v. John McCluskey* (D.N.M.). In 2010, McCluskey, serving a life sentence in Arizona for attempted murder, escaped and then carjacked a vehicle at gunpoint to get him to New Mexico, where he carjacked a second vehicle at gunpoint and eventually executed the two occupants- a newly retired vacationing couple in their 60s-and burned their bodies. He then travelled to the South where he committed an armed robbery. The aggravating factors in that case included two prior convictions for robbery and numerous instances of in-custody misconduct, including an assault on an investigative officer in the courtroom. Despite overwhelming aggravation, on December 11, 2013, the jury in that case hung 9-3 in favor of death, and McCluskey was sentenced to life imprisonment.
- *United States v. Larry Lujan*, (DNM). Lujan was convicted of what the Tenth Circuit described as a “a gruesome [crime] in which Lujan (and his cohorts) severely beat [the victim] over a significant period of time, sexually assaulted [him], and engaged in other acts to terrify and isolate [the victim].” *United States v. Lujan*, 603 F.3d 850, 852 (10th Cir. 2010). In addition, at the penalty phase, the government convinced the jury beyond a reasonable doubt that Lujan had committed two additional murders which the Tenth Circuit described as “equally gruesome.” (*Id.* at 853). These additional murders included the facts that after Lujan slit the throats of the two victims, he “poured gasoline over the victims' bodies, including the apparently still-breathing Alfredo, and set them on fire The victims' eleven-year-old daughter discovered the bodies the next afternoon.” (*Id.*) Based on these murders and other evidence the jury specifically found that Lujan would be a danger in the future. On October 5, 2011, after the jury was unable to reach a unanimous verdict, Larry Lujan received a life sentence.
- *United States v. Dzohkhar Tsarnev* (DMA), bombing of Boston Marathon, murder of a police officer, total of 4 killed, dozens injured. Tried, convicted, sentenced to death.
- *United States v. Timothy McVeigh*, (DCO). The Oklahoma City bombing case. 168 dead. Hundreds injured. Tried, convicted, sentenced to death, executed.
- *United States v. Terry Nichols*, (DCO). McVeigh’s co-defendant. Tried, convicted, sentenced to life.
- *United States v. Khalfan Mohamed and Daoud Rashed al`-Owhali*, (SDNY). Two defendants associated with Usama bin Laden and al Qaeda convicted in simultaneous terrorist truck-bombings in 1998 of two American embassies in East Africa. 224 killed, including 12 Americans; thousands injured. Tried, convicted, sentenced to life.

- *United States v. Eric Rudolph*, (NAL). The Olympic and abortion-clinic bomber. Victims included a police officer. Arrested after five-year manhunt. Described by Attorney General Ashcroft as “America’s most notorious fugitive.” Negotiated guilty plea for life sentence.
- *United States v. Zacharias Moussaoui*, (EDPA). Defendant convicted of causing thousands of deaths in the September 11, 2001 attacks on the United States. Sentenced to life by jury.
- *United States v. Theodore Kaczynski*, (EDPA). The Unabomber. Three murders by mailbombs. Plea agreement. Sentenced to life.
- *United States v. Jared Loughner* (DAZ). Mass shooting at public event resulting in 6 deaths including a child and the Chief Judge of the United States District Court for Arizona; 13 others shot and wounded including Congresswoman Gabrielle Gifford. Plea agreement. Sentenced to life.
- *United States v. Antonio Johnson*, (WVA). Defendant indicted for a murder at USP/Lee where he was serving a virtual life sentence when he stabbed another inmate to death. On March 21, 2012 – after DOJ approval of a life plea – Antonio Johnson entered a guilty plea.
- *United States v. Basciano*, (EDNY). Mafia crime boss serving life sentence for RICO murder accused of another Mafia hit murder. On June 1, 2011, after deliberating for less than 2 hours, a unanimous jury rejected the death penalty and sentenced Basciano to life imprisonment.
- *United States v. Duong*, (NDGA). Mr. Duong was previously sentenced to death in California state court for 4 murders that occurred in a nightclub in 1999. Federal prosecutors in the Northern District of California indicted Mr. Duong in a 29-count, multi-defendant racketeering indictment, alleging 3 capital homicides (arising out of a string of robberies), and an additional 5 RICO murders. On December 15, 2010, a federal jury sentenced Anh The Duong to life in prison.
- *United States v. Edgar Diaz and Emile Fort*, (NDGA). Attorney General approved 40 year plea agreements for both defendants, in a case involving seven gang-related murders, including (in Mr. Fort's case) the murder of an innocent child.
- *United States v. Joseph Minerd*, (WDPA). Arson/pipebomb murder of pregnant girlfriend, her fetus and three-year old daughter. Tried, convicted, sentenced to life.
- *United States v. Coleman Johnson*, (WVA.). Pipe-bomb used to kill pregnant girlfriend and their unborn child to avoid child support. Tried, convicted, sentenced to life.

- *United States v. Christopher Dean*, (DVT). Defendant sends pipebomb through the mails killing victim and disfiguring victim's mother. Plea agreement. Sentenced to life.
- *United States v. Billy Cooper*, (DMZ). Car-jacking double homicide. Tried, convicted, sentenced to life.
- *United States v. Christopher Vialva and Brandon Bernard*, (WDTX). Car-jacking double homicide. Tried, convicted, sentenced to death.
- *United States v. Gary Sampson*, (DMA). Two murders during separate car-jackings. Plead guilty, sentenced to death by jury. Later set aside. Pending re-trial.
- *United States v. David Paul Hammer*, (MDPA). Prison inmate guilty of strangling to death cellmate at USP/Allenwood. Sentenced to death. Sentence later vacated. Sentenced to life on re-trial.
- *United States v. Michael O'Driscoll*, (MDPA). Prison inmate guilty of stabbing to death fellow inmate at USP/Allenwood. Same judge, same courtroom, same defense attorneys as *Hammer*. Sentenced to life.
- *United States v. Storey*, (DKS). Prison inmate with Aryan Brotherhood ties kills fellow prisoner at USP/Leavenworth. Plea agreement. Sentenced to less than life sentence.
- *United States v. Douglas Black and Steven Riddle*, (DCO). Inmates at USP/Florence attack two suspected "snitches," one killed one injured. Plea agreements. Substantially less than life sentences.
- *United States v. William Sablan and Rudy Sablan*, (DCO). Two cousins housed at USP/Florence kill their cellmate, eviscerate his body, hang his entrails around the cell, and, on videotape, display the victim's heart and liver to responding officers. Defendants tried separately. Life verdicts in each case.
- *United States v. Barry Mills, et al.* (CDCA). A RICO mega-indictment targeting 40 members of the Aryan Brotherhood prison gang and charging 17 murders. Initially 27 defendants were death-eligible and 14 defendants were actually authorized for capital prosecutions. After two lengthy trials, juries spared the first four defendants facing the death penalty – the alleged leaders of the gang – and the government has withdrawn its efforts to seek death as to the remaining authorized capital defendants.
- *United States v. Fu Xin Chen, Jai Wu Chen and You Zhong Peng*, (E.D.N.Y.). Chinese gang members who kidnap, rape and murder victims held for ransom. Fu Xin Chen and Jai Wu Chen enter plea agreements. Attorney General withdraws

death authorization shortly before Peng trial. Peng convicted after trial. All three sentenced to life.

- *United States v. Louis Jones*, (NDTX). Decorated Gulf War veteran with no prior record abducts, rapes and kills young woman soldier. Tried, convicted, sentenced to death, executed.
- *United States v. Chevy Kehoe and Daniel Lee*, (WDAR) Triple murder of two adults and small child in connection with activities of white supremacist organization. Tried and convicted together. Kehoe – considered more culpable – sentenced to life. Lee sentenced to death by the same jury.
- *United States v. Jacques* (DVT). Defendant with prior convictions for sexual assaults kidnaps, rapes and murders 12-year-old niece. Case authorized for federal capital punishment. Allowed to plead guilty to life sentence.
- *United States v. Gurmeet Singh Dhinsa*, (EDNY). Millionaire Sikh businessman hires killers of two employees cooperating with authorities in criminal investigation of defendant. Tried, convicted, sentenced to life.
- *United States v. Trinity Ingle and Jeffrey Paul*, (WDAR). Murder of elderly retired National Parks employee. Victim shot while bound and gagged. At separate trials, Ingle is convicted and sentenced to life; Paul is convicted and sentenced to death.
- *United States v. Kristen Gilbert*, (DMA). VA nurse murders four patients and attempts to murder three more. Tried, convicted, sentenced to life.
- *United States v. LaFawn Bobbitt and Rashi Jones*, (EDPA). Fatal shooting of bank teller during robbery. Security guard also shot and blinded. Tried, convicted, sentenced to life.
- *United States v. Bille Allen and Norris Holder*, (WDMO). Fatal shooting of bank teller during robbery. Tried, convicted, and both defendants sentenced to death.

The disparities are particularly striking in cases where murder has taken place in the context of drug-dealing.

- *United States v. Alexis Candelario* (DPR). Defendant with 13 prior murder convictions released from prison engineers and participates in massacre at rival drug-dealer's drinking establishment where eight people and unborn fetus are killed, 20 wounded. Tried, convicted, sentenced to life.
- *United States v. Azibo Aquart*, (DCT). Three drug-related murders. Tried, convicted, sentenced to death.

- *United States v. Azikiwi Aquart* (DCT). Same three drug-related murders committed with his brother Azibo. Pled guilty to all three murders with no cooperation agreement, sentenced to life.
- *United States v. Corey Johnson, James Roane, and Richard Tipton*, (EDPA). Eleven drug-related murders. Tried, convicted, sentenced to death.
- *United States v. Dean Anthony Beckford*, (EDPA). Six drug-related murders. Tried, convicted, sentenced to life.
- *United States v. Clarence Heatley and John Cuff*, (SDNY). Fourteen drug-related murders. Plea agreement. Sentenced to life.
- *United States v. Alan Quinones and Diego Rodriguez*, (SDNY) Torture murder of suspected informant. Tried, convicted, sentenced to life.
- *United States v. Elijah Williams and Michael Williams* (SDNY). Execution-style triple murder by father and son. Tried, convicted, sentenced to life.
- *United States v. Thomas Pitera*, (EDNY). Nine drug-related murders in organized crime and large-scale drug trafficking context. Victims tortured and bodies dismembered. Tried, convicted, sentenced to life.
- *United States v. German Sinisterra and Arboleda Ortiz*, (WDMO). One drug-related murder and one attempted murder. Tried, convicted, sentenced to death.
- *United States v. John Bass* (EDMI). Four drug-related murders. Tried, convicted, sentenced to life.
- *United States v. Kevin Grey and Rodney Moore*, (DDC). Thirty-one drug-related murders. Tried, convicted, sentenced to life.
- *United States v. Daryl Johnson*, (NDIL). Allegedly directed two murders as a leader in a drug-dealing gang-one victim was a confidential government witness against Johnson-and was alleged to have directed four more. Tried, convicted, sentenced to death. Death sentence overturned. While retrial was pending, death notice withdrawn.
- *United States v. Peter Rollock*, (SDNY). Eight drug-related murders, including some ordered by defendant while incarcerated. Plea agreement. Sentenced to life.
- *United States v. Tommy Edelin*, (DDC). Fourteen drug-related murders. Tried, convicted, sentenced to life.

- *United States v. Reynaldo Villarreal and Baldemar Villarreal*, (EDTX). Drug-related murder of law enforcement officer. Tried, convicted, sentenced to life.
- *United States v. Shahem Johnson and Raheem Johnson*, (EDPA). Brothers tried for five drug-related murders. Tried, convicted, sentenced to life.
- *United States v. Juan Raul Garza*, (SDTX). Three drug-related murders. Tried, convicted, sentenced to death, executed.
- *United States v. Claude Dennis*, (EDPA). Six drug-related murders. Tried, convicted, sentenced to life.
- *United States v. Emile Dixon*, (EDNY). Two drug-related murders, including machine-gunning death of suspected informant. Tried, convicted, sentenced to life.
- *United States v. Anthony Jones*, (DMD.). Six drug-related murders. Tried, convicted, sentenced to life.
- *United States v. Walter Diaz and Tyrone Walker* (NDNY). Two defendants kill a drug-dealer and flee to New York City where, in a failed effort to steal a car, they shoot and kill a woman in lower Manhattan. Later in same day the defendants fired at, but missed, a retired school teacher in Coney Island in a failed armed robbery. Defendant Walker was also found by the jury to have beaten to death an elderly man during a burglary when Walker was 19 years-old. Both defendants tried, convicted, sentenced to life.

These are just selected cases from the larger pool of potential and authorized federal capital cases. This argument draws further force from the cumulative effect gained from reviewing the summaries of authorized cases compiled by the Federal Death Penalty Resource Counsel Project (A-101-0242) and the verdict sheets on the Project Website. By definition, since all of these cases were authorized by the Attorney General of the United States for capital prosecution, these are (or should have been) the “worst of the worst” the federal system has to offer. Indeed, it is likely there is not a crime on the list as to which a prosecutor could not argue in summation, “If this case doesn’t call for the death penalty, what case does?” And yet, in case after case – indeed, in the overwhelming *majority* of such cases – juries (and in three instances judges) returned life verdicts and, to an even greater extent, plea agreements were offered and accepted.

The point is that one cannot read these chronicles of the many ways in which man can demonstrate his inhumanity to his fellow man without coming to the realization that *all* of the cases are by their own terms horrible, and *all* involved the infliction of agony on victims and survivors. Yet, for indiscernible reasons, some defendants were sentenced to death, while an overwhelming majority were not. If any basis can be discerned, it is, as the following discussion illustrates, race, region, and gender.

In *Walker v. Georgia*, 129 S.Ct. 453 (2008), Justice Stevens, dissenting from the denial of *certiorari*, noted that Georgia had sharply curtailed the scope of its statutory proportionality review of death sentences, and noted, “[t]he likely result of such truncated review . . . is the arbitrary or discriminatory imposition of death sentences in contravention of the Eighth Amendment.” *Id.* at 457. And yet despite this criticism, numerous cases have held, following the decision in *Pulley v. Harris*, 465 U.S. 37 (1984), that proportionality review is not a necessary constitutional component of the Federal Death Penalty Act. See e.g., *United States v. Mitchell*, 502 F.3d 931, 981 (9th Cir. 2007); *United States v. Higgs*, 353 F.3d 281, 320–21 (4th Cir.2003); *United States v. Jones*, 132 F.3d 232, 240-241 (5th Cir. 1998). But see, *Miller v. Alabama*, 132 S. Ct. 2455, 2463(2012)(“The concept of proportionality is central to the Eighth Amendment” and must be viewed “less through a historical prism than according to ‘the evolving standards of decency that mark the progress of a maturing society.’”)(*Trop*). As Justices Breyer and Ginsburg point out in *Glossip v. Gross*, “since this Court held that comparative proportionality review is not constitutionally required..., it seems unlikely that appeals can prevent the arbitrariness I have described.” But if such proportionality review is not required, then what we are left with are the conflicting procedural mechanisms put into place in 1976, and everyone seems to agree that such discretionary mechanisms have failed to cure the problem of arbitrariness. As summarized in B. Sarma, *Furman’s Resurrection: Proportionality*

Review and the Supreme Court's Second Chance to Fulfill Furman's Promise, 2009 CARDOZO L.

REV. DE NOVO 238 (2009):

Almost forty years have passed since *Furman*, and nobody seriously argues that the Court's decision to regulate procedure has solved the constitutional problem of arbitrariness. In fact, evidence indicates that the application of the death penalty is just as arbitrary today as it was when the Court decided *Furman*. If *Furman* inspired positive changes in its immediate wake, those changes have been all but eviscerated in the past two decades.

Id. at 242.

Consequently, this Court should follow the lead of the Connecticut Supreme Court and conclude, as that court did, in language only slightly modified from that court's opinion to focus on the federal system, that

After thoroughly reviewing the operation of [the federal] capital sentencing scheme over the past [twenty five years], we are persuaded that these critiques are well founded and that the opportunity for the exercise of unfettered discretion at key decision points in the process has meant that the ultimate punishment has not been reserved for the worst of the worst offenders. There is no doubt that our death row has counted among its residents the perpetrators of some of the most heinous crimes in [national] history. It is equally clear, however, that the process of selecting offenders for execution has been both under inclusive and over inclusive. Many who commit truly horrific crimes are spared, whereas certain defendants whose crimes are, by all objective measures, less brutal are condemned to death....To the extent that the population of death row has been chosen on grounds other than the atrocity of the offenders' crimes, this would undermine all confidence that capital punishment, as applied, is morally proportionate and serves a legitimate retributive function in [the federal system].

Santiago, 318 Conn. at 114-15.

5. The Federal Death Penalty is unevenly applied on a regional basis and suffers from intractable problems of racial discrimination in the targeting of minority and male defendants and a demonstrated race/gender-of-victim effect.

a. Introduction.

From the earliest days of the government's efforts to enforce a nation-wide death penalty, patterns of uneven and apparently discriminatory application appeared. From the very outset, the federal death penalty was utilized almost exclusively by federal prosecutors in the South and, not surprisingly, federal death verdicts were returned almost exclusively in those traditional "death-belt" jurisdictions. Added to this arbitrary factor was the invidious circumstance of race, since the federal death penalty, as it was rolled out in the 1990's, targeted a disproportionately large number of minority groups, particularly African-Americans and Hispanics.

By 1994 – barely six years after the return of a "modern" federal death penalty – obvious racial disparities surfaced in the Justice Department's prosecution of federal death penalty cases. In response, the House Subcommittee on Civil and Constitutional Rights initiated an investigation and concluded as follows:

Race continues to plague the application of the death penalty in the United States. On the state level, racial disparities are most obvious in the predominant selection of cases involving white victims. On the federal level, cases selected have almost exclusively involved minority defendants.

Racial Disparities in Federal Death Penalty Prosecutions 1988-1994, Staff Report by the Subcommittee on Civil and Constitutional Rights, Committee on the Judiciary, 103rd Congress, 2nd Session, March 1994.³² That report found that as of 1994 there had been 37 defendants authorized for capital punishment under the § 848(e) (ADAA) scheme, of whom 33 (87 per cent) were black

³² Available at <https://www.ncjrs.gov/pdffiles1/153840.pdf>.

or Hispanic. *Id.* Presently the figure is 74 per cent (McNally Dec., App. at 0084), hardly an “improvement” to boast of.

Earlier evidence of the potential race-effect of the death penalty had also been provided by the agency formerly known as the General Accounting Office (now the Government Accountability Office). At the time Congress enacted the § 848(e) (ADAA) death penalty, the GAO was directed to undertake a study of the potential influence of race on the death penalty. 21 U.S.C. § 848(o)(2) (Repealed). The GAO in fact undertook that study in 1990 and concluded as follows:

Our synthesis of the 28 studies shows a pattern of evidence indicating racial disparities in the charging, sentencing and imposition of the death penalty after the *Furman* decision.

In 82 percent of the studies, race-of-victim was found to influence the likelihood of being charged with capital murder or receiving the death penalty, i.e. those who murdered whites were found to be more likely to be sentenced to death than those who murdered blacks. This finding was remarkably consistent across data sets, states, data collection methods and analytic techniques. The finding held for high, medium, and low quality studies.

United States General Accounting Office, Report to Senate and House Committee On The Judiciary, *Death Penalty Sentencing: Research Indicates Pattern of Racial Disparities* (Feb. 1990) at 5.³³ In a 1999 law review article, Professor Rory Little, writing with the perspective of one who had actually served on Attorney General Reno’s Capital Case Review Committee, noted that serious questions about regional and racial disparities had not been ameliorated by the administrative process within the Justice Department. Rory K. Little, *The Federal Death Penalty: History and Some Thoughts About the Department of Justice's Role*, 26 FORDHAM URB. L.J. 347, 450-90. (1999). See also, Rory K. Little, *What Federal Prosecutors Really Think: The Puzzle of Statistical Race Disparity Versus Specific Guilt, and the Specter of Timothy McVeigh*, 53 DEPAUL L. Rev. 1591, 1613-14 (2004)(“Statistical race disparity does not prove purposeful racial discriminationin

³³ Available at <http://www.gao.gov/assets/220/212180.pdf>.

federal capital prosecutions. Nevertheless, it is a persistent and disturbing fact. Lingering doubts remain that it occurs due to subconscious or attenuated systemic biases impossible to isolate or detect, but which are harmful nevertheless.”)

Thus, from the very beginning of the modern federal death penalty, the government has been on notice that its targeting and enforcement patterns are problematical.

b. The 2000 DOJ Study.

In a press conference that took place on June 28, 2000, President Clinton was asked about a highly-publicized execution that had taken place the previous week in Texas and whether he believed it was time “for the American people to stop and reassess where we stand on implementation of the death penalty.” In response, the President said the following about the application of the federal death penalty, acknowledging concerns about race and regional practices:

The issues at the federal level relate more to the disturbing racial composition of those who have been convicted and the apparent fact that almost all the convictions are coming out of just a handful of states, which raises the question of whether, even though there is a uniform law across the country, what your prosecution is may turn solely on where you committed the crime. I’ve got a review underway of both those issues at this time.

(Transcript of the President’s 6/28/2000 press conference: available at <http://www.presidency.ucsb.edu/ws/index.php?pid=1666> (Last visited November 10, 2015).

On September 12, 2000, the Department of Justice released the comprehensive study alluded to by President Clinton in his remarks. The study detailed how the federal death penalty had been administered for the 12 years from 1988 to the summer of 2000.³⁴ The essence of the 2000 DOJ

³⁴ See. United States Department of Justice, *The Federal Death Penalty System: A Statistical Survey (1988-2000)*, <http://www.justice.gov/dag/selected-publications>. The Department filed a supplemental report on June 6, 2001 after the change in administration. See, *The Federal Death Penalty System: Supplementary Data, Analysis and Revised Protocols for Capital Case Review* (June 2001), http://www.justice.gov/archive/dag/pubdoc/deathpenalty_study.htm. Additionally, on June 7, 2007, the Justice Department transmitted statistics and more

Study's findings was that the federal death penalty had been disproportionately sought against minority-group defendants and irrationally sought on a regional basis. The Study reported that federal death row consisted of 19 men, of whom four were white, 13 black, one Hispanic and one "other." Consistent with the historical roots of the death penalty, 12 of the 19 defendants on federal death row at the time of the DOJ Study had been sentenced to death in the South. Virginia and Texas had contributed four defendants apiece. No other jurisdiction, at the time of the Study's release, had sentenced more than a single defendant to death.³⁵

In terms of which defendants actually faced the federal death penalty, the 2000 Study showed that of the 159 cases where the Attorney General had authorized a capital prosecution, 44 defendants were white (27.7%), 71 were black (44.7%), 32 were Hispanic (20.1%) and another 12 were categorized as "other" (7.5%). *See*, Table 1A at p. T-2 of DOJ Study. Thus, as of the summer of 2000, more than 70% of the federal defendants targeted for the death penalty had been non-whites.

In addition to the racial disparity in federal death-penalty prosecutions, the study found a regional bias in the enforcement of the federal death penalty. The DOJ Study revealed the following on the issue of regional disparity:

- From 1995 onward, of the 94 separate federal districts in the federal system, only 49 had ever submitted a case recommending capital prosecution. (DOJ Study at 14.)³⁶

recent findings on the administration of the federal death penalty to Senator Feingold in the course of oversight hearings, <http://www.deathpenaltyinfo.org/DOJResponses6-07.pdf>.

³⁵In terms of percentages across the board, the race and region figures have not changed appreciably in the 15 years since the 2000 DOJ Study's release.

³⁶As of the present time, there are still 23 of the 94 federal districts that have never had an authorized capital case. (McNally Dec., App. 0085-86.) This includes entire districts in California, Alabama, Minnesota, Delaware, the Eastern and Western Districts of Washington, Nebraska, Oklahoma, and the Eastern and Western Districts of Wisconsin, South Dakota, Utah, Wyoming and Montana.

- Twenty-two federal districts had never submitted a case for review at all.³⁷ (DOJ Study at T-59.)
- Twenty-one federal districts, although submitting one or more cases for review, had never sought permission to seek the death penalty in any case.³⁸

Id.

The release of the report drew the following public comment from officials at the Justice Department and the White House:

Saying she was “sorely troubled” by stark racial disparities in the federal death penalty, Attorney General Janet Reno today ordered United States attorneys to help explain why capital punishment is not applied uniformly across ethnic groups.

M. Lacey and R. Bonner, “Reno Troubled by Death Penalty Statistics,” *N.Y. Times*, September 13, 2000. The *Times* also reported the reaction of then Deputy Attorney General Eric Holder, who was, at the time, the highest-ranking African American at the Justice Department:

³⁷The potential universe of federal capital prosecutions is vast. Virtually any murder committed in the course of a federal firearms violation is a potential federal death penalty case. 18 U.S.C. § 924(j). In *United States v. Chanthadara*, 230 F.3d 1237 (10th Cir. 2000), where the government proceeded on a Hobbs Act theory of federal prosecution, the defendant was sentenced to death for a murder committed in the course of the robbery of a restaurant, an unfortunately garden variety type of criminal behavior. That sentence of death was vacated on appeal on other grounds (and the defendant later sentenced to life imprisonment), but the potential number of cases that could be prosecuted on this theory is staggering. Any murder committed while engaged in a narcotics conspiracy involving more than 50 grams of crack cocaine or 5 kilograms of heroin remains a potential federal capital case. 21 U.S.C. § 848(e).

³⁸The recommendation that accompanies a submission is of great importance. In 91% of cases where the local United States Attorney did not want to prosecute the case as a death-penalty case, that recommendation was followed by the Attorney General. (DOJ Study at 43.) In 83% of cases where death-penalty authorization was requested, that recommendation was also followed by the Attorney General. *Id.* These figures are based on the 575 defendants whose cases were reviewed by the Attorney General from 1995-2000. In the “pre-protocol” period – November 1988 through January 27, 1995 – the only cases reviewed were those where the local United States Attorney affirmatively had requested capital-authorization. The approval rate for those cases was 90%. (DOJ Study at 10.)

“I can’t help but be personally and professionally disturbed by the numbers that we discuss today,” Deputy Attorney General Eric Holder said. “To be sure, many factors contributed to the disproportionate representation of racial and ethnic minorities throughout the federal death penalty process. Nevertheless, no one reading this report can help but be disturbed, troubled, by this disparity.”

*Id.*³⁹ CNN reported that Attorney General Reno wanted “a broader analysis.”⁴⁰ White House deputy press secretary Jake Siewert responded to the release of the report in the following manner: ““At first glance, those numbers are troubling. We need to know what’s behind the numbers.””⁴¹ During his confirmation hearings the year following the Study’s release, Attorney General Ashcroft also noted that evidence of racial disparity in the federal death penalty “troubled [him] deeply.” Quoted in *United States v. Bass*, *supra*, 266 F.3d at 538 n.1.

A former member of the Department of Justice Capital Case Review Committee turned law professor announced in 2004 that “[s]tatistical race disparity...is a persistent and disturbing fact.” Rory K. Little, *What Federal Prosecutors Really Think: The Puzzle of Statistical Race Disparity Versus Specific Guilt, and the Specter of Timothy McVeigh*, 53 DEPAUL L. Rev. 1591, 1613-14 (2004). He suggested two specific reforms to address the problem. First, he recommended that “we

³⁹ As indicated in the *Politics and Prosecution* article, “during his confirmation hearing, Holder said that the Department of Justice’s 2000 report on the death penalty ‘raised some very disturbing questions about not only the racial identity of people who were in the death system—in the federal death system, but also the geographic distribution of those people.’” *Politics and Prosecution* at 96, quoting Confirmation Hearing on the Nomination of Eric H. Holder to be Attorney General of the United States: Hearing Before the S. Comm. on the Judiciary, 111th Cong. 67 (2009).

⁴⁰In *United States v. Bass*, 266 F.3d 532 (6th Cir. 2001), *reversed*, 532 U.S. 1035 (2002) (per curiam), the Sixth Circuit quoted at length from the public statements of Attorney General Reno and Deputy Attorney General Holder in response to the release of the DOJ Study. 266 F.3d at 538.

⁴¹ Considering the impact of the study, Judge Sand in *United States v. bin Laden*, 126 F. Supp.2d 256, 258 (S.D.N.Y. 2000) found the statistical evidence “indeed troubling,” but ultimately rejected a challenge to that capital prosecution.

should restrict capital punishment to ‘high-end’ cases with defined, extremely aggravating, factors. This could be done statutorily or as a matter of prosecutorial policy. But it would necessitate removing certain vague or too easily manipulated statutory ‘aggravating’ factors that are commonly used today, such as ‘heinous or atrocious,’ ‘committed for pecuniary gain,’ or ‘committed in conjunction with another felony.’” *Id.* at 1611. A review of the death notice in Mr. Fell’s case, as well as a review of the case summaries at App. 0101-0242 and of the verdict forms on the FDPRC website clearly demonstrates that this suggested reform never gained traction at the DOJ.

Second, noting that “[t]here is anecdotal information emerging to suggest that the current administration under Attorney General John Ashcroft may be lowering the standard of aggravation for approval of federal capital prosecutions”, he recommended that “there must be strict enforcement of the ‘substantial federal interest’ requirement for federal capital prosecutions, and the Ashcroft amendment to the protocols that allow the availability of the death penalty itself to fulfill this requirement should be abolished. Most murder cases should remain at the state level, and the simple fact that a state has chosen not to enact a death penalty should not be sufficient without a more identifiable ‘federal’ interest to drive a case into the federal system.”⁴² *Id.* at 1606 n. 17, 1613. Accord, John Gleeson, *Supervising Federal Capital Punishment: Why the Attorney General Should Defer When U.S. Attorneys Recommend Against the Death Penalty*, 89 Va. L.Rev. 1697, 1716 (2003) (“In a federal system that rightly accords great deference to states’ prerogatives, the federalization of the death penalty should be limited to cases in which there is a heightened and demonstrable federal interest, one that justifies the imposition of a capital prosecution on

⁴² As pointed out by Little, under Attorney General Janet Reno, the DOJ Capital Case Protocols provided that “the fact that the maximum Federal penalty is death is insufficient, standing alone, to show a more substantial interest [than a state’s] in federal prosecution.” *Id.* at 1613 n. 95. This provision was repealed in 2001 under Attorney General Ashcroft. The current DOJ Death Penalty Protocol does not contain the abolished provision.

communities that refuse to permit them in their own courts.”). Once again, Mr. Fell’s case is proof positive that this reform never took hold, since both Attorney General Ashcroft and Holder insisted, over the recommendation of the local United States Attorney, that the death penalty be sought (Ashcroft) and re-sought (Holder) against Mr. Fell in the non-death penalty state of Vermont in a case in which the lack of a substantial federal interest is plainly evident.⁴³ See, *United States v. Fell*, 571 F.3d 264, 286 (2d Cir. 2009)(Calabresi, J., dissenting from the denial of rehearing *en banc*)(“In fact, the draft plea agreement reflected the judgments of Vermont-based law enforcement enforcers on what was appropriate locally, and its overruling by Main Justice reflected a centralist, and in this case decidedly anti-federalist, decision.”)

In sum, absent real reforms of this type, “troubled” and “disturbed” public officials do not cure constitutional violations or remedy arbitrary and invidious practices. As this discussion continues, it will be seen that more than 15 years later, nothing has changed. If anything, to quote the title of Mr. McNally’s DePaul Law Review article, a “non-existent” problem has gotten worse.

⁴³ The thin federal jurisdictional premise of the capital Count 1 in this case is that Mr. Fell took “a motor vehicle that had been transported, shipped and received in interstate and foreign commerce, and the death of Teresca King resulted from such taking of the automobile.” [Doc. 57]. The equally thin federal jurisdictional premise of capital Count 2 is that Mr. Fell willfully transported his victim, while she was alive, “in interstate commerce from the State of Vermont to the State of New York, resulting in the death of Teresca King.” However, directly contradicting this allegation that the purpose of the transport was “interstate commerce”, in its Notice of Intent to Seek the Death penalty, the government alleged as a non-statutory aggravating factor that “Donald Fell participated in the abduction of Teresca King to facilitate his escape from the area in which he and an accomplice had committed a double murder.” [Doc. 32 at 3]. There simply is no substantial federal interest in this case. See, United States Department of Justice, *The Federal Death Penalty System: Supplementary Data, Analysis and Revised Protocols for Capital Case Review* (June 2001)(“A factor of particular importance is the focus of federal enforcement efforts on drug trafficking enterprises and related criminal violence. The prosecution of drug crimes has generally been a key priority both of Congress and of federal law enforcement for many years., <http://www.justice.gov/archive/dag/pubdoc/deathpenaltystudy.htm>.

See, Kevin McNally, *Race and the Federal Death Penalty: A Nonexistent Problem Gets Worse*, 53 DEPAUL L. REV. 1615 (2004).

c. The persistent capricious circumstance of region.

As to the regional bias of federal capital prosecutions, the FDPA remains a largely Southern phenomenon. Nearly two-thirds of federal death verdicts have come out of the traditional “death belt” states. Additionally, these states sentence federal defendants to death at a significantly higher rate than elsewhere in the country.

**TABLE II: 1988-2015
STATES WITH MORE THAN ONE FEDERAL DEATH VERDICT**

STATE	AUTHORIZED	CASES	DEFENDANTS TRIED	DEATH SENTENCES	RATE
Texas	31		21	14	66 %
Missouri	29		21	10	50%
Virginia	57		35	8	23%
Louisiana	11		6	5	83%
North Carolina	10		5	4	80%
Georgia	9		6	3	50%
Oklahoma	6		5	3	60%
Maryland	26		10	2	20%
Pennsylvania	23		9	2	22%
Arkansas	7		5	2	40%
California	44		10	2	20%
Florida	15		7	2	29%
Illinois	12		5	2	40%
Iowa	4		2	2	100%
Massachusetts	5		3	2	66%
New York	45		24	2	8%
South Carolina	3		2	2	100%
West Virginia	8		3	2	66%

(Source: McNally Declaration – App. 0085-92.)

In *Santiago*, noting the regional caprice of the death-penalty on a nation-wide basis, the Connecticut Supreme Court examined the death-penalty sentencing rates of the 13 states that made up the Confederacy and concluded that those states were responsible for 75% of the executions carried out in the United States since 1976. *State v. Santiago*, 318 Conn. at 81.⁴⁴ In terms of federal death verdicts and the confederacy (the number of federal executions – three – are not enough to reach a meaningful conclusion, nonetheless two out of the three were cases from Texas) shows that 49 of 81 federal death verdicts have come out of the states that formed the confederacy, more than 62% of all federal capital verdicts. Just three of those former confederate states – Texas, Missouri and Virginia – account for 32 federal death verdicts, 40 per cent of the total.

When one examines the numbers on a circuit basis, as outlined in the McNally Declaration, the results reflect the same regional bias. To put it bluntly, if we have a national death penalty it should not matter where you are tried in terms of the likelihood of receiving a death sentence but that very much is the reality.

TABLE III: 1988-2015
DEATH SENTENCING RATES BY CIRCUIT

CIRCUIT	AUTHORIZED DEFENDANTS TRIED	SENTENCED TO DEATH	PER CENT
First	12	2	17%
Second	31	3	10%
Third	17	2	12%
Fourth	70	14	20%

⁴⁴The states of the Confederacy were: Alabama, Arkansas, Florida, Georgia, Kentucky, Louisiana, Mississippi, Missouri, North Carolina, South Carolina, Tennessee, Texas, and Virginia.

CIRCUIT	AUTHORIZED DEFENDANTS TRIED	SENTENCED TO DEATH	PER CENT
Fifth	29	19	66%
Sixth	19	3	16%
Seventh	9	3	33%
Eighth	31	15	48%
Ninth	22	4	18%
Tenth	18	5	28%
Eleventh	20	6	30%
DC	4	0	0%

(SOURCE: McNALLY DECLARATION at App. 0085-92.)

Historically, the death penalty has been a largely Southern phenomenon; that remains the case today. As of October 30, 2015, there had been 1,419 post-*Gregg* executions carried out in the United States. (DPIC, Facts About The Death Penalty, App. 0001.) Of these, 1,153 – or 81% – have been carried out by Southern states. (App. 0003.) Three states alone – Texas, Oklahoma and Virginia – have accounted for 753 executions, more than half (53%) of all post-*Gregg* executions. (*Id.*)⁴⁵ With this historical perspective in mind, it is no surprise that those federal jurisdictions in states with an established “culture of death” reflect that culture, consciously or not, in decisions to pursue the death penalty. Neither is it surprising that federal juries accustomed to seeing death sentences routinely returned in their own communities would do the same. Regional bias, however, is inimical to a national penalty that is, theoretically at least, that death is sought and imposed using consistent national standards. The Attorney General’s Capital Case Protocol, published as part of

⁴⁵ A recent study conducted by the Death Penalty Information Center concluded that “[t]he South has carried out 82% of the executions, the Northeast, less than 1%”, and that more than half of this nation’s *post-Furman* executions came as a result of cases prosecuted in two per cent of the nation’s counties. *See*, “The 2% Death Penalty: How a Minority of Counties Produce Most Death Cases at Enormous costs to All” (Death Penalty Information center 2013). Copy reproduced at App. 0043.

the United States Attorneys Manual, touts national consistency as one of its goals in deciding whether to authorize a capital prosecution in a given case.⁴⁶ See e.g. § 9-10.030 - Purposes of the Capital Case Review Process (“Each such decision must be based upon the facts and law applicable to the case and be set within a framework of consistent and even-handed national application of Federal capital sentencing laws.”); § 9-10.140 - Standards for Determination (“The standards governing the determination to be reached in cases under this Chapter include fairness, national consistency, adherence to statutory requirements, and law-enforcement objectives.”). As the next table shows, the Department has failed miserably at this.

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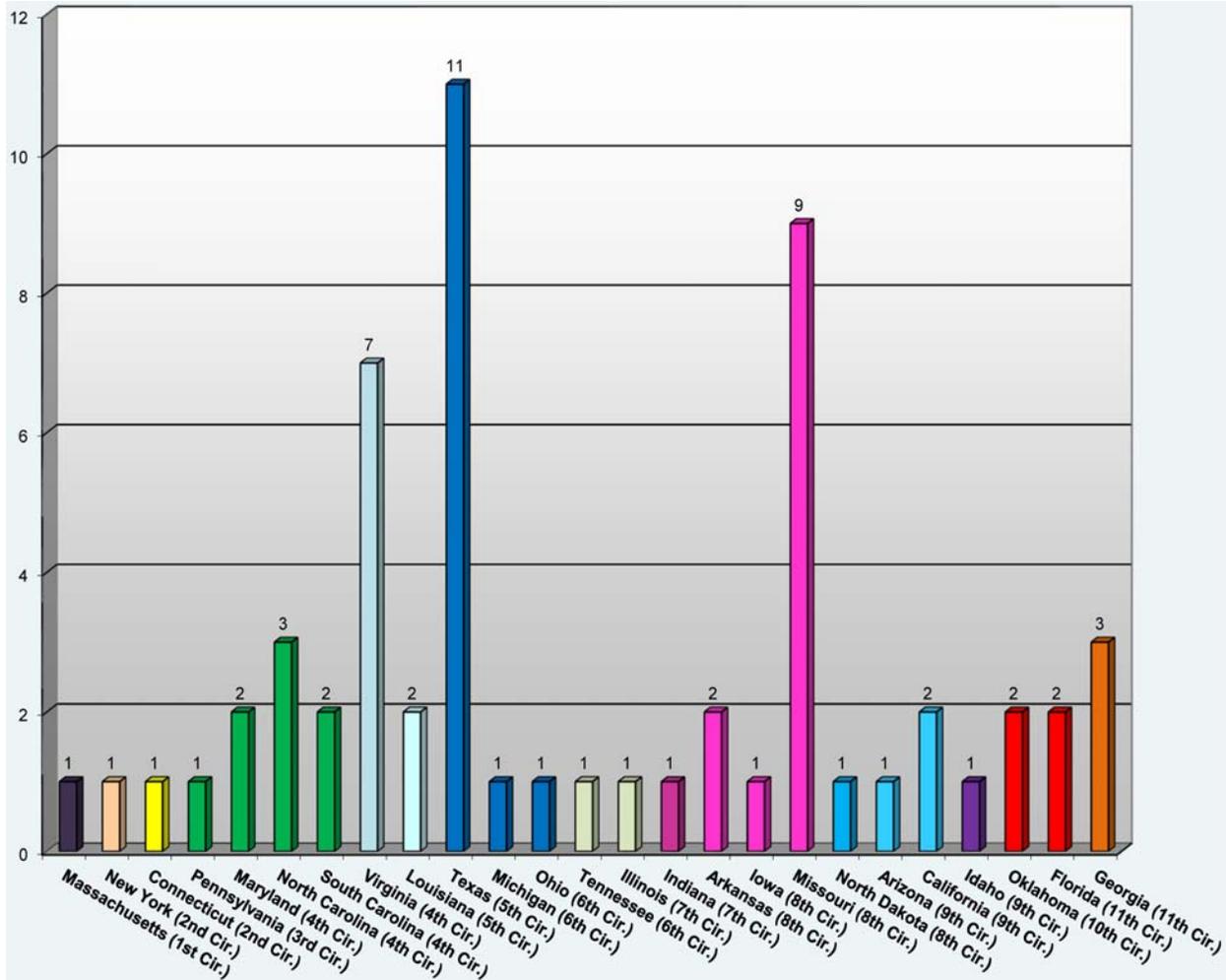
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⁴⁶ Available at <http://www.justice.gov/usam/usam-9-10000-capital-crimes>.

CHART I

STATES WHERE FEDERAL DEATH VERDICTS HAVE BEEN RETURNED
 (as of 10-27-15)⁴⁷



The failed “ideal” of a “national consistency” aside, the federal death penalty into 2015 continues to be a Southern phenomenon and federal districts from the South predictably “lead the charge” in seeking and receiving authorization to take cases capital and in convincing juries to return death verdicts. Thus, “[o]f the 81 federal death sentences imposed by juries since 1988, 51 [64 %] have

⁴⁷ Provided by the Federal Capital Habeas Project and available at: https://www.capdefnet.org/2255/pubmenu.aspx?menu_id=32&id=334.

come from the traditional ‘death belt’ states, the states that have historically executed the most people.” (McNally Declaration at App. 0086.) In a study of this issue published in 2010, the authors note:

Geographic disparities . . . persist. To promote uniformity, United States Attorneys submit all death-eligible federal cases to the United States Attorney General for death-authorization. Yet the geography of the federal death penalty is anything but uniform. Six of the ninety-four federal judicial districts account for one-third of death-authorizations. More than half of all death-authorizations come from fourteen federal districts. Seven federal districts are responsible for approximately 40% of the individuals on federal death row. Two-thirds of districts have not sentenced anyone to death. Nearly one-third of federal districts have not sought a death sentence. Fewer than 20% of federal districts have sentenced more than one person to death.

G. Ben Cohen. & Robert J. Smith, *The Racial Geography of the Federal Death Penalty*, 85 WASHINGTON LAW REV. 425, 429-430 (2010). As of 2015 25% of the 94 federal districts have *never* had an authorized federal capital case. (App. at 0086.)

The reality is there has been no appreciable change since the 2000 DOJ Study, and the federal death penalty remains a disproportionately Southern phenomenon. It thus appears – whether one takes a micro or macro view – that the irrational caprice of geographical location has as much to do with facing the federal death penalty as does the crime committed. This is the essence of arbitrariness and caprice. To quote former President Clinton, “[W]hat your prosecution is may turn solely on where you committed the crime.”⁴⁸ See also, *Glossip v. Gross*, 135 S. Ct. at 2761 (Breyer and Ginsburg, JJ., dissenting)(“ Geography also plays an important role in determining who is

⁴⁸It also appears that trying to “fix” one part of a the geography problem may give rise to others. See, B. Weiser and W. Glaberson, *Ashcroft Pushed Executions in More Cases in New York*, *N.Y. Times*, 2/6/03 (Reporting on efforts by the Attorney General to require federal prosecutors in New York and Connecticut to seek death more often;); B. Weiser and W. Glaberson, *Decisions on Death Cases Raise Questions of Race*, *N.Y. Times*, 2/14/03 (Pointing out that the 12 defendants as to whom Attorney General Ashcroft overruled a New York area federal prosecutor’s decision not to seek the death penalty were all black or Hispanic).

sentenced to death.”); *State v. Santiago*, 318 Conn. at 85 (“In the case of capital punishment, the regional disparities are both instructive in their character and striking in their magnitude.”).

A death penalty that operates on an arbitrary basis is unconstitutional under both the Eighth Amendment and the due process and equal protection guarantees of the Fifth Amendment. *See, Bush v. Gore*, 531 U.S. 98, 106, 121 S.Ct. 525, 148 L.Ed.2d 388 (2000) (equal protection and due process violations found where “the standards for accepting or rejecting contested ballots might vary not only from county to county but indeed within a single county from one recount team to another. This is not a process with sufficient guarantees of equal treatment.”); see also, *United States v. Bin Laden*, 126 F. Supp. 2d 256, 263 (S.D.N.Y. 2000) (finding that the Eighth Amendment would be violated if the federal government had decided to seek the death penalty on the basis of geographic considerations); accord, *United States v. Jacques*, 2011 WL 3881033 * 4 (D. Vt. Sept. 2, 2011); *United States v. Johnson*, 900 F.Supp.2d 949, 962-963 (N.D.Iowa,2012). What is true with respect to non-capital sentencing is equally true and more disturbing with respect to the federal death penalty: “Regrettably, there is as much regional disparity in sentencing now as there was prior to the creation and enactment of the Sentencing Commission and Guidelines. The origin of that disparity, however, has shifted from the judiciary to politically appointed prosecutors.” *United States v. Buckendahl*, 251 F.3d 753, 764-65 (8th Cir. 2001).

As these cases teach, the Eighth Amendment and the Fourteenth Amendment's due process and equal protection clauses prohibit allowing or disallowing the death penalty based solely on the arbitrary factor of geography, or on the equally arbitrary and related geographic factor that a particular state does not endorse the death penalty. *See Politics and Prosecution* at 57, 87 (the lead author, a former United States Attorney in the Eastern District of New York who “participated in committee meetings advising the U.S. Attorney on the disposition of capital cases” admits that

beginning with Attorney General Ashcroft's administration and his modification of the death penalty Protocol, non-death penalty states such as Vermont were "seemingly targeted by the Department of Justice.")⁴⁹

- d. The continuing and unabated practice of targeting males and minorities for the federal death penalty, the long-documented "white-victim effect," and the emergence of a "white female victim effect" further demonstrate the arbitrary and irrational operation of the federal death penalty.⁵⁰

After more than 25 years of a federal death penalty, it is undeniable and clear that the patterns of race and region that disturbed and troubled government officials 15 years ago persist. It seems undeniable that these problems are intractable and part of the DNA of capital punishment, including the federal version. The following tables reflect the present state of affairs:

⁴⁹ The authors point to Ashcroft's change in the Protocol, the firing of local United States Attorneys who disagreed with DOJ's death penalty policies, and the experience in Vermont, Massachusetts, New York, and Puerto Rico as stark evidence of this geographic targeting. With respect to Puerto Rico, the authors note:

Puerto Rico's deep-seated opposition to capital punishment is reflected in its Constitution, which declares bluntly that "[t]he death penalty shall not exist." Nonetheless, Puerto Rico has been a virtual repository for the Department of Justice's capital prosecution efforts and once had the greatest number of pending death penalty cases in the entire federal system.

Id. at 95.

⁵⁰The victims in this case are white, as is Mr. Fell. Mr. Fell has standing to raise the present argument. See, *McCleskey v. Kemp*, 481 U.S. 481 U.S. 279, 291 n. 8 (1987)("It would violate the Equal Protection Clause for a State to base enforcement of its criminal laws on "an unjustifiable standard such as race, religion, or other arbitrary classification.... Because *McCleskey* raises such a claim, he has standing."); *United States v. Sampson*, 275 F. Supp. 2d 49, 69, 87 (D. Mass. 2003).

TABLE IV: 1988-2015

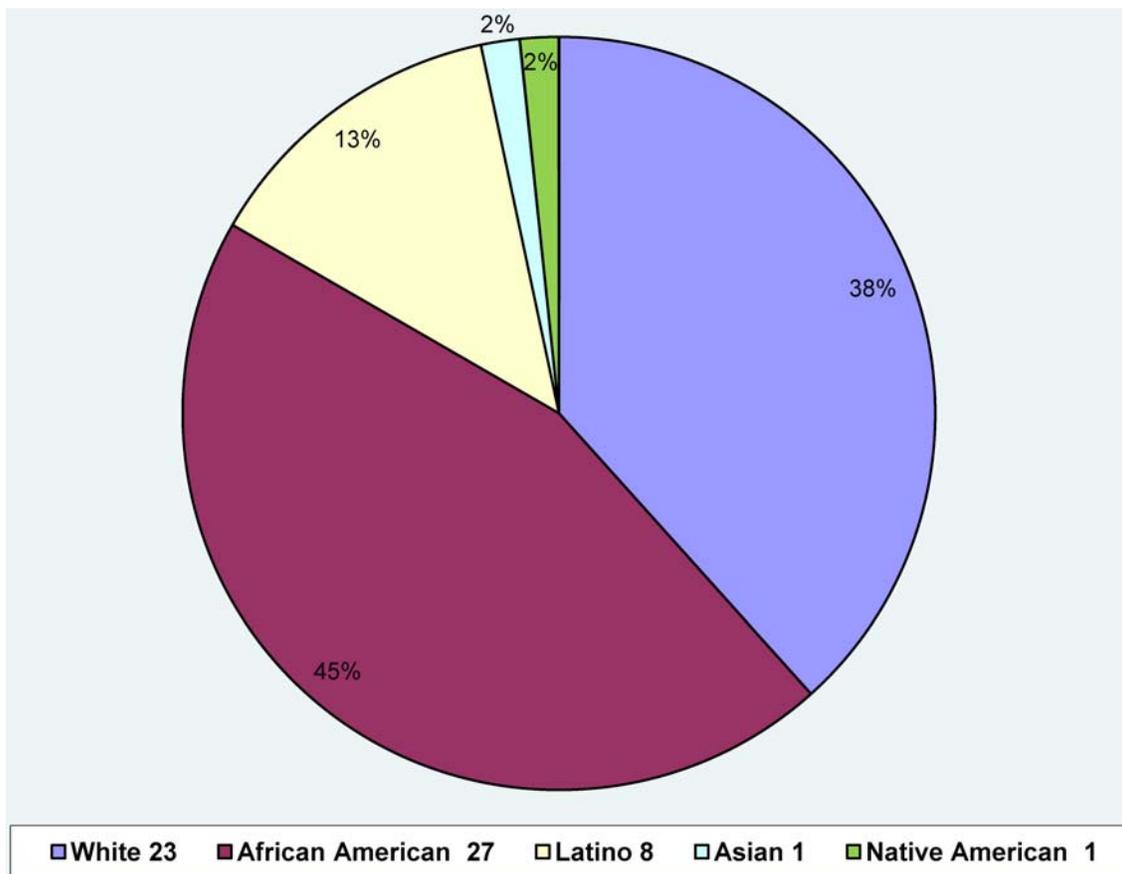
THE RACE OF THE 498 FEDERAL DEFENDANTS
TARGETED FOR FEDERAL EXECUTION

RACE OF DEFENDANT	NUMBER	PER CENT
AFRICAN- AMERICAN	251	50%
CAUCASIAN	131	26%
HISPANIC/ LATINO	92	26
OTHER	24	5%

(Source: McNally Declaration at App. 0084.) In terms of targeting decisions, therefore, 73% of those selected for capital prosecutions are members of minority groups. At the time of the 2000 DOJ Study, the figure was 70%.

As the chart on the following page demonstrates, the disproportionate targeting of minorities for the federal death penalty has had what would be the expected effect on the population of death row. Thus, as of the spring of 2015, 60 percent of those presently on federal death row are non-white. This is an unacceptable state of affairs and, bluntly, one that should be a source of intense concern to the Justice Department.

CHART II: RACIAL COMPOSITION OF
FEDERAL DEATH ROW (as of MAY 27, 2015) ⁵¹



(1) *The law on race and the death penalty.*

Twenty-eight years ago, dissenting in *McCleskey v. Kemp*, 481 U.S. 279 (1987), Justices Brennan, Marshall, Blackmun and Stevens hypothesized an attorney-client conversation where an African-American defendant charged with capital murder asked his attorneys what the chances were that he would be sentenced to death and what would factor into that process. Based on the statistical analysis presented to the Court in *McCleskey*, it was the four dissenters’ conclusion that, at some

⁵¹ Provided by the Federal Capital Habeas Project and available at: https://www.capdefnet.org/2255/pubmenu.aspx?menu_id=32&id=332.

point in the dialogue, defense counsel would have to level with their client and tell him that his race would play an important role – perhaps a determinative one – in whether he lived or died:

The story could be told in a variety of ways, but [the client] could not fail to grasp its essential narrative line: there was a significant chance that race would play a prominent role in determining if he lived or died.

McCleskey, 481 U.S. at 322 (Opinion of Brennan, Marshall, Blackmun and Stevens, J.J., dissenting).⁵² In *McCleskey*, a rigorous statistical study of Georgia’s capital sentencing practices found that killers of whites, regardless of their own race, were more likely to be sentenced to death than killers of African-Americans. One of the major statistical models relied on by *McCleskey* showed that “defendants charged with killing white victims (whatever their own race) were 4.3 times as likely to receive a death sentence as defendants charged with killing blacks.” 481 U.S. at 287.

More than a century ago, in *Yick Wo v. Hopkins*, 118 U.S. 356 (1886), the Court observed that application of seemingly neutral laws “with an evil eye and an unequal hand, so as practically to make unjust and illegal discrimination between persons in similar circumstances” amounts to a denial of equal protection. *Id.* at 373-74. The historical truth is that in the United States capital punishment and race have always been inextricably intertwined. That state-of-affairs is likely to continue, regrettably, until we can say honestly that racism has disappeared from our society. *See, e.g.*, C. J. Ogletree (Ed.) and A. Sarat, *From Lynch Mobs to the Killing State: Race and the Death Penalty in America* (New York University Press 2006); R. K. Little, *What Federal Prosecutors Really Think: The Puzzle of Statistical Race Disparity Versus Specific Guilt, and the Specter of Timothy McVeigh*, 53 DEPAUL L. REV. 1591 (2004); K. McNally, *Race and the Federal Death Penalty: A Nonexistent Problem Gets Worse*, 53 DEPAUL L. REV. 1615 (2004); C. J. Ogletree, *Black Man’s Burden: Race*

⁵²After his retirement from the bench, Justice Powell wrote that he regretted both voting with the majority, and authoring the Court’s 5-4 opinion upholding the death-penalty in *McCleskey*. *See*, Jeffries, *Justice Lewis F. Powell, Jr.* (1994) at pp. 451-52.

and the Death Penalty in America, 81 OREGON L.REV. 15 (2002); G. L. Pierce, M. L. Radlet, *Race, Region, and Death Sentencing in Illinois*, 81 OREGON L.REV. 39 (2002); S. Bright, *Discrimination, Death and Denial: The Tolerance of Racial Discrimination in the Infliction of the Death Penalty*, 35 SANTA CLARA L.REV. 433 (1995); D. Baldus, *Reflections on the 'Inevitability' of Racial Discrimination in Capital Sentencing and the 'Impossibility' of its Prevention, Detection and Correction*, 51 WASH. & LEE L.REV. 359 (1994); Bienen, Weiner, Denno, Allison and Mills, *The Reimposition of Capital Punishment in New Jersey: The Role of Prosecutorial Discretion*, 41 RUTGERS L.REV. 27, 100-57 (1988).

In Connecticut's recent *Santiago* decision, the issue of race and the death penalty in that affluent northeastern state was examined with the following conclusion:

[D]ata from three authoritative governmental sources . . . all suggest that the death penalty in Connecticut continues to be imposed disproportionately based on the race and ethnicity of the offender and the victim. The alleged disparities are significant and hold across hundreds of cases. We are not aware of any study or report to have reached a contrary conclusion.

State v. Santiago, 318 Conn. at 151.

In *Furman*, Justice Douglas had explored the correlation between race and the death penalty⁵³

and concluded:

In a Nation committed to equal protection of the laws there is no permissible “caste” aspect of law enforcement. Yet we know that the discretion of judges and juries in imposing the death penalty enables the penalty to be selectively applied, feeding prejudices against the accused if he is poor and despised, lacking political clout, or if he is a member of a suspect or unpopular minority, and saving those who by social position may be in a more protected position. In ancient Hindu law, a Brahman was exempt from capital punishment, and in those days, “[g]enerally, in the law books, punishment increased in severity as social status diminished.” We have, I fear, taken in practice the same position

Furman, 408 U.S. at 255 (Douglas, J., concurring; footnotes omitted.) As recently as 1991, the execution of a white man for the murder of a black man was front-page news as an event that had not occurred in the nation for 50 years. *See*, D. Margolick, *Rarity for U.S. Executions: White Dies for*

⁵³A study of death verdicts returned in Philadelphia illustrates the invidious and odious nature of the problem of race and the death penalty. The study concluded that convicted murderers with stereotypical African-American features (flat noses, large lips, kinky hair) and dark skin were more likely to receive the death penalty for killing a white person than lighter-skinned African-American defendants with more Caucasian features. J. Eberhardt, P.G. Davies, V. J. Purdie-Vaughns, S.L. Johnson, *Looking Deathworthy: Perceived Sterotypicality of Black Defendants Predicts Capital-Sentencing Outcomes*, 17 PSYCHOLOGICAL SCIENCE 383 (Spring 2006). *See also*, Justin D. Levinson, Robert J. Smith & Danielle M. Young, *Devaluing Death: an Empirical Study of Implicit Racial Bias on Jury-Eligible Citizens in Six Death Penalty States*, 89 NEW YORK UNIVERSITY LAW REVIEW 513 (2014)(“[W]e conducted a study on 445 jury-eligible citizens in six leading death penalty states. We found that jury-eligible citizens harbored two different kinds of the implicit racial biases we tested: implicit racial stereotypes about Blacks and Whites generally, as well as implicit associations between race and the value of life. We also found that death-qualified jurors— those who expressed a willingness to consider imposing both a life sentence and a death sentence—harbored stronger implicit and self-reported (explicit) racial biases than excluded jurors.”); Mona Lynch and Craig Haney, *Mapping the Racial Bias of the White Male Capital Juror: Jury Composition and the “Empathic Divide”*, 45 LAW & SOCIETY REVIEW 69, 91 (2011)(“[T]he white male jurors in this study judged a black defendant whom they tended to view as driven by the defendant’s own depraved predispositions, and as someone whose criminal behavior they were reluctant to interpret as the product of the defendant’s dysfunctional and psychologically damaging background.”) As Justices Breyer and Ginsburg recently acknowledged, “racial and gender biases may, unfortunately, reflect deeply rooted community biases (conscious or unconscious), which, despite their legal irrelevance, may affect a jury’s evaluation of mitigating evidence.” *Glossip v. Gross*, 135 S.Ct at 2763.

Killing Black, *N.Y. Times*, September 7, 1991, p.1, col. 1. DPIC reports that since executions resumed in the wake of *Gregg*, there have been 31 executions of a white defendant for killing a black victim; but there have been 295 executions of black defendants who killed a white victim. (App. 0002.)

Mr. Fell's showing in this motion is sufficient to establish a case of arbitrariness and invidious discrimination in the enforcement of the federal death penalty. See, *United States v. Sampson*, 275 F. Supp. 2d 49, 89 (D. Mass. 2003) ("If the sentences of similarly situated defendants based on these three factors [the race of the defendant, the race of the victim, and the geographic location of the prosecution] were so great as to make the imposition of the death penalty arbitrary and capricious, the Eighth Amendment would be violated. The first two factors, the race of the defendant and the race of the victim, also implicate the Fifth Amendment's guarantee of equal protection of the law.") It is difficult to imagine how, other than racism, one can explain the arbitrary manner in which the federal death penalty has been administered in terms of the race of those who are targeted. See, *Batson v. Kentucky*, 476 U.S. 79, 93-94 (1986). To all appearances, there is "a clear pattern, unexplainable on grounds other than race." *Arlington Heights v. Metropolitan Housing Dev. Corp.*, 429 U.S. 252, 266 (1977).

The Supreme Court has repeatedly emphasized that "the core of the Fourteenth Amendment is the prevention of meaningful and unjustified official distinctions based on race." *Hunter v. Erickson*, 393 U.S. 385, 391 (1969). This case, as a federal prosecution, is subject to the Due Process Clause of the Fifth Amendment which has long been held to embody a guarantee of equal protection. *Bolling v. Sharpe*, 347 U.S. 497, 499 (1954); see *Weinberger v. Wisenfeld*, 420 U.S. 636, 638 n.2 (1975) ("[Our] approach to Fifth Amendment equal protection claims has . . . been precisely the same as to equal protection claims under the Fourteenth Amendment.") In the area of criminal justice,

where racial discrimination “strikes at the fundamental values of our judicial system and our society as a whole,” *Rose v. Mitchell*, 443 U.S. 545, 556 (1979), the Supreme Court has “consistently” articulated a “strong policy . . . of combating racial discrimination.” *Id.* at 558. That the federal death penalty operates with an impermissible racist effect is powerful evidence that it operates fundamentally unfairly and with arbitrariness and caprice. Accordingly, Mr. Fell has standing pursuant to the Eighth Amendment and Fifth Amendment Due Process Clause not to be subjected to an arbitrary system of capital punishment.

There is strong and consistent evidence that minority and male defendants are many times more likely than white defendants to face the death penalty at the hands of the federal government. This is a problem that demands our government’s “most rigid scrutiny” of the kind described in *Loving*.

The Eighth Amendment’s prohibition of the arbitrary use of the death penalty imposes constitutional limitations on capital punishment that do not apply to lesser punishments. *See, e.g., Woodson v. North Carolina*, 428 U.S. 280 (1976) and *Roberts v. Louisiana*, 428 U.S. 325 (1976) (mandatory death sentences – but not other mandatory sentences – are unconstitutional); *Lockett v. Ohio*, 438 U.S. 586 (1978) (sentencer must be free to give “independent mitigating weight” to any fact about the defendant or the offense, in a capital case); *Bullington v. Missouri*, 451 U.S. 430 (1981) (imposition of a death sentence after reversal of a sentence of life imprisonment is unconstitutional, although there is no similar *per se* ban on harsher sentencing on retrials of other criminal cases); *Turner v. Murray*, 476 U.S. 28 (1986) (capital defendants in interracial murders – but not non-capital murder defendants – are automatically entitled to have potential jurors questioned about the effects of possible racial biases).

Secondly, it is obvious that racial discrimination is a species of the arbitrariness condemned in *Furman*. This is apparent from the opinions of the Justices in the majority and of those in dissent alike. For example, Justice Douglas concluded that the capital statutes before him were “pregnant with discrimination,” 408 U.S. at 157, and thus ran directly counter to “the desire for equality . . . reflected in the ban against `cruel and unusual punishments` contained in the Eighth Amendment.” *Id.* at 255. Similarly, Justice Stewart lamented that “if any basis can be discerned for the selection of these few sentenced to die, it is the constitutionally impermissible basis of race.” *See Id.* at 364-366 (Marshall, J., concurring); *Id.* at 389 n.12 (Burger, C.J. dissenting); *Id.* at 449-50 (Powell, J., dissenting). Later Supreme Court cases have applied this interpretation. Thus, for example, in *Zant v. Stephens, supra*, the Court explained that *Furman* would be violated if a state based its capital sentencing on “factors that are constitutionally impermissible or totally irrelevant to the sentencing process, such as . . . the race . . . of the defendant.” 462 U.S. at 885.

Taken together, then, these two points can be summarized as follows: The Cruel and Unusual Punishments Clause of the Eighth Amendment imposes a constitutional prohibition against racial or gender discrimination in the use of the death penalty that is at least as strict as the general proscription of racial and gender discrimination in the (implicit) equal protection clause of the Fifth Amendment. In *Graham v. Collins*, 506 U.S. 461 (1993), Justice Thomas’ concurring opinion summed this point up succinctly when he noted that racial prejudice or bias in the context of capital punishment “is the paradigmatic capricious and irrational sentencing factor.” *Id.* at 484. Where a death penalty appears to operate so as to institutionalize racism, it offends the same constitutional values that yielded *Furman* and this nation’s abandonment of capital punishment.

- (2) *The effect of gender of defendant, and of race and gender of victim in the application of the FDPA.*

For obvious reasons, a capital punishment scheme which explicitly provided that the death penalty is more appropriate where the defendant is a male, or where the victim is white or white and female would not be constitutional. A scheme that operates in practice to the same effect is no better. On the question of race-of-victim, research that is consistent across several decades has demonstrated that those who kill whites are more likely to face a sentence of death and to be sentenced to death than those who kill members of minority groups.⁵⁴ A race-of-victim effect has been repeatedly found to be present in capital prosecutions, including the federal system.⁵⁵ In their *Glossip* dissent, Justices Breyer and Ginsburg noted, “Numerous studies have concluded that individuals accused of murdering white victims, as opposed to other black or minority victims, are more likely to receive a death penalty.”⁵⁶ *Glossip* dissent, 135 S.Ct. at 2760.

⁵⁴Figures compiled by the Federal Death Penalty Resource Counsel Project, current as of September 22, 2105, reflect that 57% of those on federal death row were convicted of murdering white victims. (App. 0079.)

⁵⁵ For a comprehensive discussion of the white-victim effect, see D. Baldus and G. Woolworth, *Race Discrimination and the Legitimacy of Capital Punishment: Reflections on the Interaction of Fact and Perception*, 53 DEPAUL L. REV. 1411, 1423-1428 (2004). Utilizing statistics current at the time of the study, the authors noted that the nation-wide average for execution of those who killed whites was in the 83% range, while whites were victims of murder in only approximately 45% of such cases. *Id* at 1423. See also, K. McNally, *Race and the Federal Death Penalty: A Non-Existent Problem Gets Worse*, 53 DEPAUL L. REV. 1615, 1623-24 (2004)(“Between January 27, 1995 and July 20, 2000, Attorney General Reno's approval rate for capital prosecutions was .37 (61/167) in white-victim cases and .21 (81/383) in minority-victim cases—a 16 percentage point difference that is statistically significant at the .001 level.”); *Id.* at 1626 (“Under Attorney General Ashcroft, the probability of being targeted for a capital prosecution are: 34% (38 of 112) if the defendant is accused of killing a white victim...but only 24% (64 of 267) if the defendant is charged with killing a nonwhite victim.”).

⁵⁶ Citing GAO, Report to the Senate and House Committees on the Judiciary: *Death Penalty Sentencing* 5 (GAO/GGD–90–57, 1990) (82% of the 28 studies conducted between 1972 and 1990 found that race of victim influences capital murder charge or death sentence, a “finding ... remarkably consistent across data sets, states, data collection methods, and analytic techniques”); Shatz & Dalton, *Challenging the Death Penalty with Statistics: Furman, McCleskey, and a Single County Case Study*, 34 Cardozo L. Rev. 1227, 1245–1251 (2013) (same

Recent studies have begun to demonstrate that there is a gender-based irrationality to capital punishment schemes as well, with the net effect that those who are guilty of murdering white females are substantially more likely to face the death penalty and be sentenced to death than those who kill non-whites and males. This is further evidence of the arbitrary, capricious and biased nature of the death penalty.

Studies of state capital schemes have uniformly detected a significant race-of-victim effect. See, e.g. Marcia Wilson, *The Application of the Death Penalty in New Mexico, July 1979 Through December 2007: an Empirical Analysis*, 38 N.M. L. REV. 255, 260 (2009) (“The data strongly suggest that the race and ethnicity of the victims and the defendants affected the determination of who would live and who would die.”); State Bar of New Mexico, Task Force on the Administration of the Death Penalty in New Mexico: Final Report (2004) p. 13 (“[S]ome states have done studies in an effort to determine what factors make it more or less likely that an individual defendant will receive the death penalty. These studies have found that the race of the defendant and the race of the victim affect to a significant degree whether a particular defendant convicted of first-degree murder will be sentenced to die.”) See also, Pierce and Radelet, *Death Sentencing in East Baton Rouge Parish, 1990-2008*, 71 LOUISIANA LAW REV. 671 (2011) (In Louisiana, the odds of a death sentence were 97 % higher for those whose victim was white than for those whose victim was black.); G. Ben Cohen. & Robert J. Smith, *The Racial Geography of the Federal Death Penalty*, 85 WASHINGTON LAW REV. 425, 428 (2010) (“Statistics suggest that defendants are more likely to be sentenced to death for killing a white victim than a black victim.”); R. Paternoster, G. Pierce, & M. Radelet, *Race and Death Sentencing in Georgia, 1989-1998*, in American Bar Association, Evaluating Fairness And Accuracy In State Death Penalty Systems: The Georgia Death Penalty Assessment Report,” (with

conclusion drawn from 20 plus studies conducted between 1990 and 2013).

respect to capital prosecutions in Georgia, “[t]he data show that among all homicides with known suspects, those suspected of killing whites are 4.56 times as likely to be sentenced to death as those who are suspected of killing blacks”); Andrew Welsh-Huggins, *Death Penalty Unequal - Study: Race, Geography Can Make a Difference*, *The Cincinnati Enquirer* (May 7, 2005) (analysis of death penalty verdicts in the state of Ohio from 1981 to 2002 reveals that “[o]ffenders facing a death penalty charge for killing a white person were twice as likely to go to death row [compared to those charged with having] killed a black victim. Death sentences were handed down in 18 percent of cases in which the victims were white, compared with 8.5 percent of cases when victims were black”); G.L. Pierce & M. Radelet, *The Impact of Legally Inappropriate Factors on Death Sentencing in California Homicides*, 46 SANTA CLARA L. REV. 1 (2005) noting that the killers of whites were over three times more likely to be sentenced to death than those who killed blacks and 4 times as likely than those who killed Latinos.

In addition, research commissioned by state governments in, for example, California, Maryland, Nebraska and Illinois has consistently found that defendants convicted of killing white victims are more frequently sentenced to death than defendants convicted of killing non-white victims. See, e.g., *Maryland Commission on Capital Punishment: Final Report To the General Assembly* (2008), p. 10 (“The evidence shows that the troublesome factor of race plays a dominant role in the administration of the death penalty in Maryland. Research presented to the Commission showed that cases in which an African-American offender killed a Caucasian victim are almost two and a half times more likely to have death imposed than in cases where a Caucasian offender killed a Caucasian victim.”); State of Illinois, *Report of the Governor's Commission on Capital Punishment* (2002), p. 196 (“When certain facts in aggravation, such as previous criminal history of the defendant, are controlled for, there is evidence that the *race of the victim* influences who is sentenced

to death. In other words, defendants of any race who murder white victims are more likely to receive a death sentence than those who murdered black victims.”)(emphasis in original).

Not surprisingly, the studies of the operation of the federal death penalty system replicate the race of victim findings of the state court studies.⁵⁷ As indicated supra at n. 55, K. McNally, *Race and the Federal Death Penalty: A Non-Existent Problem Gets Worse*, 53 DEPAUL L. REV. 1615, 1623-24 (2004) was one of the first studies to report a significant race of victim effect in federal death penalty cases. The study noted that in 2004 “The persistent presence of statistical disparity not only continues, it is getting worse.” *Id.* at 1616. The current situation is documented in Mr. McNally’s

Declaration:

Since 2000, in a grossly disproportionate number of cases juries have imposed the death penalty when the victim was a white female As of September 8, 2015, white female victim cases constituted 38% (23 of 60) of federal death row but only 8% (202 of 2470) of the available pool of potential defendants since the year 2000 Moreover, 45% (25 of 55) of all death sentences between 2000 and 2014 have involved white female victims. This many times greater than one would expect given the pool of white female victim cases.

(App. 0084).

⁵⁷ Contrary to all of the studies discussed in this section, one study purported to find no race of victim effect in the federal death penalty system. See, Rand Corporation, *Race and the Decision to Seek the Death Penalty in Federal Cases* (2006), available at http://www.rand.org/content/dam/rand/pubs/technical_reports/2006/RAND_TR389.pdf. The study itself, based on data from 1995-2000, notes that the authors “agreed that their analytic methods cannot provide definitive answers about race effects in death-penalty cases”, that “[r]esults could be different with other variables, methods, and cases”, and that “[e]xtrapolating beyond the data we analyzed here to other years, other defendants, other points in the decisionmaking process, or other jurisdictions would be even more problematic.” *Id.* at xx. Commenting on this study in 2009, Senator Feingold, in support of his bill to abolish the Federal Death Penalty Act, pointed out that “the long anticipated study did not address the root question about the application of the Federal Death Penalty: it did not study the decision-making process for bringing defendants into the Federal system in the first place. Of course this study only covers 1995-2000. So we still have very little information about racial disparities from 2001 forward.” 115 Congressional Record-Senate 8071-72 (May 19, 2009).

As a result of these studies, and others, it is clear that “[d]eath row’s racial disparity, however, is not the result of race-neutral application of the death penalty or a perverse form of affirmative action to favor black defendants. Rather, a racial hierarchy clearly exists among cases based upon who the victim is.” See J. Blume, T. Eisenberg, and M. T. Wells, *Explaining Death Row’s Population and Racial Composition*, 1 JOURNAL OF EMPIRICAL LEGAL STUDIES 1, 167 (March 2004).

The dissenting justices in *Glossip* also noted that “many... studies have found that the gender of the defendant or the gender of the victim makes a not-otherwise-warranted difference.”⁵⁸ *Id.* at 2761. Justice Marshall addressed the gender of the defendant issue in *Furman*. See, *Furman v. Georgia*, 408 U.S. at 365 (Marshall, J., concurring) (“There is . . . overwhelming evidence that the death penalty is employed against men and not women It is difficult to understand why women have received such favored treatment since the purposes allegedly served by capital punishment seemingly are equally applicable to both sexes.”). One of the studies on this issue referenced in the Shatz & Dalton article cited in *Glossip* is Victor L. Streib, *Rare and Inconsistent: The Death Penalty for Women*, 33 FORDHAM URB. L.J. 609, 621–22 (2006). Streib, who has tracked the issue for many years, reports that, in terms of raw numbers, women homicide defendants receive more favorable treatment at each stage of the criminal process, so that, although women constitute 10% of those arrested for murder, they constitute only 2% of those sentenced to death at trial, and only 1% of those actually executed. See also, Steven F. Shatz & Naomi R. Shatz, *Chivalry Is Not Dead: Murder, Gender, and the Death Penalty*, 27 BERKELEY J. GENDER L. & JUST. 64 (2012)(while women constituted 5.3% of defendants convicted of first-degree murder and death-eligible, they constituted only 1.2% of those sentenced to death.)

⁵⁸ Citing the “many studies” discussed in the Shatz & Dalton article at page 1251-53.

In the federal system, since 1790, there have been 343 federal executions, two (0.5 %) of which were women.⁵⁹ Both women were executed in 1953.⁶⁰ Since the federal death penalty was reinstated in 1988, only nine women have faced a federal capital trial: Kristen Gilbert, D. MA CR No. 98-30044-MAP⁶¹, Angela Johnson, N.D. Iowa, No. No. 3:01-CR-03046-MWB⁶², Donna Moonda, N.D. OH No. 1:06-CR-00395-DDD⁶³, Valerie Friend, No. S.D. WV CR No. 2:05-00107

⁵⁹ Death Penalty Focus, *The Federal Death Penalty: An Overview*, available at <http://deathpenalty.org/article.php?id=46>.

⁶⁰ DPIC, *Women Executed In The United States Since 1900* (noting that Ethel Rosenberg was executed on 6/19/53, and Bonnie Heady was executed on 12/18/53), available at <http://www.deathpenaltyinfo.org/women-executed-us-1900>.

⁶¹ “[T]he killing of four patients at a Department of Veterans Affairs Hospital, on federal property, and the attempted killing of three others. Ms. Gilbert, 31, used epinephrine, a drug that can overstimulate the heart, on her patients. Federal prosecutors said Gilbert murdered one patient, a 41-year-old invalid, after asking a supervisor if she could “leave early if he died.” All involved are Caucasian. The jury deadlocked and Gilbert was sentenced to life in prison.” (*App.* 0113)

⁶² “[F]ive murders in 1993 of a potential witness, his girlfriend (both meth dealers) and two daughters, in a drug conspiracy case. The fifth victim is Angela Johnson's former boyfriend, another dealer turned informant, who disappeared in November of 1993. Johnson attempted suicide in jail after she was tricked by a jailhouse informant into revealing the location of the bodies. Attorney General Ashcroft rejected Honken's attempt to enter a plea to a life sentence. Attorney General Gonzales rejected Johnson's attempt to enter a plea to a life sentence. Finding ineffective assistance of counsel, the district court in 2012, reversed Johnson's death sentence. 860 F.Supp.2d 663 (ND IA 2012). A resentencing trial was scheduled for 2015 but Attorney General Holder withdrew the Notice of Intent to seek the death penalty. All involved are white.” (*App.* 0151)

⁶³ “[A] 2005 “interstate stalking,’ 18 U.S.C. §2261A, §924 domestic gun murder of a millionaire urologist while he was driving on the Ohio Turnpike. Co-defendant Bradford, a black male, allegedly traveled from Pennsylvania to Ohio to kill Dr. Gulam Moonda. Bradford struck a deal for 17 years in return for testimony that Mrs. Moonda offered him money to kill her husband. He was having an affair with the doctor's wife. The deceased was 69 and of Indian descent. Mrs. Moonda, 47, faced the death penalty for charges of murder for hire. [Life sentence from jury].” (*App.* 0140)

⁶⁴, Tamara Llamas, No. E.D. NC CR No. 7:97-CR-63-1-H ⁶⁵, Lorie Ann Taylor-Keller ⁶⁶, Barbara Brown, No. N.D. WV CR No. 1:98CR34 ⁶⁷, Janette A. Able, N.D. WV CR No. 1:98CR34 ⁶⁸ and Lisa Montgomery, W.D. MO No. 5:05-CR-06002-GAF ⁶⁹. Although reasonable minds might differ on the issue of whether the murders by Moonda, Friend, and Llamas are more or less aggravated than Mr.

⁶⁴ “[A] 2005 gun murder-for-hire of a cooperating witness/informant in a drug (cocaine) prosecution. Lecco asked Burton, who asked Friend to help kill the female victim who was shot and beaten to death and buried in a shallow grave. Attorney General Gonzales required a death penalty prosecution. Lecco and Friend were sentenced to death at a joint trial but a new trial was granted by the trial judge when the government revealed that a juror was under federal investigation for child pornography. 634 F.Supp.2d 633 (SD WV 2009). Friend entered into a plea agreement approved by Attorney General Holder and testified against Lecco, who was sentenced to life in prison at a retrial. Friend received 35 years. All involved are white.” (App. 0159)

⁶⁵ “[A] murder-for-hire of an informant in a marijuana conspiracy. Llamas, a white female, allegedly ordered the killing of a drug informant. The triggerman was Wakefield. The drug informant was carelessly named in a warrant, and was murdered a month later. The marijuana conspiracy involved North and South Carolina, Texas and Oregon. [Authorized capital case that resulted in a guilty plea and a non-death sentence].” (App. 0212)

⁶⁶ “Interstate domestic gun and arson triple murders of three; an ex-husband of Lorie Keller, his new wife and her five year old child. They were shot and the house burned. All involved are white. [Authorized capital case that resulted in a guilty plea and a non-death sentence] (App. 0233)

⁶⁷ “[A]rson/murder by their parents of five children, after an insurance policy was issued on the dwelling and the Brown's children. Federal charges were based on the use of the mail and phones. However, the capital counts were dismissed after the Supreme Court's decision in *United States v. Jones*, 592 U.S. 848 (2000). After a non-capital trial, the Browns were acquitted. Ables pled guilty and became a government witness. All involved are Caucasian. State charges were also filed.” (App. 0247)

⁶⁸ Co-defendant of Barbara Brown.

⁶⁹ “[A] baby girl was cut out of her murdered mother's womb and taken across state lines. She was found alive in the possession of a Kansas woman, who police charged with interstate kidnapping resulting in death. Kevin and Lisa Montgomery have two older children, but she had recently lost a baby. The victim was eight months pregnant and strangled with a rope. Montgomery confessed. [A death sentence was imposed in 2008 and upheld on appeal]. All involved are white. A 28 USC §2255 motion is pending.

Fell's alleged crimes, and there was a legal bar in the Brown and Abel cases, by any measure of aggravation, the number and nature of the murders by Johnson, Gilbert, and Taylor-Keller are far more aggravated than Mr. Fell's crimes, yet he faces death and these female defendants do not. Examining the verdict forms in these cases leads to the conclusion that there is no rhyme or reason for this discrepancy other than arbitrariness or sex discrimination. And although it is not ascertainable from Mr. McNally's Declaration how many of the 3842 federal capital eligible defendants he identifies are women, the Bureau of Justice Statistics reports that from 1990-2008 women constituted 11.2 % of all homicide offenders.⁷⁰ Using this percentage to gain a rough idea of how many female offenders are in the pool of 3842 federal capital eligible defendants yields an estimate of 430 female defendants. Yet Ms. Montgomery is the lone person in this pool who currently faces a death sentence. . A sample and description of 110 cases from this pool of death eligible female capital defendants, compiled by the Resource Counsel Project in 2011, is included at App. 0243-0270. A comparison of these cases with the facts of Mr. Fell's case will reveal that there are many cases involving federal female defendants that are comparable to or more aggravated than Mr. Fell's case, yet none of these female defendants are facing the death penalty. Again, there is no rhyme or reason for this discrepancy other than arbitrariness or sex discrimination.

Although the significance of the victim's race in death sentencing outcomes has been discussed for at least 40 years, very little prior research has examined whether the combined effect of victim race and gender improperly skews sentencing outcomes in capital cases. This area has only recently gained the attention of researchers.⁷¹ Research has identified just three empirical studies,

⁷⁰ Bureau of Justice Statistics, Homicide Trends in the United States, 1980-2008, available at <http://www.bjs.gov/content/pub/pdf/htus8008.pdf>.

⁷¹As noted earlier, in the *Glossip* dissent, it was observed, that "[M]any studies have found that the gender of the victim makes a not- otherwise-warranted difference." *Glossip*, 135

all very recent, that considered the joint effects of victim race and gender in capital prosecutions. Relying on state court data in Colorado, Georgia and Ohio, each study found that defendants were treated most harshly when a white female victim was present. A Colorado study examined prosecutors' decisions to seek the death penalty after conviction, while Georgia and Ohio studies looked at capital sentencing outcomes.

In a 2006 study of Colorado death penalty cases spanning the two decades from 1980 to 1999, researchers found that prosecutors were more likely to seek the death penalty in cases involving white, female victims than they were in cases involving victims of any other race/gender combination. *See Hindson, Potter and Radelet, Race, Gender, Region and Death Sentencing in Colorado, 1980- 1999, 77 COL. L. REV. 549 (2006).* The authors concluded:

the death penalty is sought for defendants who kill white females at a rate much higher than it is sought for any other victims. White females, who account for only 17.9 percent of all homicide victims, make up 34.5 percent of victims in death penalty cases. Thus, death sentences are pursued against those who kill white women at almost twice the rate as their rate of homicide victimization.

Id. at 577.

A November 2007 study⁷² analyzed state court data from Georgia cases in the 1970's and concluded:

Defendants who murder females are more likely to receive a death sentence than defendants who murder males. Furthermore, we show that large differences exist in the likelihood of receiving a death sentence when the variables “victim race” and “victim gender” are considered jointly. Cases that involve white female victims are treated the most harshly”

S.Ct. at 2761.

⁷² Williams, DeMuth and Holcomb, *Understanding the Influence of Victim Gender in Death Penalty Cases: The Importance of Victim Race, Sex-Related Victimization and Jury Decision Making*, 45 CRIMINOLOGY 4, 865 (2007).

Williams, DeMuth, Holcomb, 45 CRIMINOLOGY 885. In a 2004 Ohio study, the same research group found that death sentences were a product of a strong association between one victim race-gender group – white female victims – and the imposition of a death sentence. Holcomb, Williams, DeMuth, *White Female Victims and Death Penalty Research*, 21 *Justice Quarterly* 877-902 (2004).

In December 2008,⁷³ the defendants in *United States v. Valerie Friend and George Lecco*, 05-cr-00107 (S.D.W.Va.), a case involving the murder of a white female victim, brought a motion to bar the death penalty on the basis of an asserted arbitrary and discriminatory victim-related race and gender effect. Based on an analysis of over 400 authorized federal capital cases, it was determined by a qualified expert statistician, Lauren Cohen Bell, Ph.D., that defendants in federal capital cases whose victims were white females were more than three times as likely to be sentenced to death than other federal capital defendants. (App. 0093-98.) This finding was, moreover, found to be “highly statistically significant, systemic, and not the result of chance.” The examination of the cases revealed, as well, that as of December 2007, federal capital cases involving white female victims constituted 43% (26 of 61) of those sentenced to death in the federal system, but only 9% (61/626) of all potential defendants since 2000. Thus, the death-sentencing rate is many times higher than the death-sentencing rate for non-white female victim cases.

As stated previously, the issue of the “white victim effect” has been studied and found to exist before. It now also appears that there is a “white female victim effect.” When the gender of the victim is considered, the evidence of an arbitrary and capricious operation of the federal death penalty becomes apparent. When the penalty decisions of juries are examined, the results are nothing short of astonishing.

⁷³Efforts are underway to update the findings, but there is no reason to believe that the passage of 51 months has appreciably altered 20 years of data.

Accordingly, this Court should find that the existence of gender of defendant discrimination, in combination with a “white female victim” effect renders any death sentence in this case unconstitutional and/or in violation of 18 U.S.C. §§3593(f).

3. “Cruel”-Other Sources of Unreliability and Arbitrariness

In addition to the sources of unreliability and arbitrariness surveyed in the *Glossip* dissent and in the *Santiago* opinion, there are at least two other sources of unreliability and arbitrariness that have particular significance to the operation of the federal death penalty .

a. Arbitrariness Produced by Prosecutorial Discretion

As one commentator has noted: “[T]he selection process for imposition of the death penalty begins in the prosecutor’s office.” William Schabas, The Death Penalty as Cruel Treatment and Torture: Capital Punishment 74 (1996) (discussing effect of plea bargaining on arbitrariness problem in capital cases). Another commentator notes that the most important factor in determination of a sentence in a capital case is prosecutorial discretion in both the decision to charge a capital crime and the decision whether to offer a plea bargain less than death. See Elisabeth Semel, *Reflections on Justice John Paul Stevens's Concurring Opinion in Baze v. Rees: A Fifth Gregg Justice Renounces Capital Punishment*, 43 *U.C. Davis L. Rev.* 783, 788 (2009).

Reform commissions have also noted the problem of arbitrariness created by prosecutorial discretion: See *Report and Recommendation on the Administration of the Death Penalty in California*, California Commission on the Fair Administration of Justice, 102-04, JUNE 30, 2008 (Finding “great variation in the practices for charging special circumstances, a lack of racial diversity among the individuals who made the decision, great variation in when the decision was made, and

significant variation in the involvement of the defense in the process.”)⁷⁴; *Report of the Governor’s Comm. On Capital Punishment* (April 15, 2002) at 82 (noting criticisms that Illinois’ procedure “contains no standards elucidating the criteria to be considered in determining whether or not to seek the death penalty in a particular case.”)⁷⁵

Although the discretion afforded prosecutors in selecting who to prosecute and what charges to bring is extremely broad, “there are undoubtably constitutional limits upon its exercise.” *Bordenkircher v. Hayes*, 434 U.S. 357, 365, 98 S.Ct. 663, 54 L.Ed.2d 604 (1978). A decision to prosecute may not be “based upon an unjustifiable standard such as race, religion, or other arbitrary classification.” *Id.* at 364, 98 S.Ct. 663 (emphasis added). Where a claim of such selective prosecution is made, it will be judged “according to ordinary equal protection standards.” *Wayte v. United States*, 470 U.S. 598, 608, 105 S.Ct. 1524, 84 L.Ed.2d 547 (1985).

In *DeGarmo v. Texas*, 474 U.S. 973 (1985) (Brennan and Marshall, JJ., dissenting from denial of certiorari) the Court was presented with a case where a female co-defendant who was as equally guilty of capital murder as her male co-defendant received a sentence of only 10 years' deferred probation while her male accomplice received a death sentence. Justices Brennan, writing for himself and Justice Marshall protested the denial of certiorari because

I remain convinced that the Court deludes itself when it insists that the infliction of the death penalty, as currently administered, is not arbitrary or capricious under any meaningful definition of those terms. See *Pulley v. Harris*, 465 U.S. 37, 59, 104 S.Ct. 871, 884, 79 L.Ed.2d 29 (1984) (BRENNAN, J., dissenting). This case demonstrates just one way in which capital sentencing schemes have failed to eliminate arbitrariness in the choice of who is put to death.

⁷⁴<http://deathpenalty.org/downloads/FINAL%20REPORT%20DEATH%20PENALTY%20ccfaj%20June%2030.2008.pdf>

⁷⁵http://illinoismurderindictments.law.northwestern.edu/docs/Illinois_Moratorium_Commission_complete-report.pdf

With the aid of Helen Mejia, Roger DeGarmo kidnaped and murdered a young woman. DeGarmo was subsequently convicted of capital murder and condemned to die by lethal injection. As part of a plea bargain, Mejia-whose participation made her equally subject to prosecution under the capital murder statute-received a sentence of only 10 years' deferred probation. In other words, while the State sought and may soon succeed in putting DeGarmo to death, it did not care to see his accomplice serve even a day in jail for participating in the same offense. This gross disparity in treatment is solely a product of the prosecutor's unfettered discretion to choose who will be put in jeopardy of life and who will not.

Id. at 973-74.

Justice Brennan continued:

I believe that such a disparity in treatment is alone sufficient grounds to set aside DeGarmo's death sentence as disproportionate under the circumstances. Cf. *Pulley v. Harris*, supra, 465 U.S., at 43, 104 S.Ct., at 875; *Solem v. Helm*, 463 U.S. 277, 103 S.Ct. 3001, 77 L.Ed.2d 637 (1983). More importantly, however, this disparity in treatment highlights the utter failure of the elaborate sentencing schemes approved by the Court in *Gregg* and its companion cases to meaningfully limit the arbitrary infliction of death by the States. When *Gregg* was decided several Members of the Court expressed the belief that channeling juror discretion would minimize the risk that the death penalty "would be imposed on a capriciously selected group of offenders," thereby making it unnecessary to channel discretion at earlier stages in the criminal justice system. See *Gregg*, supra, 428 U.S., at 199, 96 S.Ct., at 2937 (opinion of Stewart, POWELL, and STEVENS, JJ.). But discrimination and arbitrariness at an earlier point in the selection process nullify the value of later controls on the jury. The selection process for the imposition of the death penalty does not begin at trial; it begins in the prosecutor's office. His decision whether or not to seek capital punishment is no less important than the jury's. Just like the jury, then, where death is the consequence, the prosecutor's "discretion must be suitably directed and limited so as to minimize the risk of wholly arbitrary and capricious action." 428 U.S., at 189, 96 S.Ct., at 2932.

Instead, the decisions whether to prosecute, what offense to prosecute, whether to plea bargain or not to negotiate at all are made at the unbridled discretion of individual prosecutors. The prosecutor's choices are subject to no standards, no supervision, no controls whatever. There are, of course, benefits associated with granting prosecutors so much discretion, but there are also costs. Some of these costs are simply accepted as part of our criminal justice system. But if the price of prosecutorial independence is the freedom to impose death in an arbitrary, freakish, or discriminatory manner, it is a price the Eighth Amendment will not tolerate.

Id. at 475-476.

Citing Justice Brennan's opinion in *DeGarmo*, Ninth Circuit Judge Ferguson, in a thoughtful concurring opinion in *Morris v. Ylst*, 447 F.3d 735(9th Cir. 2006), concluded that "[a]s long as a prosecutor's discretion in seeking the ultimate penalty-death-remains thus unbridled, the administration of the death penalty in the United States will violate the guarantees of due process and freedom from cruel and unusual punishment enshrined in the Constitution." *Morris v. Ylst*, 447 F.3d at 746 (Ferguson J., concurring). He wrote:

Over thirty years ago, the Supreme Court declared that death is different. The death penalty must be imposed fairly, without prejudice or whim, or it may not be imposed at all. *Furman v. Georgia*, 408 U.S. 238, 92 S.Ct. 2726, 33 L.Ed.2d 346 (1972); see *Gregg v. Georgia*, 428 U.S. 153, 188, 96 S.Ct. 2909, 49 L.Ed.2d 859 (1976) (interpreting *Furman*). In the years since *Furman*, legislatures and courts have struggled to meet this daunting challenge, yet "the death penalty remains fraught with arbitrariness, discrimination, caprice, and mistake." *Callins v. Collins*, 510 U.S. 1141, 1144, 114 S.Ct. 1127, 127 L.Ed.2d 435 (1994) (Blackmun, J., dissenting from denial of writ of certiorari). The problems today are not identical to those of thirty years ago. Rather, those problems that were originally "pursued down one hole with procedural rules and verbal formulas have come to the surface somewhere else, just as virulent and pernicious as they were in their original form." *Id.* Even as the courts have tried to limit the jury's discretion to impose the death penalty, "discrimination and arbitrariness at an earlier point in the selection process nullify the value of later controls on the jury." *DeGarmo v. Texas*, 474 U.S. 973, 975, 106 S.Ct. 337, 88 L.Ed.2d 322 (1985) (Brennan, J., dissenting from denial of writ of certiorari).

Here, the prosecutor's unbridled discretion to single out *Morris* for prosecution under the death penalty, when the guilt is equally spread among his co-defendants, is a rank example of "arbitrariness at an earlier point in the selection process." *Id.* This sort of gross disparity in the treatment of equally guilty defendants "highlights the utter failure of the elaborate sentencing schemes approved by the [Supreme] Court in *Gregg* and its companion cases to meaningfully limit the arbitrary infliction of death by the States." *Id.* at 974-75, 106 S.Ct. 337. Such arbitrariness in the administration of the death penalty violates the Eighth Amendment and the Due Process Clause. See *Gregg*, 428 U.S. at 188-89, 96 S.Ct. 2909 (arbitrary infliction of the death penalty violates the Eighth Amendment); *United States v. Redondo-Lemos*, 955 F.2d 1296, 1298-99 (9th Cir.1992), overruled on other grounds by *United States v. Armstrong*, 48 F.3d 1508 (9th Cir.1995), rev'd 517 U.S. 456, 116 S.Ct. 1480, 134 L.Ed.2d 687 (1996) (arbitrary charging decisions violate due process).

Id. at 747.

In *United States v. Redondo-Lemos*, 955 F.2d 1296, 1300 (9th Cir.1992), overruled en banc on other grounds by *United States v. Armstrong*, 48 F.3d 1508 (9th Cir.1995), *896 rev'd, 517 U.S. 456, 116 S.Ct. 1480, 134 L.Ed.2d 687 (1996), the Ninth Circuit distinguished between the general right “not to have charging or plea bargaining decisions made in an arbitrary or capricious manner” and a specific claim that prosecutorial decisions were made on the basis of sex, race, religion, or similar characteristics. The latter case was held to raise both Due Process and Equal Protection problems, and a judicial inquiry into whether protected classes of people were being treated differently was found to be manageable. *Id.* at 1301. Consequently, the Circuit wrote, “the Supreme Court has concluded that courts do indeed have the authority to inquire into charging and plea bargaining decisions to determine whether the prosecutor is abusing her awesome power to favor or disfavor groups defined by their gender, race, religion, or similar characteristic.” *Id.*

“However, where exercise of prosecutorial discretion is arbitrary but there is no hint of class-based discrimination, the *Redondo-Lemos* majority said that there was no judicial remedy available to the defendant-even while acknowledging that such an arbitrary exercise of power would be a Due Process violation. *Id.* at 1300. The majority justified this result on separation-of-powers grounds: for the courts to inquire into prosecutors' decision-making processes would entangle them “in the core decisions of another branch of government.” *Id. In re Morris*, 363 F.3d 891, 896 (9th Cir. 2004)(Ferguson, J., concurring). This Court’s ability to regulate unbridled prosecutorial discretion is thus limited at best.

One court in the Ninth Circuit has decided otherwise in a federal death penalty case, striking a notice of intent to seek the death penalty because in light of the government’s actions with respect to other co-defendants “it is clear that no rational decision-maker would continue to seek to execute Gary Joe Littrell. Accordingly, the Government's continued intention to seek the death penalty is

arbitrary and capricious, and must be stricken.” *United States v. Littrell*, 478 F. Supp. 2d 1179, 1192 (C.D. Cal. 2007). The district court in that case concluded that “[i]t is vital to the constitutional protections of due process and to the moral authority of the Government ... that the decision to seek death is neither arbitrary and capricious nor wholly divorced from reason.” *United States v. Littrell*, 478 F.Supp.2d 1179 (C.D. Cal. 2007). The court applied *Furman*’s prohibition arbitrary and capricious jury decision-making to the government’s initial decision to seek the death penalty. In particular, the Court ruled:

Furman mandates that where discretion is afforded a sentencing body on a matter so grave as the determination of whether a human life should be taken or spared, that discretion must be suitably directed and limited so as to minimize the risk of wholly arbitrary and capricious action.” *Gregg*, 428 U.S. at 189, 96 S.Ct. 2909. *Furman* and its progeny are concerned solely with the imposition of the death penalty by the judge or jury. The cases make no comment on the breadth of the discretion afforded to the Government to seek the death penalty against a particular defendant. However, it would be fundamentally inconsistent with the constitutional prohibition on the arbitrary *imposition* of the death penalty to say that an arbitrary decision *to seek* the death penalty is constitutionally permissible. The Fifth Amendment requires that every aspect of the process by which the Government seeks to put a defendant to death is consistent with due process of law. At a bare minimum, the protections of the Fifth Amendment must guarantee that the Government's decision to seek the death penalty is rational. When the Government's decision to seek death is wholly divorced from reason and arbitrarily disregards the totality of the relevant evidence, a capital prosecution based on that decision would be repugnant to the Constitution.

(*Id.* at 1186-1187)(emphasis in original)

For the most part, however, this courageous and correct decision has not found favor with other courts. See e.g., *United States v. Cooya*, No. 4:08-CR-70, 2011 WL 3608611, at *3 (M.D. Pa. Aug. 16, 2011)(“The decision in *Littrell*...appears to be in direct contrast to every other decision, including United States Supreme Court decisions, that have considered the issue.”)(collecting cases). The problem of unbridled prosecutorial discretion in the charging of federal capital cases therefore remains. See, *State v. Santiago*, 318 Conn. at 25 (“As currently construed, then, the federal

constitution simultaneously requires that states narrowly limit and carefully define which offenders are eligible for capital punishment, while, paradoxically, also giving prosecutors and juries, respectively, virtually unfettered discretion whether actually to charge defendants with capital crimes and whether to sentence convicted offenders to death.”).

The results of that unbridled discretion is further arbitrariness. Like the seemingly random results of federal death penalty trials, a comparison of the facts of other capital-eligible federal cases, where the death penalty was either not authorized, or the defendant was nonetheless allowed to plead to a lesser sentence, are equally probative of arbitrariness, as suggested by the cases described at App. 0181-0234, 0234-0270. As can be seen, as a group there is little to distinguish the facts in these cases from those at App. 0101-0180 where federal prosecutors proceeded to trial and sought the death penalty. See, *State v. Santiago*, 318 Conn. at 114 (“[W]e are persuaded that these critiques are well founded and that the opportunity for the exercise of unfettered discretion at key decision points in the process has meant that the ultimate punishment has not been reserved for the worst of the worst offenders.”). In light of this new evidence, this Court should therefore conclude that the FDPA has failed to eliminate arbitrariness in the choice of who is put to death, that if the price of prosecutorial independence is the freedom to impose death in an arbitrary, freakish, or discriminatory manner, it is a price the Eighth Amendment will not tolerate, and that as long as a prosecutor's discretion in seeking the ultimate penalty-death-remains thus unbridled, the administration of the death penalty by the United States government will violate the guarantees of due process and freedom from cruel and unusual punishment enshrined in the Constitution.

b. Arbitrariness and Unreliability Induced by Doomed Efforts to Predict Future Danger

A disturbing trend has developed since *Gregg* of relying heavily on a jury's ability to forecast an offender's "future dangerousness" to quarantine those selected to die from those not selected. This futile exercise has introduced another level of arbitrariness and unreliability into the federal death penalty process.

In some states juries are required by statute to make a finding concerning future dangerousness. *See e.g. Jurek v. Texas*, 428 U.S. 262, 269 (1976). Although the phrasing may vary, the inquiry is basically the same – jurors are asked to predict whether the defendant will likely engage in violence in the future. In other states, and in the federal system, future dangerousness is frequently cited as a non-statutory aggravating factor. In a federal case in which the only alternative to death is life without parole, the aggravating factor of future dangerousness is limited to how the defendant would behave in a prison setting if incarcerated for life. *See Simmons v. South Carolina*, 512 US 154, 166, n. 5 (1994).

Between 1995 and 2006, future danger was alleged as a non-statutory aggravating factor in 77 % of federal capital prosecutions and a death sentence occurred in over 80% of the federal cases where the jury found that future prison violence was likely.⁷⁶ Currently, as of November 3, 2015, future danger has been alleged in 352 (70.6 %) of the 498 federal capital cases that have been filed.⁷⁷ See also, *United States v. Taveras*, 424 F.Supp.2d 446, 454 (E.D.N.Y. 2006)(Weinstein,

⁷⁶ Cunningham, Mark D., Sorensen, Jon R. & Reidy, Thomas J., *Capital Jury Decision-Making: The Limitations of Predictions of Future Violence*, Psychol. Pub. Pol'y & L. 15:223, 225, 244. (2009).

⁷⁷ Federal Death Penalty Resource Counsel Project, *Aggravation Alleged in Federal Death Penalty Cases* (November 3, 2015), available at https://www.capdefnet.org/FDPRC/pubmenu.aspx?menu_id=94&id=1902.

J.)("Frequently, future dangerousness is alleged as an aggravating circumstance. See Decl. of David Bruck of June 14, 2004 Bruck of June 14, 2004 at ¶ 5-6 (available at www.capdefnet.org, last visited on March 14, 2006) (future dangerousness has been alleged in more than three-quarters of the federal capital trials since 1995). Much less often is it found to exist. *Id.* (future dangerousness found in one-third of trials in which it is alleged). ") ⁷⁸

Such data suggests the ascendant importance of a jury's attempt to assess future danger. But, the attempt to predict future conduct is a challenging assignment, at best. It is especially so when attempting to forecast the future danger posed by a defendant in a controlled prison environment where so many unforeseeable variables are at play, including correction officials' decisions as to where, and the conditions under which, the offender will be housed. As to this task, detailed studies show that juries are routinely being asked to do the undoable. *See e.g.*, Reidy, T. J., Sorensen, J. R., & Cunningham, M. D., *Probability of acts of criminal violence: A test of jury predictive accuracy*, 31 Behavioral Sciences & the Law 286-305 (2013)("Consistent with prior studies demonstrating a very low base rate of serious prison violence among capital offenders in other jurisdictions... the current findings demonstrate that assaultive acts among aggravated murderers in Oregon, particularly those involving significant injuries, are quite rare, with the prevalence decreasing with the severity of injury....These low base rates are a key factor in the poor predictive performance of Oregon juries, i.e., it is very difficult to predict a low base rate behavior."); Cunningham, Mark D., Sorensen, Jon R. & Vigen, Mark P, *Life and Death in the Lone Star State: Three Decades of Violence Predictions*

⁷⁸ The fact that this allegation is so frequently made provides a compelling reason why it should be struck in this case, a point that will be raised when Mr. Fell's second round of death penalty motions will be filed. As Judge Weinstein points out, "[i]f the sentencer fairly could conclude that an aggravating circumstance applies to every defendant eligible for the death penalty, the circumstance is constitutionally infirm." *Id.*, quoting *Arave v. Creech*, 507 U.S. 463, 474 (1993).

by *Capital Juries*, 29 Behav. Sci. & L. 29 (2011) ("[J]uror estimates of future homicide are inflated 50- to 250-fold as compared with the observed prevalence of prison homicide perpetration among capital offenders... which range from 0.2% ..., to 0.5% ..., to 1% The proportions of their estimation error suggest that these jurors are reacting out of irrational fears as opposed to reasoned analysis.") (discussing the studies); Cunningham, M.D., Reidy, T.J. & Sorenson, J.E., *Assertion of "Future Dangerousness" at Federal Capital Sentencing: Rates and Correlates of Subsequent Prison Misconduct and Violence*, 32 Law and Hum. Behav. 46, 55-57, 59, 61 (2008) (finding no significant difference in the rates of serious disciplinary infractions between those against whom the government alleged future danger as an aggravating factor and those against whom it did not); Cunningham, M.D., Reidy, T.J. & Sorenson, J.E., *Capital Jury Decision-Making: The Limitations of Predictions of Future Violence*, 15 Psychology, Public Policy & Law, 223, 239-240, 243 & Table 4 (2009) (among defendants found to be a future danger but sentenced to life, jurors positive predictions proved wrong more than 2/3 of time); Eugenia T. La Fontaine, *A Dangerous Preoccupation with Future Danger: Why Expert Predictions of Future Dangerousness in Capital Cases are Unconstitutional*, 44 B.C.L. Rev. 207, 233-36 (2002) (citing studies establishing unreliability of such predictions by mental health professionals); Future Dangerousness Predictions Wrong More Than 95% of the Time, Death Penalty Information Center, <http://www.deathpenaltyinfo.org/node/1099> . The bottom line is clear - there is no proven methodology from which jurors, or anyone else, can reliably determine which few offenders will engage in violent conduct in prison. Cunningham, et. al., *Capital Jury Decision-Making*, at 227-228, 246.

To an experienced jurist like Judge Weinstein it was obvious that "[p]rojections of future dangerousness are precarious. They require jurors to predict, beyond a reasonable doubt, future

conduct based on an often uncertain pattern of past behavior.” *United States v. Taveras*, 424 F.Supp.2d at 455.

Another very experienced federal jurist declared as far back as 2004 that “ the fact that there now seems to be increasing reason to be concerned that experts cannot reliably predict future dangerousness also generates, for this court at least, increased concern that jurors cannot do so.” *United States v. Sampson*, 335 F. Supp. 2d 166, 221 (D. Mass. 2004). Reviewing some of the relevant scientific literature on this issue, Judge Wolf noted that “there are relatively recent studies that suggest that it is not just difficult for jurors to predict reliably whether a murderer is likely to commit violent crimes again, but that it is impossible.” *Id.* at 222.

The court quoted an article by Jonathan R. Sorenson, Rocky L. Pilgrim, *An Actuarial Risk Assessment of Violence Posed by Capital Murder Defendants*, 90 *J.Crim. & Criminology*, 1251, 1254 (2000), as follows:

Recent research on jury deliberations has shown that jurors' assessments of future dangerousness is highly subjective. Influenced by stereotypical images of the violent recidivist—the psychopathic serial killer disproportionately portrayed in the media and the new “true crime” genre of television shows—jurors seldom realize research has consistently found the true incidence of recidivism among murderers released from prison to be much lower than for other types of parolees.

Id. at 222.

The court commented that in Mr. Sampson’s case “the court carefully considered and limited the government's proffered evidence on future dangerousness.” *Id.* The Court continued:

Nevertheless, the court's experience in the case causes it to wonder whether it is impossible for lay jurors, as well as for trained experts, to predict future dangerousness with the level of reliability necessary to ensure that the death penalty is not being “wantonly and ... freakishly imposed.” *Furman v. Georgia*, 408 U.S. 238, 310, 92 S.Ct. 2726, 33 L.Ed.2d 346 (1972) (Stewart, J., concurring).

Id.

Indeed, asking a jury to make a critical determination concerning a factor that cannot be determined with any reasonable degree of accuracy is, by definition, likely to produce arbitrariness. And, asking a juror to make such troublesome forecasts in a death penalty case has constitutional implications under the Eighth Amendment. *See Roper v. Simmons*, 543 U.S. at 573 (concerning experts' inability to diagnose whether a juvenile offender is acting from immaturity or with more malignant mindset: "If trained psychiatrists with the advantage of clinical testing and observation refrain, despite diagnostic expertise . . . from [such] assess[ments] . . . we conclude that the State should refrain from asking jurors to issue a far graver condemnation.").

4. "Cruel"- Excessive Delays

"The problems of reliability and unfairness almost inevitably lead to a third independent constitutional problem: excessively long periods of time that individuals typically spend on death row, alive but under sentence of death. That is to say, delay is in part a problem that the Constitution's own demands create....[U]nless we abandon the procedural requirements that assure fairness and reliability, we are forced to confront the problem of increasingly lengthy delays in capital cases. Ultimately, though these legal causes may help to explain, they do not mitigate the harms caused by delay itself." *Glossip v. Gross*, 135 S. Ct. at 2764 (Breyer and Ginsburg, JJ., dissenting). See also, *State v. Santiago*, 318 Conn. at 99 ("[Another] reason the death penalty has lost its retributive mooring in Connecticut is that the lengthy if not interminable delays in carrying out capital sentences do not just undermine the death penalty's deterrent effect; they also spoil its capacity for satisfying retribution."). See also, see also *Jones v. Chappell*, supra, 31 F.Supp.3d at 1064.

The Eighth Amendment's prohibition on "cruel and unusual" punishment reaches beyond the arbitrary and capricious concerns of *Furman* and *Gregg*. Widely- acknowledged uneasiness with the unreliability and fairness of the death penalty process has resulted in years of delay from conviction

to execution, contemplated neither by *Gregg* nor the Founding Fathers when the Eighth Amendment was adopted in 1790. This, in turn, has resulted in years of dehumanizing incarceration on death rows that presents an additional Eighth Amendment snare, especially in light of the availability of alternative sentences of life without parole, which do not involve such protracted delay and which undermine marginal penological justifications for the death penalty.

The average time between conviction for a capital offense and executions in 2014 was almost 18 years, an increase of more than 50% just in the last decade and a nine-fold increase since 1960, when the average interval was two years.⁷⁹ And it is not unusual for a death sentence, if ever carried out, to be done so 25 years or more years after the conviction. *Glossip*, 135 S. Ct. at 2764-65, (Breyer and Ginsburg, JJ., dissenting)(citing sources).⁸⁰

These delays are unavoidable, “given the special need for reliability and fairness in capital cases.” *Id.*, at 2770-72 (citing examples where DNA evidence exonerated defendants who otherwise would have been wrongly executed years before but for the delays occasioned by necessary appellate and post-conviction review). accord, *Santiago*, 318 Conn. at 93 n. 96 (“Delays, then, are indispensable if the ultimate punishment is to be reliably applied, and, if the constitution did not mandate such close scrutiny, the execution of innocent persons would inevitably result.”). Justice Breyer described real-life cases in the Supreme Court where these lengthy delays have avoided

⁷⁹ As the Court is well aware, Mr. Fell has been in custody on the current charges since November 30, 2000. If again convicted and sentenced to death, his case will undoubtedly again be tied up in direct and collateral review proceedings for many years to come. Indeed, three inmates on Federal Death Row (Cory Johnson, James Roane, and Richard Tipton) still have active appellate proceedings pending although all were sentenced to death in 1993, some 22 years ago.

⁸⁰ See also, Tr. Oral Argument, *Hall v. Florida*, Case # 12-10882, March 3, 2013, at 46 (Justice Kennedy pointing out that “the last ten people Florida has executed have spent an average of 24.9 years on death row.”), available at http://www.supremecourt.gov/oral_arguments/argument_transcripts/12-10882_6kh7.pdf.

unthinkable mistakes but the need to avoid sacrificing reliability for swift execution was perhaps even more eloquently expressed by Gordon (Randy) Steidl, who was exonerated after 17 years of incarceration, 12 of which were on Illinois' Death Row. *See* Hal Dardick, *Inmates Free After 17 Years*, CHI. TRIB., May 29, 2004 (Metro), at 16. Testifying before Illinois legislators some seven years after his release, Mr. Steidl pointed out: "If you want to kill John Wayne Gacy, you have to kill me, as well." *See Warden*, *supra*, 245, 269-270 (2012). Translated: the price of a rush to execution increases the specter of irremediable miscarriage.

Such prolonged delays have an Eighth Amendment corollary. Defendants sentenced to death are normally housed under brutal, approaching barbaric, conditions on "death rows." *Johnson v. Bredesen*, 558 U.S. 1067, 1069 (2009)(statement of Stevens, J., respecting denial of certiorari)(after recounting petitioner's confinement in a solitary cell awaiting his execution for nearly 29 years: "the delay itself subjects death row inmates to decades of especially severe, dehumanizing conditions of confinement."); *accord Glossip*, 135 S. Ct. at 2764-65 (Breyer and Ginsburg, JJ., dissenting). This often entails what functionally amounts to solitary confinement for years and sometimes decades. *See Davis v. Ayala*, 135 S. Ct. 2187, 2208-2210 (2015)("[I]f his confinement follows the usual pattern, it is likely respondent has been held all or most of the past 20 years or more in a windowless cell no larger than a typical parking spot for 23 hours a day; and in the one hour when he leaves he likely is allowed little or no opportunity for conversation or interaction with anyone.").

"[I] is well documented that such prolonged solitary confinement produces numerous deleterious harms." *Glossip*, 135 S. Ct. at 2765 (Breyer and Ginsburg, JJ., dissenting).⁸¹ *See also In*

⁸¹ Citing Haney, *Mental Health Issues in Long-Term Solitary and "Supermax" Confinement*, 49 *Crime & Delinquency* 124, 130 (2003) (cataloguing studies finding that solitary confinement can cause prisoners to experience "anxiety, panic, rage, loss of control, paranoia, hallucinations, and self-mutilations," among many other symptoms); Grassian, *Psychiatric Effects of Solitary Confinement*, 22 *Wash U. J. L. & Policy* 325, 331 (2006) ("[E]ven a few days

re Medley, 134 U.S. 160, 167-68 (1890) (describing psychiatric harm occasioned by solitary confinement: “A considerable number of the prisoners fell, after even a short confinement, into a semi-fatuous condition, from which it was next to impossible to arouse them, and others became violently insane; others, still, committed suicide . . .”). *Kervin v. Barnes*, 787 F.3d 833, 836 (7th Cir. 2015) (citing studies documenting the “serious psychological consequences” of solitary confinement). As is discussed extensively in *Santiago*, 318 Conn. at 87-103, decades-long delay also undermines the deterrence and retribution rationales for capital punishment. “The penological justifications for the sentencing practice are ...relevant to the [Eighth Amendment] analysis. *Graham v. Florida*, 560 U.S. at 71. *Thompson v. McNeil*, 556 U.S. 1114, 1115 (2009)(Statement of Stevens, J., respecting denial of certiorari)(“[D]elaying an execution does not further public purposes of retribution and deterrence . . .”); *Jones v. Chappell*, 31 F.Supp.3d at 1053 (“[F]or most [individuals on death row], systemic delay has made their execution so unlikely that the death sentence carefully and deliberately imposed by the jury has been quietly transformed into one no rational jury or legislature could ever impose: life in prison, with the remote possibility of death. As for the random few for whom execution does become a reality, they will have languished for so long on [d]eath [r]ow that their execution[s] will serve no retributive or deterrent purpose and will be arbitrary.”).

As to deterrence, the idea that the unlikely prospect of being executed some 20 or more years in the future provides more of a deterrent than the far more immediate one of a definite sentence of life without parole is implausible. Although expressed in the context of juveniles, the likelihood that an adult offender engages in this kind of “cost-benefit analysis . . . is so remote as to be virtually nonexistent.” *Thompson v. Oklahoma*, 487 U.S. 818, 837 (1988). Fanciful reasoning, such as this,

of solitary confinement will predictably shift the [brain's] electroencephalogram (EEG) pattern toward an abnormal pattern characteristic of stupor and delirium”)

is blunted by the severity of life-without-parole sentences. *See Roper v. Simmons*, 543 U.S. at 572. And, there is little question that the Eighth Amendment has a role in constraining punishments justified by deterrence arguments. The execution of offenders at noon in the public square, al la Saudi Arabian style, would likely increase the deterrent effect, but such a public spectacle would hardly be tolerable in light of the Eighth Amendment's concern for the "dignity of man." *See Trop v. Dulles*, 356 U.S. at 100.

"The deterrent value of any punishment is, of course, related to the promptness with which it is inflicted." *Coleman v. Balkcom*, 451 U.S. 949, 952 (1981) (Stevens, J., concurring in the denial of certiorari); see also *Gomez v. Fierro*, 519 U.S. 918, 918 (1996) (Stevens, J., dissenting) ("[d]elay in the execution of judgments imposing the death penalty frustrates the public interest in deterrence and eviscerates the only rational justification for that type of punishment"); *Furman v. Georgia*, supra, 408 U.S. at 302 (Brennan, J., concurring) ("[a] rational person contemplating a murder or rape is confronted, not with the certainty of a speedy death, but with the slightest possibility that he will be executed in the distant future"); *Jones v. Chappell*, 31 F.Supp.3d 1050, 1064 (C.D.Cal.2014) (law and common sense dictate that "long delays preceding execution frustrate whatever deterrent effect the death penalty may have"); *People v. Anderson*, 6 Cal.3d 628, 652, 493 P.2d 880, 100 Cal.Rptr. 152 (1972) ("capital punishment can have a significant deterrent effect only if the punishment is swiftly and certainly exacted"); L. Powell, commentary, "Capital Punishment," 102 Harv. L.Rev. 1035, 1035 (1989) ("years of delay between sentencing and execution ... [undermine] the deterrent effect of capital punishment and [reduce] public confidence in the criminal justice system"); *State v. Santiago*, 218 Conn. at 93 ("[T]he fact that one who commits the most heinous of crimes can expect to spend decades in prison prior to any execution suggests that capital punishment promises little if any deterrence over and above life imprisonment.")

Execution of offenders after the necessarily drawn-out judicial proceedings also erodes retributive arguments where the identity and feelings of both the community and offender may have changed. *Glossip*, 135 S. Ct. 2769 (Breyer, J., dissenting). If “justice delayed is justice denied,” the prompt imposition of life without parole arguably satisfies retribution more than an execution years after many family members may have passed. *Id.* And, like deterrence, the Eighth Amendment has something to say about the limits of retribution, as it forbids punishments that are “cruel and unusual” regardless of proffered retribution justifications. This is demonstrated by the fact that no current Justice seemingly questions the Eighth Amendment’s bar on the deliberate and infliction of unnecessary pain in executions. See *Baze v. Rees*, 553 U.S. 35 (2008); *Glossip v. Gross*, 135 S. Ct. 2726 (2015). After reviewing the Court’s jurisprudence on methods of execution in *Baze v. Rees*, *supra*, Chief Justice Roberts summed up the governing principle: “What each of the forbidden punishments had in common was the deliberate infliction of pain for the sake of pain – ‘superadd[ing]’ pain to the death sentence through torture and the like.” 553 U.S. at 48. Retribution, without constitutional constraint, could justify, again a la Saudi Arabian style, cutting off the hands of thieves, or, as applied to capital punishment, some equally unacceptable violation of human dignity.

Justice Kennedy perhaps said it best when he warned of the danger of using the retribution card in the capital punishment context:

“It is the last of these, retribution, that most often can contradict the law’s own ends. This is of particular concern when the Court interprets the meaning of the Eighth Amendment in capital cases. When the law punishes by death, it risks its own sudden descent into brutality, transgressing the constitutional commitment to decency and restraint.”

Kennedy v. Louisiana, 554 U.S. at 420. See also, *Valle v. Florida*, — U.S. —, 132 S.Ct. 1, 2, (2011) (Breyer, J., dissenting from the denial of stay of execution) (“I would ask how often [the]

community's sense of retribution would forcefully insist [on] a death that comes only several decades after the crime was committed”); *Lackey v. Texas*, 514 U.S. 1045, 1045–46 (1995) (mem. respecting the denial of certiorari) (expressing doubt whether execution following extended imprisonment satisfies state's interest in retribution); *Coleman v. Balkcom*, *supra*, 451 U.S. at 960 (Rehnquist, J., dissenting from the denial of certiorari) (“[t]here can be little doubt that delay in the enforcement of capital punishment frustrates the purpose of retribution”).

“What then remains of retribution when one who commits a heinous crime is not executed until after he has spent half a lifetime or more on death row, if ever? Unlike with deterrence, the retributive value of an execution defies easy definition and quantification, shrouded as retribution is in metaphysical notions of moral restoration and just deserts. What is clear, however, is that the most tangible retributive fruit of capital punishment—providing victims and their families with a sense of respite, empowerment, and closure—is grievously undermined by the interminable delays in carrying out the sentence imposed....Psychologically, the capital punishment system actually may impede the healing process.”

State v. Santiago, 318 Conn. at 101-02.

In sum, “[t]hese lengthy delays create two special constitutional difficulties.... First, a lengthy delay in and of itself is especially cruel because it subjects death row inmates to decades of especially severe, dehumanizing conditions of confinement. the great and insurmountable “constitutional difficulty resulting from lengthy delay.” *Glossip*, 135 S. Ct. at 2766, (Breyer and Ginsburg, JJ., dissenting)(internal quotation omitted). “The second constitutional difficulty resulting from lengthy delays is that those delays undermine the death penalty's penological rationale, perhaps irreparably so.” *Id.* at 2767. “The upshot is that lengthy delays both aggravate the cruelty of the death penalty and undermine its jurisprudential rationale.” *Id.* at 2769. And the Supreme Court has said that, if the death penalty does not fulfill the goals of deterrence or retribution, “it is nothing more than the purposeless and needless imposition of pain and suffering and hence an unconstitutional punishment.” *Atkins*, 536 U.S., at 319.

5. “Unusual”- Decline in Use of the Death Penalty Under Evolving Standards of Decency

“The Eighth Amendment forbids punishments that are cruel and *unusual*. Last year, in 2014, only seven States carried out an execution. Perhaps more importantly, in the last two decades, the imposition and implementation of the death penalty have increasingly become unusual.” *Glossip v. Gross*, 135 S. Ct. at 2772 (Breyer and Ginsburg, JJ., dissenting)(emphasis in original)

The “evolving standards of decency that mark the progress of a maturing society”⁸² have reached that point where the federal death penalty is out of place with current societal values and is therefore constitutionally “unusual” within the meaning of the Eighth Amendment. In the lengthy discussion above, Mr. Fell documented the arbitrary, capricious, irrational, and invidious manner in which the federal death penalty operates in practice. But there is more to the argument than a reiteration of the same historical state of affairs that existed at the time of *Furman*. In essence, society’s acceptance of a death penalty as such has waned to the point that present standards of decency decree an end to capital punishment.

Justices Breyer and Ginsburg in their *Glossip* dissent, pointed to eleven specific recent developments in support of their conclusion that in the last two decades the death penalty has become constitutionally “unusual”:

1. The trajectory of the number of annual death sentences nationwide is that “approximately 15 years ago, the numbers began to decline, and they have declined rapidly ever since.” *Id.* at 2772-73; 2777 (Appendix A, graph showing number of death sentences from 1977-2014);

⁸² As pointed out above, the idea that the Eighth Amendment is not static has long been a key element of Eighth Amendment analysis. *See, e.g., Hall v. Florida*, 134 S.Ct. 1986, 1992 (2014); *Trop v. Dulles*, 356 U.S. 86, 101 (1958) (plurality opinion); *Weems v. United States*, 217 U.S. 349, 378 (1910).

2. That trend, a significant decline in the last 15 years, also holds true with respect to the number of annual executions. *Id.* at 2773, 2777 (Appendix B, graph showing executions from 1977–2014);
3. 30 States have either formally abolished the death penalty or have not conducted an execution in more than eight years. Of the 20 States that have conducted at least one execution in the past eight years, 9 (Delaware, Idaho, Indiana, Kentucky, Louisiana, South Dakota, Tennessee, Utah, Washington) have conducted fewer than five in that time, making an execution in those States a fairly rare event. That leaves 11 States in which it is fair to say that capital punishment is not “unusual.” And just three of those States (Texas, Missouri, and Florida) accounted for 80% of the executions nationwide (28 of the 35) in 2014. Indeed, last year, only seven States conducted an execution.. In other words, in 43 States, no one was executed. *Id.* at 2773-74;
4. In terms of population, if we ask how many Americans live in a State that at least occasionally carries out an execution (at least one within the prior three years), the answer two decades ago was 60% or 70%. Today, that number is 33%. *Id.* at 2774, 2778 (Appendix C);
5. The use of the death penalty has become increasingly concentrated geographically, and by the early 2000's, the death penalty was only actively practiced in a very small number of counties. In short, the number of active death penalty counties is small and getting smaller. And the overall statistics on county-level executions bear this out. Between 1976 and 2007, there were no executions in 86% of America's counties. *Id.* at 2774, 2779 (Appendix D);

6. In sum, if we look to States, in more than 60% there is effectively no death penalty, in an additional 18% an execution is rare and unusual, and 6%, i.e., three States, account for 80% of all executions. If we look to population, about 66% of the Nation lives in a State that has not carried out an execution in the last three years. And if we look to counties, in 86% there is effectively no death penalty. *Id.* at 2774;
7. It “is not so much the number of these States that is significant, but the consistency of the direction of change.” *Roper*, 543 U.S., at 566. Seven States have abolished the death penalty in the last decade, including (quite recently) Nebraska. And several States have come within a single vote of eliminating the death penalty. Eleven States have not executed anyone in eight years. And several States have formally stopped executing inmates. *Id.* at 2774-2775;
8. The direction of change is consistent. In the past two decades, no State without a death penalty has passed legislation to reinstate the penalty. Indeed, even in many States most associated with the death penalty, remarkable shifts have occurred. In Texas, the State that carries out the most executions, the number of executions fell from 40 in 2000 to 10 in 2014, and the number of death sentences fell from 48 in 1999 to 9 in 2013 (and 0 thus far in 2015). Similarly dramatic declines are present in Virginia, Oklahoma, Missouri, and North Carolina. *Id.* at 2775;
9. A majority of Americans, when asked to choose between the death penalty and life in prison without parole, now choose the latter. *Id.* at 2775;
10. In 2009, the American Law Institute withdrew the Model Penal Code section on capital punishment from the Code, in part because of doubts that the American Law Institute could “recommend procedures that would” address concerns about the

administration of the death penalty. *Id.* at 2776. cf. *Gregg*, 428 U.S., at 193–194 (joint opinion of Stewart, Powell, and Stevens, JJ.) (relying in part on Model Penal Code to conclude that a “carefully drafted statute” can satisfy the arbitrariness concerns expressed in *Furman*); and,

11. Many nations—indeed, 95 of the 193 members of the United Nations—have formally abolished the death penalty and an additional 42 have abolished it in practice. In 2013, only 22 countries in the world carried out an execution. No executions were carried out in Europe or Central Asia, and the United States was the only country in the Americas to execute an inmate in 2013. Only eight countries executed more than 10 individuals (the United States, China, Iran, Iraq, Saudi Arabia, Somalia, Sudan, Yemen). *Id.*, at 2. And almost 80% of all known executions took place in three countries: Iran, Iraq, and Saudi Arabia. *Id.* at 2775-76.

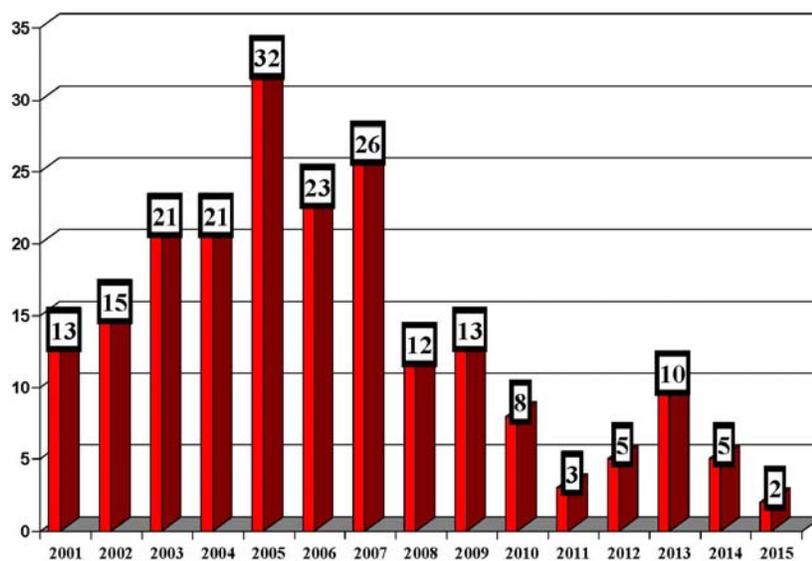
Based on the combination of these compelling and recent developments, “[i]t seems fair to say that it is now unusual to find capital punishment in the United States, at least when we consider the Nation as a whole.” *Id.* at 2774, citing *Furman*, 408 U.S., at 311(White, J., concurring) (executions could be so infrequently carried out that they “would cease to be a credible deterrent or measurably to contribute to any other end of punishment in the criminal justice system ... when imposition of the penalty reaches a certain degree of infrequency, it would be very doubtful that any existing general need for retribution would be measurably satisfied”). See also. *State v. Santiago*, 318 Conn. at 78-86 (concluding, on the basis of many of these same recent developments that “Connecticut now stands as an outlier, the sole remaining New England state in which execution remains a legal and potentially viable option”, and that “ [t]he evolution of this punishment...evidences, not that it is an inevitable part of the American scene, but that it has proved

progressively more troublesome to the national conscience.’ ”. *Id.* at 84-85, quoting *Furman v. Georgia*, supra, 408 U.S. at 299 (Brennan, J., concurring).

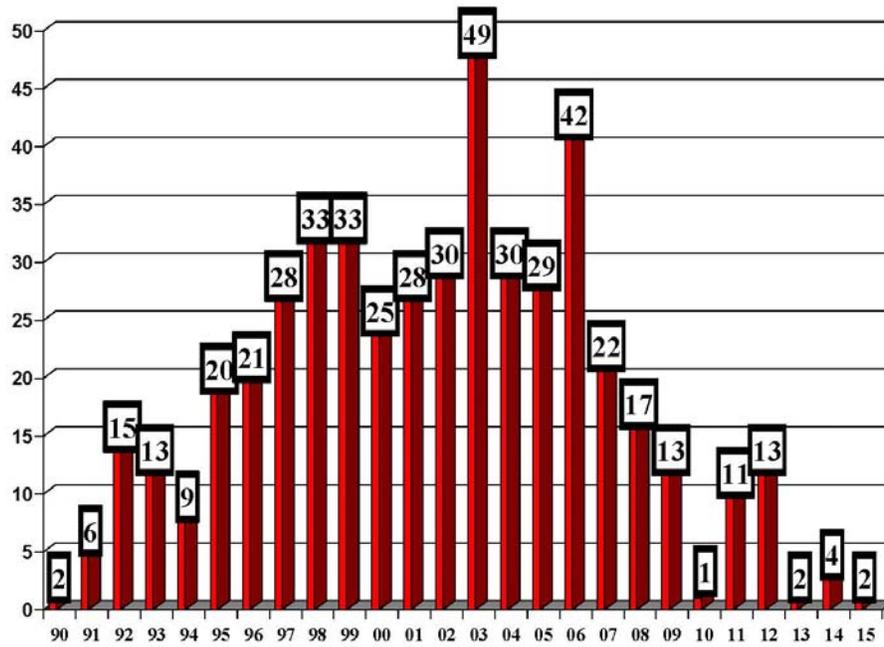
Certainly these national trends are relevant to the issue of whether the federal death penalty has become constitutionally “unusual”. But it is important to stress that these trends are mirrored in the federal system itself. In the federal system, there have only been three executions since 1988. There have been none since 2003. In terms of nation-wide execution rates, that figure has also declined precipitously. From a high in 1999 of 98 executions , the figure has dropped almost every year to a low of 25 executions as of October 30, 2015. (App. 0001.)

In terms of the regional nature of the death penalty nationwide, that point has been made earlier in this brief that both the death penalty in general and the federal death penalty in particular are largely unknown outside the south. The following three charts supplied by the Federal Death Penalty Resource Counsel Project illustrate the sharp decline in federal authorizations, federal trials, and federal death sentences:

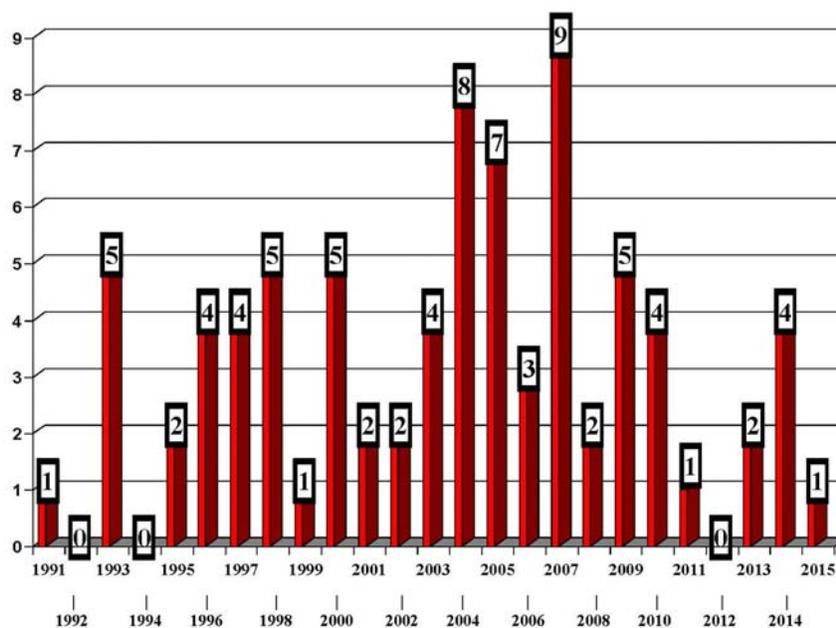
NUMBER OF DEFENDANTS TRIED BY CALENDAR YEAR – 9/22/15



AUTHORIZED FEDERAL CAPITAL DEFENDANTS BY CALENDAR YEAR – 9/22/15



NUMBER OF DEATH VERDICTS BY CALENDAR YEAR – 9/22/15



What these charts document is the dramatic fading away of the federal death penalty from its “heyday” in 2003 when 49 defendants were authorized for a federal capital prosecution, to 2014 when just four defendants were authorized. In 2005, 32 federal defendants went on trial in capital cases. In 2015, there were two such trials and none are scheduled for the remainder of the year. In 2009, there were nine defendants sentenced to death. So far in 2015 there has been one and he (Dzhokhar Tsarnaev) will be the only one since there are no federal capital cases scheduled to begin trial for the remainder of 2015. As the Court has indicated, it is not just the raw numbers that are important here, “but the consistency of the change.” *Roper*, 543 U.S., at 566. See also, *Kennedy*, 554 U.S. at 431 (“Consistent change might counterbalance an otherwise weak demonstration of consensus.”)

Although “[t]he clearest and most reliable objective evidence of contemporary values is the legislation enacted by the country's legislatures”, “[t]here are measures of consensus other than legislation....Actual sentencing practices are an important part of the[c]ourt's inquiry into consensus.” *Graham v. Florida*, supra, 560 U.S. at 62. accord *Kennedy v. Louisiana*, 554 U.S. at 433 (“Statistics about the number of executions may inform the consideration whether capital punishment . . . is regarded as unacceptable in our society.”).

When one examines the recent statistics about the operation of the federal death penalty, and also takes into account relevant Supreme Court cases and the nationwide legislative and other trends documented in *Glossip* and *Santiago*, it is clear that the time has come to declare the federal death penalty both cruel and unusual.

The trends discussed above compare favorably to the shift on execution of juveniles under the age of 18 at the time of their offenses where only 5 states had shifted their position between the Supreme Court’s decision sustaining the practice in *Stanford v. Kentucky*, 492 U.S. 361 (1989), and

its ruling sixteen years later in *Roper* that the practice was prohibited by the Eighth Amendment. *See Roper*, 543 U.S. at 565; *Kennedy v. Louisiana*, 554 U.S. at 432. And, although this change was significantly less than the 16 states that had changed their position on mental retardation from the Court's decision in *Penry v. Lynaugh*, 492 U.S. 302 (1989), to its overruling in *Atkins v. Virginia*, *supra*, the change of 5 states from *Stanford* to *Roper* was nonetheless characterized as "telling" because of its direction. *Roper*, 543 U.S. at 565.

Further corroborating the capital punishment trend is that "in the last two decades, no State without a death penalty has passed legislation to reinstate the death penalty." *Glossip*, 135 S. Ct. at 2775 (Breyer, J., dissenting). This "carries special force in light of the general popularity of anticrime legislation." *Roper*, 543 U.S. at 566. And, the fact that somewhat less than half of the states now prohibit capital punishment similarly compares with the statistics in *Atkins* and *Roper*. In both, after discounting the 12 states that at the time of those decisions barred the death penalty across-the-board, less than half of the remaining barred the execution of mentally retarded offenders (*Atkins*) or offenders less than 18 years old at the time of their offense. (*Roper*).⁸³

The number of states that currently retain the death penalty is also similar to the number that maintained life-without-parole sentences for juveniles when the Supreme Court ruled such sentences violate the Eighth Amendment, *see Miller v. Alabama*, 132 S. Ct. 2455, 2471 (2012) (28 states and the Federal Government provided for life-without-parole sentences for some juveniles convicted of murder); and significantly less than the 39 jurisdictions that provided for such sentences in non-

⁸³ The statistics were identical in both cases: In each, 12 states barred capital punishment. Of the 38 remaining capital punishment states only 18, or less than ½, precluded execution of mentally retarded offenses. *Atkins*, 536 U.S. at 313-15. And, the same held true in *Roper* with only 18 of 38 death penalty states barring execution of juveniles under 18 at the time of their offense. 543 US at 564.

homicide cases at the time of the Court's similar decision in *Graham v. Florida*, 560 U.S. 48, 97 (2011)(Thomas, J., dissenting).

These statistics are also comparable to the Court's decisions in the consensual same-sex and right-to-marry cases. See *Lawrence v. Texas*, 539 U.S. 558, 573 (2003)(finding constitutional right of same-sex adults to engage in consensual sex: number of states that prohibited this activity had been reduced approximately in half since the Court's contrary decision in *Bowers v. Hardwick*, 478 U.S. 186 (1986); *Obergefell v. Hodges*, 135 S. Ct. 2584, 2615 (2015) (Roberts, C.J., dissenting)(finding constitutional right of same-sex couples to marry even though the practice was sanctioned by the legislatures of only 11 states and the District of Columbia).

This directional change is telling in another way. Regarding capital punishment statutes, inertia is often the safer political course. Political expediency based on fears of a vocal minority trumpeting tough crime measures and resorting to attack ads against anyone purported to be "soft" on crime makes repeal of capital punishment statutes a hazardous undertaking even though the statutes may no longer be used, or rarely so. As a consequence, the *practice* of death penalty states is as important an indicator as the fact that the statutes are still on the books. In this regard, the federal statistics summarized above are highly relevant and complement the national statistics which show that the number of persons sentenced to death in this country declined from an average of 286 a year between 1986 and 1999, to 73 in 2014 and executions declined from 98 in 1999, to 35 in 2014. Further, in 11 states with death penalty, there has been no execution for more than 8 years. *Glossip*, 135 S. Ct. at 2773 (Breyer, J., dissenting). This, again, is telling. See *Atkins*, 536 US at 316 (noting the infrequency of executions of mentally retarded offenders in the 20 states that did not formally prohibit the practice).

While constitutional rights are not determined by polls, they offer additional evidence that public support for the death penalty in this country is trending downwards. *See* National Polls and Studies, Death Penalty Information Center, <http://deathpenaltyinfo.org/national-polls-and-studies#Pew;CBS> (collecting polls, which clearly show declining public support for capital punishment).⁸⁴ This is especially true where the shortcomings and miscarriages in the administration of capital punishment have received extensive media coverage, as in Illinois. When, in March 2007, the *Chicago Tribune* reversed the editorial position it had maintained for 138 years and called for an end to capital punishment, the paper noted three weeks later that “there [had been] barely a ripple” in opposition. Timothy J. McNulty, *Opinion Shift Passes Quietly*, CHI. TRIB., Apr. 10, 2007, at 13. When given the option of the death penalty or life without parole, a joint June 2014 poll by ABC News and the Washington Post showed that Americans preferred the latter by a 52%-42% margin. *See* Damila Ergun, *New Low In Preference for the Death Penalty*, June 5, 2014, available at <http://abcnews.go.com/blogs/politics/2014/06/new-low-in-preference-for-the-death-penalty/>.⁸⁵

Finally, the views of the international community shine light on the “evolving standards of decency that mark the progress of a maturing society.” *Thompson v. Oklahoma*, 487 U.S. 815, 830

⁸⁴ *See e.g.*: Poll conducted in April 2015 by Pew Research Center and CBS News showing support in favor of death penalty at 56%, a “near historic low.” <http://deathpenaltyinfo.org/national-polls-and-studies#Pew;CBS>. *See also*, Kenneth E. Shirley and Andrew Gelman, *Hierarchical models for estimating state and demographic trends in US death penalty public opinion*, 178 J. R. STATIST. SOC. A 1-28 (2015)(sophisticated statistical analysis of extensive polling data (N=58,253) gathered in the period from 1953-2006 indicates “high support in the 1980s (during which time a national concern about crime made the death penalty a prominent political issue) and, finally, decreased support since the mid-1990s (when five states either explicitly legalized or indirectly suspended the death penalty in part because of the exoneration of numerous death row inmates due to DNA evidence)”), available at <http://onlinelibrary.wiley.com/doi/10.1111/rssa.12052/full>.

⁸⁵ Without the life without parole alternative, 61% expressed support for the death penalty. *Id.*

(1988) (plurality opinion noting that prohibition on executing offenders less than 16 years old is consistent with the views expressed by “other nations that share our Anglo-American heritage, and by leading members of the Western European community.”); *Roper v. Simmons*, 543 U.S. at 575-76 (noting “relevance of the views of the international community in determining whether a punishment is cruel and unusual,” and referencing UN Conventions and other international agreements). *Roper* notes that the United Kingdom’s experience “bears particular relevance here in light of the Eighth Amendment’s own origins.” *Id.*, at 577.

While the death penalty remains in use in many countries, the trend internationally is progressing to abolition. See *Glossip*, 135 S. Ct. at 2775-76 (Breyer J., dissenting). In resisting this trend, the United States is keeping company neither with its “Anglo-American heritage,” nor the “leading members of the Western European community.” The United Kingdom abolished the death penalty in 1965, see generally Frederick C. Millett, *Will the United States Follow England (and the Rest of the World) in Abandoning Capital Punishment?*, 6 *Pierce L. Rev.* 3 548, 549. And the death penalty is banned under Article 2 of the Charter of Fundamental Rights of the European Union, 2012/C 326/02, available at http://www.europarl.europa.eu/charter/pdf/text_en.pdf (visited 8-19-15). Instead, in executing more than ten people in 2013, the United States’ fellow-travellers were China, Iran, Iraq, Saudi Arabia, Somalia, Sudan and Yemen. *Glossip*, 135 S. Ct. at 2776 (Breyer J., dissenting), a collection of countries that hardly reflect contemporary public opinion in this country as to what constitutes “evolving and maturing” societies.

Finally, it is a telling indication of the evolving standards of decency on the death penalty that on November 4, 2015, the Wall Street Journal, not especially known for promoting cutting edge liberal ideology, published an Opinion/Commentary article co-authored by Christof Heyns, U.N. special rapporteur on extrajudicial, summary or arbitrary executions and a law professor at the

University of Pretoria in South Africa, and Juan Mendez, U.N. special rapporteur on torture and a law professor at American University in Washington. The article, entitled *Time to Kill the Federal Death Penalty*⁸⁶ summarizes the main points in the *Glossip* dissent and then urges:

While executions are becoming less frequent—with 35 executions in 2014 compared with 98 in 1999—the U.S. is still one of the five most prolific executing countries in the world, in the company of China, Iran, Saudi Arabia and Iraq. This has high symbolic value world-wide. Countries with much less circumspection in their legal processes invariably justify their use of the death penalty by citing the U.S....

Clearly [for the reasons stated in the *Glossip* dissent], even with modern advancements, the death penalty is inherently flawed. U.S. government officials often say their hands are tied, since this is a matter largely decided by state law. Yet the U.S. could declare a moratorium on the death penalty for federal crimes. Some would argue that an unofficial moratorium is already in place. The federal government hasn't executed anyone in 12 years, since Louis Jones Jr. in 2003, despite 50 federal death sentences having been handed down since then.

Adopting an official federal moratorium on the death penalty, through executive order if need be, would send a powerful message about the value of life and the inhumane and flawed nature of executions.

Reading this article might prompt the Court to ask a question that Justices Breyer and Ginsburg asked themselves in *Glossip*: “We are a court. Why should we not leave the matter up to the people acting democratically through legislatures [or the executive branch] ? ” *Glossip*, 135 S.Ct. at 2776. The Justices responded to their own question:

The answer is that the matters I have discussed, such as lack of reliability, the arbitrary application of a serious and irreversible punishment, individual suffering caused by long delays, and lack of penological purpose are quintessentially judicial matters. They concern the infliction—indeed the unfair, cruel, and unusual infliction—of a serious punishment upon an individual. I recognize that in 1972 this Court, in a sense, turned to Congress and the state legislatures in its search for standards that would increase the fairness and reliability of imposing a death penalty. The legislatures responded. But, in the last four decades, considerable evidence has accumulated that those responses have not worked.

⁸⁶ <http://www.wsj.com/articles/time-to-kill-the-federal-death-penalty-1446682783>.

Thus we are left with a judicial responsibility. The Eighth Amendment sets forth the relevant law, and we must interpret that law. See *Marbury v. Madison*, 1 Cranch 137, 177, 2 L.Ed. 60 (1803); *Hall*, 572 U.S., at —, 134 S.Ct., at 2000 (“That exercise of independent judgment is the Court’s judicial duty”). We have made clear that “ ‘the Constitution contemplates that in the end our own judgment will be brought to bear on the question of the acceptability of the death penalty under the Eighth Amendment.’ ” *Id.*, at —, 134 S.Ct., at 1999 (quoting *Coker v. Georgia*, 433 U.S. 584, 597, 97 S.Ct. 2861, 53 L.Ed.2d 982 (1977) (plurality opinion)); see also *Thompson v. Oklahoma*, 487 U.S. 815, 833, n. 40, 108 S.Ct. 2687, 101 L.Ed.2d 702 (1988) (plurality opinion).

Id. at 2776.⁸⁷

6. The Doctrine of *Stare Decisis*

Experience over 40 years has shown that the *Gregg* approach has not tamed the arbitrariness problem identified in *Furman*. But, the question remains: In light of *Gregg*, what can this Court do about it?

Mr. Fell acknowledges the Court’s obligation to apply the doctrine of *stare decisis*. But the protections afforded by the Eighth Amendment’s prohibition of cruel and unusual punishment require reconsideration when necessary to ensure that its underlying values have not become moribund by later developments and knowledge. This Court can discount precedent when “special justifications” are present. *Arizona v. Rumsey*, 467 U.S. 203, 212 (1984).

Such justifications include the advent of “subsequent changes or development in the law” that undermine a decision’s rationale, *Patterson v. McLean Credit Union*, *supra* . . . the need “to bring [a decision] into agreement with experience and with facts newly ascertained,” *Burnet v. Coronado Oil & Gas Co.*, *supra* . . . ; and a showing that a particular precedent has become a “detriment to coherence and consistency in the law . . . ” (citations omitted)

⁸⁷ A majority of the Court shares this view. See, *Obergefell v. Hodges*, 135 S. Ct. 2584, 2605 (2015) (“[T]he freedom secured by the Constitution consists, in one of its essential dimensions, of the right of the individual not to be injured by the unlawful exercise of governmental power.’ [citation omitted]. Thus, when the rights of persons are violated, ‘the Constitution requires redress by the courts,’ [citation omitted], notwithstanding the more general value of democratic decisionmaking. This holds true even when protecting individual rights affects issues of the utmost importance and sensitivity.”)

Payne v. Tennessee, 501 U.S. 808, 849 (1991) (Marshall, J. dissenting).

While the above relates to the Supreme Court reconsidering its own precedents, the doctrine of anticipatory overruling, which allows a lower court to reject precedent where circumstances have changed, applies to both courts of appeals, *see United States v. City of Philadelphia*, 644 F.2d 187, 191-92 (3rd Cir. 1980) (declining to follow *Wyandotte Transportation Co. v. United States*, finding it “merely one step in the development of current standards” and refusing to be “blind to subsequent developments. . .”); *United States v. White*, 405 F.2d 838, 847-48 (7th Cir. 1969) (declining to follow *On Lee v. United States*, even though factually “directly on point” because of subsequent developments); and to lower courts, especially when called upon to reconsider issues of overriding constitutional importance. *See Barnette v. West Virginia Board of Education*, 47 F. Supp. 251 (S.D. West Virginia) (1942) (refusing to follow Supreme Court decision in *Minersville School District v. Gobitis*, 310 U.S. 586 (1940), holding that public schools could require students to salute the flag and recite the *Pledge of Allegiance* over their religious objections as Jehovah’s Witnesses), *affirmed in West Virginia State Board of Education v. Barnette*, 319 U.S. 643 (1943) (overruling *Minersville School District*); *Gebhart v. Belton*, 87 A.2d 862 (Del. Ch. 1952), *affirmed* 91 A.2d 137 (De. 1952) (Delaware Chancellor Collins Seitz (later Chief Judge of the Third Circuit) orders public schools integrated despite Supreme Court decision in *Plessy v. Ferguson*, 163 U.S. 537 (1896)), *affirmed in Brown v. Board of Education*, 347 U.S. 483 (1954).⁸⁸

⁸⁸ Judge Seitz did not directly rule *Plessy* was no longer good law but instead held that the evidence did not support *Plessy*’s underlying assumption that the segregated schools in New Castle, Delaware were equal. Similarly, there is no need for this Court to say *Gregg* is no longer applicable. The Court need only rule that the now-available evidence does not support its underlying assumption that the death penalty can be imposed in a non-arbitrary and non-capricious manner.

Finally, this Court would not be a voice in the wilderness in ruling the death penalty is no longer consistent with the Eighth Amendment. Comments of several Justices since *Gregg* support the anticipatory view that, upon reconsideration, it will be overruled. When Justice Stevens announced his view, based on “countless” cases, that the death penalty is “patently excessive and cruel and unusual punishment violative of the Eighth Amendment,” *see Baze v. Rees*, 553 U.S. 35, 86 (2008)(Stevens, J., concurring in judgment)(citation omitted), he became the fifth *Gregg* justice to ultimately come to this conclusion, joining *Gregg* dissenters, Justices Brennan and Marshall; Justice Blackmun who announced his view, changed after 20 years of experience with capital cases, that the death penalty no longer comports with the Eighth Amendment and that he would “no longer tinker with the machinery of death,” *see Collins v. Collins*, 510 U.S. 1141, 1145 (Blackmun, J., dissenting from denial of certiorari); and Justice Powell, who expressed a similar change of heart to his biographer. John C. Jeffries, Jr., *Justice Lewis F. Powell, Jr.: A Biography* 451 (1994)(Quoting Justice Powell: “I have come to think that capital punishment should be abolished.”); *see generally* John Paul Stevens, *Six Amendments: How and Why We Should Change the Constitution*, 107-123 (2014); Semel, *Reflections on Justice John Paul Stevens’ Concurring Opinion in Baze v. Rees: A Fifth Gregg Justice Renounces Capital Punishment*, *supra*.

Former Justice Souter also came to doubt the continued constitutionality of the death penalty in this age of DNA. *See Kansas v. Marsh*, 548 U.S. 163, 207-08 (2008)(“Today, a new body of fact must be accounted for in deciding what, in practical terms, the Eighth Amendment guarantees should tolerate, for the period starting in 1989 has seen repeated exonerations of convicts under death sentences, in numbers never imagined before the development of DNA tests.”).⁸⁹

⁸⁹ Among the examples of exonerations, Justice Souter cited the Illinois experience, where, at the time of his writing, 13 death row inmates had been exonerated between 1977 and 2000, while only 12 had been executed during this period. And, like Justices Breyer and

Current Justices have announced similar skepticism. In their dissenting opinion in *Glossip*, *supra*, Justices Breyer and Ginsburg all but said the death penalty cannot in this day of time be reconciled with the Eighth Amendment.

Similarly, Justice Sotomayor has expressed a willingness to reconsider prior death penalty decisions. See *Mario Dion Woodward v. Alabama*, 134 S. Ct. 405 (2013) (Sotomayor, J., dissenting from denial of certiorari) (“[T]he time has come for us to reconsider” opinions in *Spaziano v. Florida*, 468 U. S. 447 (1984), and *Harris v. Alabama*, 513 U. S. 504 (1995) (both upholding judicial override statutes)). As Justice Sotomayor pointed out in *Roper v. Simmons*, *supra*, the Supreme Court reconsidered and reversed its decision on the execution of juveniles who committed offenses under the age of 18 after the passage of only 16 years from *Stanford v. Kentucky*, *supra*; and in *Atkins v. Virginia*, *supra*, reversed its decision concerning the application of the Eighth Amendment to those suffering from mental retardation only 13 years after *Penry v. Lynaugh*, *supra*. *Woodward*, 134 S. Ct. at 407. As noted, here 39 years have passed since *Gregg*. Like the issue concerning the relationship between *stare decisis*, the passage of time and changing cultural values, presented in *Lawrence v. Texas*, *supra*, “our laws and traditions in the past half century are of most relevance here.” 539 U.S. at 558.

IV. CONCLUSION

Rather than a slow burn, arbitrariness in the administration of capital punishment has metastasized into an out-of-control wildfire. No matter the direction one looks, capital punishment presents seemingly intractable problems. Decisions such as *Roper*, *Simmons* and *Kennedy*, show that

Ginsburg in their *Glossip* dissent, 135 S.Ct. at 2757-58, Justice Souter also observed the data show that "false verdicts" are "probably disproportionately high in capital cases." *Marsh*, at 210.

the death penalty is now wobbling on its last Eighth Amendment leg. Mr. Fell therefore asks this Court to enter an order declaring that the federal death penalty, in and of itself, constitutes a legally prohibited cruel and unusual punishment prohibited by both the Fifth and Eighth Amendments, and striking the government's Notice of Intent to Seek Death.

Dated at San Francisco, California, this 15th day of November, 2015.

Dated: November 15, 2015

Respectfully Submitted,
MICHAEL N. BURT
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CERTIFICATE OF SERVICE

I hereby certify that on November 16, 2015, I electronically filed with the Clerk of

MEMORANDUM IN SUPPORT OF DEFENDANT DONALD FELL'S MOTION TO PRECLUDE THE DEATH PENALTY AS A PUNISHMENT BECAUSE THE DEATH PENALTY, IN AND OF ITSELF, CONSTITUTES AN UNCONSTITUTIONAL PUNISHMENT

using the CM/ECF system. The CM/ECF system will provide service of such filing(s)

via Notice of Electronic Filing (NEF) to the following NEF parties:

Michael N. Burt, Esq.
Kerry B. DeWolfe, Esq.
John Phillipsborn
William B. Darrow, Esq., Assistant United States Attorney
Bruce R. Hegyi, U.S. Dept. Of Justice

I also caused to be served, by U.S. Postal Service, the following non-NEF party:

Donald Fell
Register Number 05306-010
The Metropolitan Detention Center
P.O. Box 329002
Brooklyn, NY 11232

Dated at San Francisco, California, this 16th day of November, 2015.

By: /s/ Michael N. Burt

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Counsel for DONALD FELL

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF VERMONT

)	
)	
UNITED STATES OF AMERICA)	NO. 5:2001-CR-00012
)	
)	
vs.)	
)	
DONALD FELL,)	
)	
Defendant.)	
)	

**DEFENDANT DONALD FELL’S APPENDIX TO MOTION TO PRECLUDE THE
DEATH PENALTY AS A PUNISHMENT BECAUSE THE DEATH PENALTY, IN AND
OF ITSELF, CONSTITUTES AN UNCONSTITUTIONAL PUNISHMENT**

TABLE OF CONTENTS

Death Penalty Information Center: Facts About the Death Penalty 0001

Death Penalty Information Center: Report, “Struck by Lightning:
The Continuing Arbitrariness of the Death Penalty
Thirty-Five Years After its Reinstatement in 1976” 0005

Death Penalty Information Center: Report, “The 2% Death Penalty:
How a Minority of Counties Produce the Most Death Cases at
Enormous Cost to All 0043

Fact sheet: The Federal Death Penalty 0078

Declaration of KEVIN MCNALLY, Director, Federal Death Penalty
Resource Counsel Project 0080

Declaration of LAUREN COHEN BELL, Ph.D. 0093

Authorized Federal Capital Prosecutions Pending Trial 0101

Authorized Federal Capital Prosecutions Sentenced to Death But Now Awaiting a Retrial	0104
Authorized Federal Capital Prosecutions Resulting in a Life Sentence	0105
Authorized Federal Capital Prosecutions Resulting in a Sentence of Death	0144
Authorized Federal Capital Prosecutions With Current Sentence of Death	0164
Authorized Federal Capital Prosecutions Resulting in Defendant Being Found Not Guilty or Innocent	0179
Authorized Federal Capital Prosecutions Which Resulted in Conviction of a Lesser Offense	0180
Authorized Federal Capital Prosecutions Where Authorization Was Withdrawn	0181
Authorized Federal Capital Cases Which Resulted in a Guilty Plea	0203
Authorized Federal Capital Prosecutions Which Resulted in Dismissal by Judge for Legal Reasons	0235
Authorized Federal Capital Prosecutions Where Defendant Died Before or During Trial	0242
Female Defendants	0243



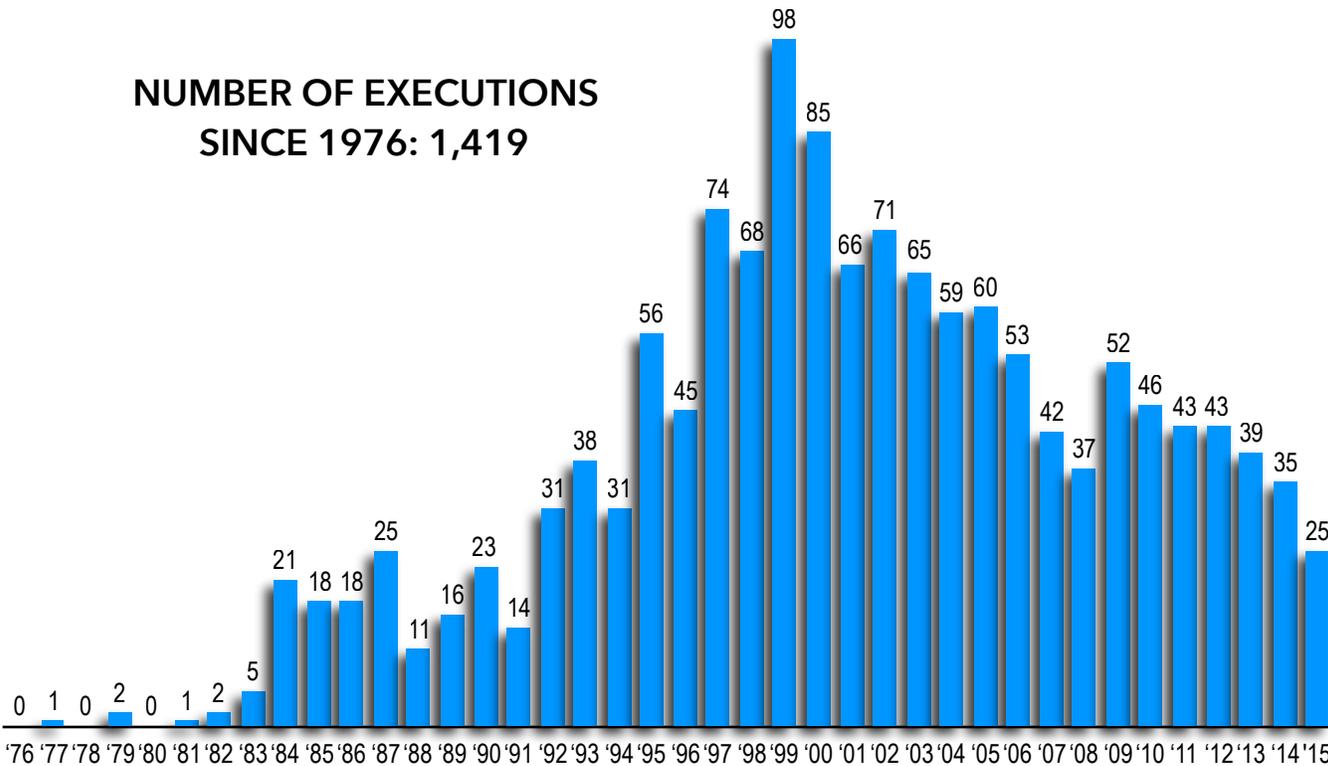
DEATH PENALTY INFORMATION CENTER

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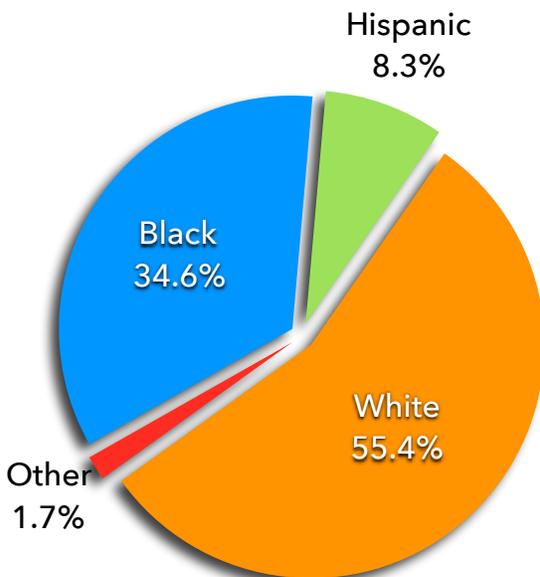
NUMBER OF EXECUTIONS SINCE 1976: 1,419



DEATH PENALTY STATES (31)

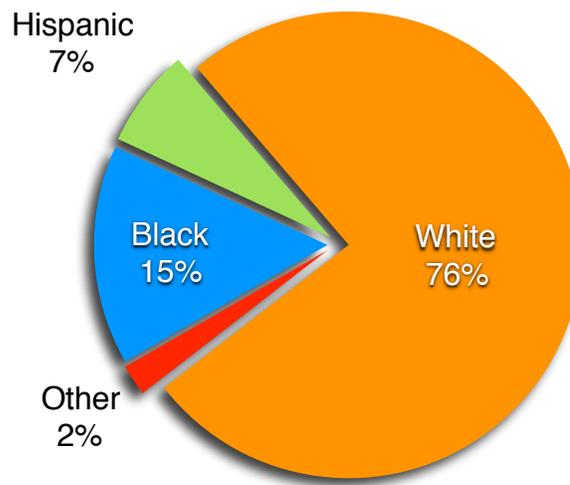
- Alabama
- Arizona
- Arkansas
- California
- Colorado
- Delaware
- Florida
- Georgia
- Idaho
- Indiana
- Kansas
- Kentucky
- Louisiana
- Mississippi
- Missouri
- Montana
- Nevada
- New Hampshire
- North Carolina
- Ohio
- Oklahoma
- Oregon
- Pennsylvania
- South Carolina
- South Dakota
- Tennessee
- Texas
- Utah
- Virginia
- Washington
- Wyoming
- U.S. Gov't
- U.S. Military

RACE OF DEFENDANTS EXECUTED



- White: 786
- Black: 491
- Hispanic: 118
- Other: 24

RACE OF VICTIMS IN DEATH PENALTY CASES



Over 75% of the murder victims in cases resulting in an execution were white, even though nationally only 50% of murder victims generally are white.

NON-DEATH PENALTY STATES (19)

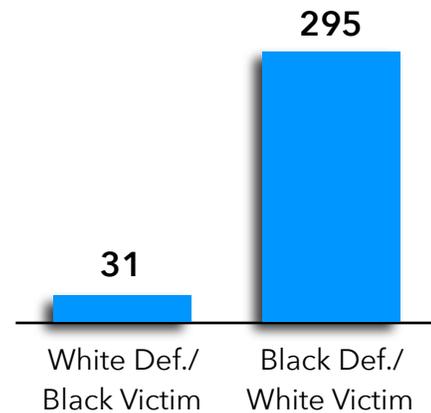
- Alaska
- Connecticut
- Hawaii
- Illinois
- Iowa
- Maine
- Maryland
- Massachusetts
- Michigan
- Minnesota
- Nebraska*
- New Jersey
- New Mexico**
- New York
- North Dakota
- Rhode Island
- Vermont
- West Virginia
- Wisconsin

District of Columbia
 *A petition to suspend the repeal bill has been submitted and is pending verification.
 **Inmates remain on death

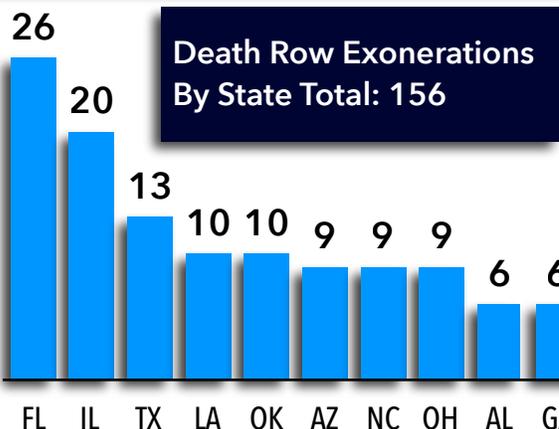
RECENT STUDIES ON RACE

- Jurors in Washington state are three times more likely to recommend a death sentence for a black defendant than for a white defendant in a similar case. (Prof. K. Beckett, Univ. of Washington, 2014).
- In Louisiana, the odds of a death sentence were 97% higher for those whose victim was white than for those whose victim was black. (Pierce & Radelet, Louisiana Law Review, 2011).
- A study in California found that those who killed whites were over 3 times more likely to be sentenced to death than those who killed blacks and over 4 times more likely than those who killed Latinos. (Pierce & Radelet, Santa Clara Law Review, 2005).
- A comprehensive study of the death penalty in North Carolina found that the odds of receiving a death sentence rose by 3.5 times among those defendants whose victims were white. (Prof. Jack Boger and Dr. Isaac Unah, University of North Carolina, 2001).
- In 96% of states where there have been reviews of race and the death penalty, there was a pattern of either race-of-victim or race-of-defendant discrimination, or both. (Prof. Baldus report to the ABA, 1998).

Persons Executed for Interracial Murders

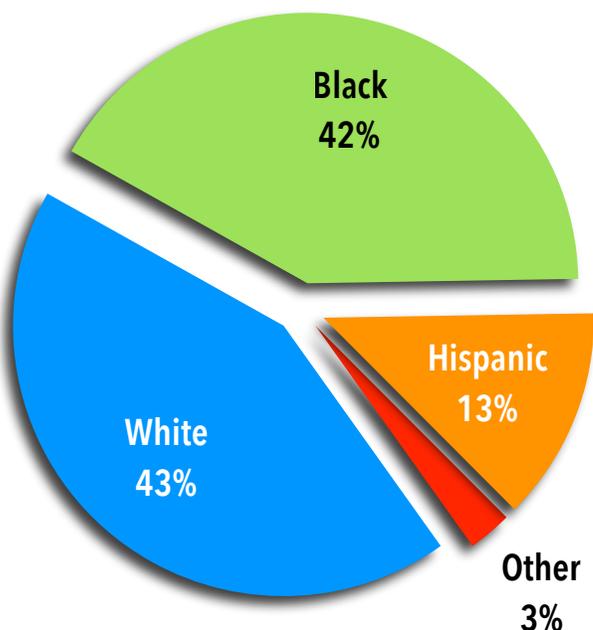


INNOCENCE



- Since 1973, more than 150 people have been released from death row with evidence of their innocence. (Staff Report, House Judiciary Subcommittee on Civil & Constitutional Rights, 1993, with updates from DPIC).
- From 1973-1999, there was an average of 3 exonerations per year. From 2000-2011, there was an average of 5 exonerations per year.

DEATH ROW INMATES BY RACE



DEATH ROW INMATES BY STATE: April 1, 2015

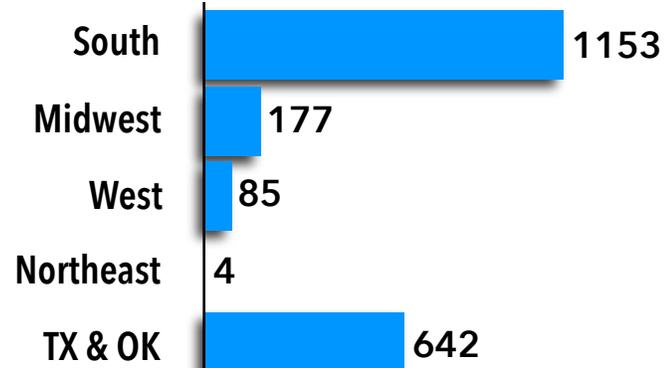
California	746	Oklahoma	48	Kansas	10
Florida	401	Mississippi	48	Utah	9
Texas	271	S. Carolina	44	Washington	9
Alabama	201	Oregon	36	Virginia	8
Pennsylvania	184	Arkansas	35	U.S. Military	6
N. Carolina	157	Kentucky	34	S. Dakota	3
Ohio	145	Missouri	33	Colorado	3
Arizona	124	Delaware	17	Montana	2
Georgia	85	Indiana	14	New Mexico	2
Louisiana	85	Connecticut	12	Wyoming	1
Nevada	78	Idaho	11	N. Hampshire	1
Tennessee	73	Nebraska	11	TOTAL: 3,002	
U.S. Gov't	61				

Race of Death Row Inmates and Death Row Inmates by State Source: NAACP Legal Defense Fund, "Death Row USA" (April 1, 2015). When added, the total number of death row inmates by state is slightly higher than the given total because some prisoners are sentenced to death in more than one state.

EXECUTIONS BY STATE SINCE 1976

State	Tot	2014	2015	State	Tot	2014	2015	State	Tot	2014	2015
TX	530	10	12	AR	27	0	0	PA	3	0	0
OK	112	3	1	MS	21	0	0	KY	3	0	0
VA	111	0	1	IN	20	0	0	MT	3	0	0
FL	91	8	2	DE	16	0	0	US GOVT	3	0	0
MO	86	10	6	CA	13	0	0	ID	3	0	0
GA	58	2	3	IL	12	0	0	SD	3	0	0
AL	56	0	0	NV	12	0	0	OR	2	0	0
OH	53	1	0	UT	7	0	0	NM	1	0	0
NC	43	0	0	TN	6	0	0	CO	1	0	0
SC	43	0	0	MD	5	0	0	WY	1	0	0
AZ	37	1	0	WA	5	0	0	CT	1	0	0
LA	28	0	0	NE	3	0	0				

EXECUTIONS BY REGION*



*Federal executions are listed in the region in which the crime was committed.

DEATH SENTENCING

The number of death sentences per year has dropped dramatically since 1999.

Year	1997	1998	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014
Sentences	266	295	279	223	153	166	151	138	140	123	126	120	118	114	85	82	83	73

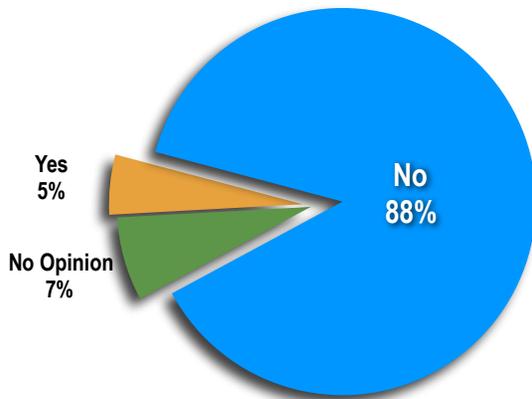
Source: Bureau of Justice Statistics: "Capital Punishment, 2013." 2014 figure from DPIC research.

MENTAL DISABILITIES

- **Intellectual Disabilities:** In 2002, the Supreme Court held in *Atkins v. Virginia* that it is unconstitutional to execute defendants with 'mental retardation.'
- **Mental Illness:** The American Psychiatric Association, the American Psychological Association, the National Alliance for the Mentally Ill, and the American Bar Association have endorsed resolutions calling for an exemption of the severely mentally ill.

DETERRENCE

Do executions lower homicide rates?



- A report by the National Research Council, titled *Deterrence and the Death Penalty*, stated that studies claiming that the death penalty has a deterrent effect on murder rates are "fundamentally flawed" and should not be used when making policy decisions (2012).
- Consistent with previous years, the 2014 FBI Uniform Crime Report showed that **the South had the highest murder rate. The South accounts for over 80% of executions.** The Northeast, which has less than 1% of all executions, had lowest murder rate.
- According to a survey of the former and present presidents of the country's top academic criminological societies, 88% of these experts rejected the notion that the death penalty acts as a deterrent to murder. (Radelet & Lacock, 2009)

Murder Rates per 100,000 (2014)



EXECUTIONS SINCE 1976 BY METHOD USED

1244	Lethal Injection	34 states plus the US government use lethal injection as their primary method. Some states utilizing lethal injection have other methods available as backups. Though New Mexico and Connecticut have abolished the death penalty, their laws were not retroactive, leaving prisoners on the states' death rows and their lethal injection protocols intact.
158	Electrocution	
11	Gas Chamber	
3	Hanging	
3	Firing Squad	

JUVENILES

- In 2005, the Supreme Court in *Roper v. Simmons* struck down the death penalty for juveniles. 22 defendants had been executed for crimes committed as juveniles since 1976.

WOMEN

- There were 56 women on death row as of Dec. 31, 2014. This constitutes less than 2% of the total death row population. (NAACP Legal Defense Fund, Jan. 1, 2015). 16 women have been executed since 1976.

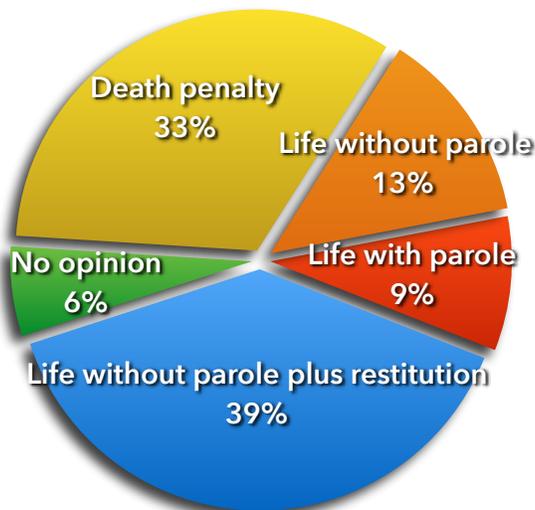
FINANCIAL FACTS ABOUT THE DEATH PENALTY

- Defense costs for death penalty trials in Kansas averaged about \$400,000 per case, compared to \$100,000 per case when the death penalty was not sought. (Kansas Judicial Council, 2014).
- A new study in California revealed that the cost of the death penalty in the state has been over \$4 billion since 1978. Study considered pre-trial and trial costs, costs of automatic appeals and state habeas corpus petitions, costs of federal habeas corpus appeals, and costs of incarceration on death row. (Alarcon & Mitchell, 2011).
- In Maryland, an average death penalty case resulting in a death sentence costs approximately \$3 million. The eventual costs to Maryland taxpayers for cases pursued 1978-1999 will be \$186 million. Five executions have resulted. (Urban Institute, 2008).
- Enforcing the death penalty costs Florida \$51 million a year above what it would cost to punish all first-degree murderers with life in prison without parole. Based on the 44 executions Florida had carried out since 1976, that amounts to a cost of \$24 million for each execution. (Palm Beach Post, January 4, 2000).
- The most comprehensive study in the country found that the death penalty costs North Carolina \$2.16 million per execution over the costs of sentencing murderers to life imprisonment. The majority of those costs occur at the trial level. (Duke University, May 1993).
- In Texas, a death penalty case costs an average of \$2.3 million, about three times the cost of imprisoning someone in a single cell at the highest security level for 40 years. (Dallas Morning News, March 8, 1992).

PUBLIC OPINION AND THE DEATH PENALTY

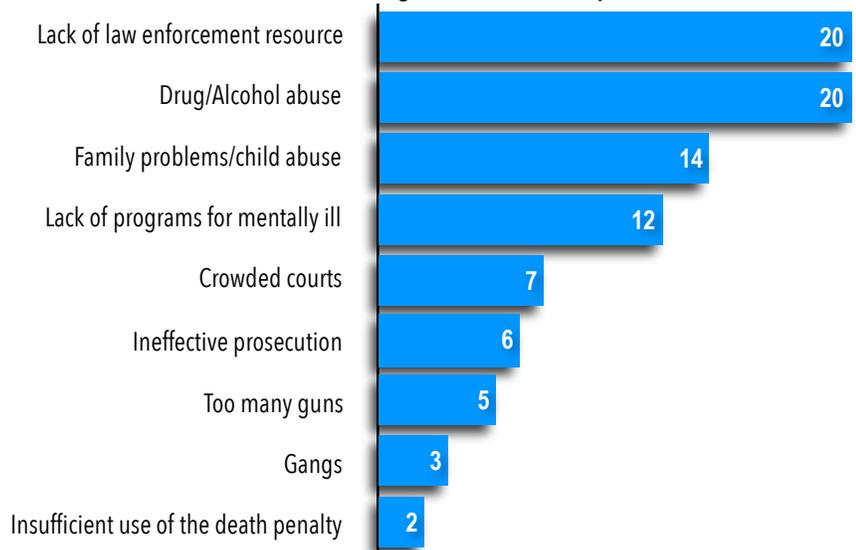
Support for Alternatives to the Death Penalty

- A 2010 poll by Lake Research Partners found that **a clear majority of voters (61%) would choose a punishment other than the death penalty for murder.**



What Interferes with Effective Law Enforcement?

Percent Ranking Item as One of Top Two or Three



- A 2009 poll commissioned by DPIC found police chiefs ranked the death penalty **last** among ways to reduce violent crime. The police chiefs also considered the death penalty the least efficient use of taxpayers' money.

The Death Penalty Information Center has available more extensive reports on a variety of issues, including:

- "The Death Penalty in 2014: Year-End Report" (December 2014)
- "The 2% Death Penalty: How a Minority of Counties Produce Most Death Cases at Enormous Costs to All" (October 2013)
- "The Death Penalty in 2013: Year-End Report" (December 2013)
- "Struck By Lightning: The Continuing Arbitrariness of the Death Penalty 35 Years After Its Reinstatement in 1976" (June 2011)
- "Smart on Crime: Reconsidering the Death Penalty in a Time of Economic Crisis" (October 2009)
- "A Crisis of Confidence: Americans' Doubts About the Death Penalty" (2007)
- "Blind Justice: Juries Deciding Life and Death with Only Half the Truth" (2005)
- "Innocence and the Crisis in the American Death Penalty" (2004)
- "International Perspectives on the Death Penalty: A Costly Isolation for the U.S." (1999)
- "The Death Penalty in Black & White: Who Lives, Who Dies, Who Decides" (1998)
- "Innocence and the Death Penalty: The Increasing Danger of Executing the Innocent" (1997)

Struck by Lightning:

**The Continuing Arbitrariness of the Death Penalty
Thirty-Five Years After Its Re-instatement in 1976**

A Report of the Death Penalty Information Center



Struck by Lightning:

The Continuing Arbitrariness of the Death Penalty Thirty-Five Years After Its Re-instatement in 1976

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

**Washington, DC
July 2011**

www.deathpenaltyinfo.org

Struck by Lightning: The Continuing Arbitrariness of the Death Penalty Thirty-Five Years After Its Re-instatement in 1976

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

July 2011

These death sentences are cruel and unusual in the same way that being struck by lightning is cruel and unusual.

-Justice Potter Stewart (1972)

Rather than continue to coddle the Court's delusion that the desired level of fairness has been achieved and the need for regulation eviscerated, I feel morally and intellectually obligated to concede that the death penalty experiment has failed.

-Justice Harry Blackmun (1994)

Two decades after Gregg, it is apparent that the efforts to forge a fair capital punishment jurisprudence have failed. Today, administration of the death penalty, far from being fair and consistent, is instead a haphazard maze of unfair practices with no internal consistency.

-American Bar Association (1997)

We now have decades of experience with death-penalty systems modeled on [the Model Penal Code]. . . . Unless we are confident we can recommend procedures that would meet the most important of the concerns, the Institute should not play a further role in legitimating capital punishment, no matter how unintentionally, by retaining the section in the Model Penal Code.

-American Law Institute (The motion to withdraw this section of the Code was passed in 2009.)

I have concluded that our system of imposing the death penalty is inherently flawed. The evidence presented to me by former prosecutors and judges with decades of experience in the criminal justice system has convinced me that it is impossible to devise a system that is consistent, that is free of discrimination on the basis of race, geography or economic circumstance, and that always gets it right.

-Gov. Pat Quinn of Illinois (signing bill abolishing the death penalty, 2011)

Executive Summary

The United States Supreme Court approved the re-instatement of the death penalty 35 years ago on July 2, 1976. Although the death penalty had earlier been held unconstitutional because of its arbitrary and unpredictable application, the Court was willing to sanction new systems that states had proposed to make capital punishment less like “being struck by lightning” and more like retribution for only the “worst of the worst” offenders. The Court also deferred to the states’ judgment that the death penalty served the goals of retribution and deterrence.

After three and a half decades of experience under these revised statutes, the randomness of the system continues. Many of the country’s constitutional experts and prominent legal organizations have concluded that effective reform is impossible and the practice should be halted. In polls, jury verdicts and state legislative action, there is evidence of the American people’s growing frustration with the death penalty. A majority of the nine Justices who served on the Supreme Court in 1976 when the death penalty was approved eventually concluded the experiment had failed.

Four states have abolished the death penalty in the past four years, and nationwide executions and death sentences have been cut in half since 2000. A review of state death penalty practices exposes a system in which an unpredictable few cases result in executions from among thousands of eligible cases. Race, geography and the size of a county’s budget play a major role in who receives the ultimate punishment. Many cases thought to embody the worst crimes and defendants are overturned on appeal and then assessed very differently the second time around at retrial. Even these reversals depend significantly on the quality of the lawyers assigned and on who appointed the appellate judges reviewing the cases. In such a haphazard process, the rationales of deterrence and retribution make little sense.

In 1976, the newly reformed death penalty was allowed to resume. However, it has proved unworkable in practice. Keeping it in place, or attempting still more reform, would be enormously expensive, with little chance of improvement. The constitution requires fairness not just in lofty words, but also in daily practice. On that score, the death penalty has missed the mark.

I. Introduction: History of the Modern Death Penalty

The only lengthy, nationwide suspension of the death penalty in U.S. history officially began in 1972 when the U.S. Supreme Court held in *Furman v. Georgia*¹ that the death penalty was being administered in an arbitrary and capricious manner that amounted to cruel and unusual punishment. As in Georgia, the statutes of other states and the federal government provided no guidance to the jury empaneled to decide between sentences of life and death. The death penalty ground to a halt as states formulated revised laws they hoped would win the Court's approval.

Executions had stopped in 1967 as lower courts anticipated a High Court ruling on the constitutionality of capital punishment. Insights from the civil rights movement of the 1960s led many to believe the death penalty was so linked to the practice of racial discrimination that it would no longer be constitutionally acceptable. When the Supreme Court reviewed the practice of capital punishment, it focused primarily on arbitrariness in its application rather than on racial discrimination. Nevertheless, as Justice William O. Douglas warned in his concurring opinion in *Furman*, the questions of arbitrariness and discrimination are closely linked.²

For a pivotal set of Justices, the death penalty was unconstitutional because it was “so wantonly and so freakishly imposed.”³ Justice Potter Stewart said the death penalty was “cruel and unusual in the same way that being struck by lightning is cruel and unusual.”⁴ Justice Byron White echoed that sentiment when he said he could not uphold a punishment where “there is no meaningful basis for distinguishing the few

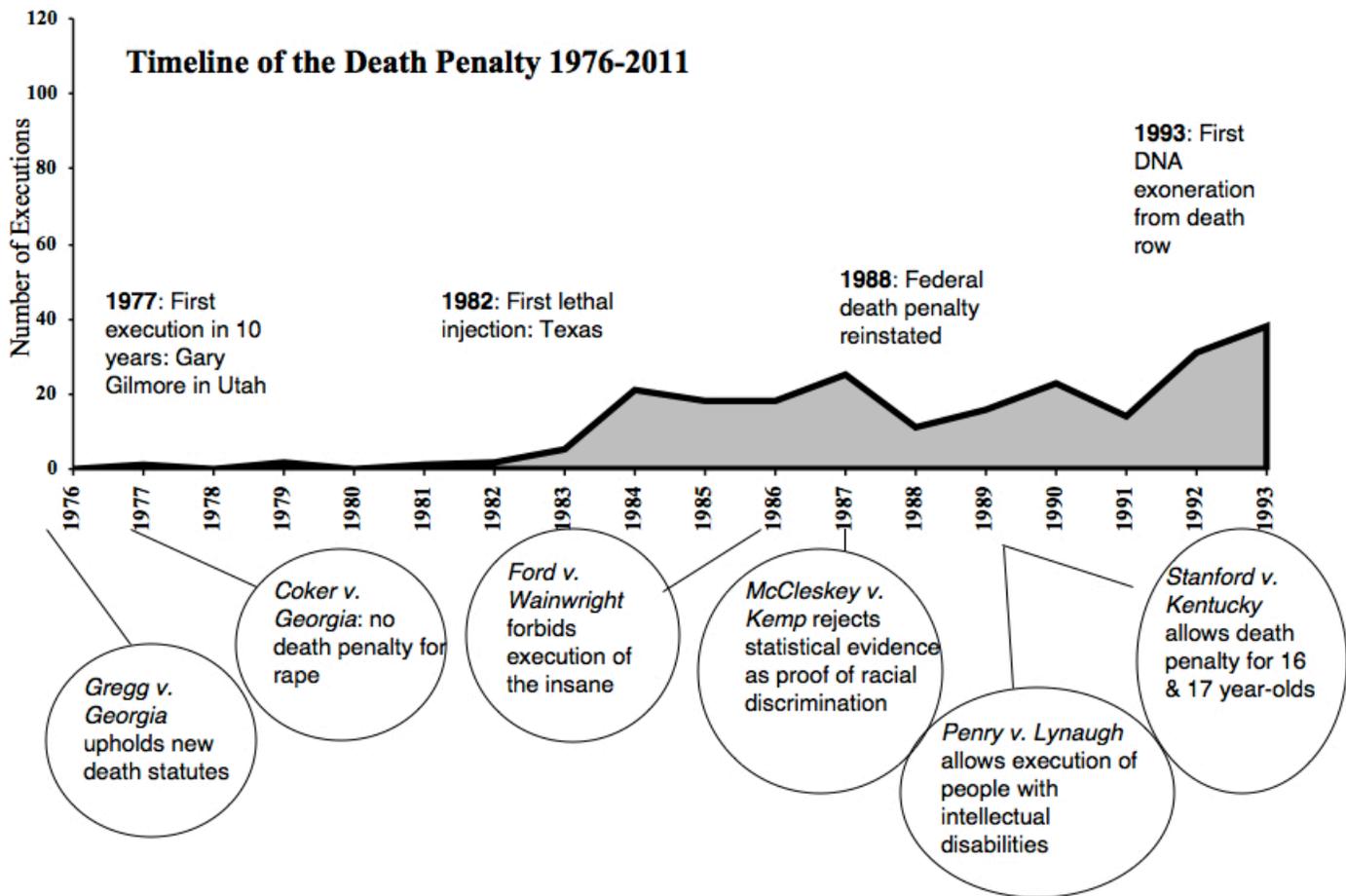
cases in which it is imposed from the many cases in which it is not.”⁵

The Justices left for another day the question of whether the death penalty itself was constitutional, leaving the door open to the enactment of more limited death penalty statutes that provided detailed guidance for juries. After *Furman*, many states re-wrote their death penalty laws and began sentencing people to death—although no executions would be carried out until the Court again addressed the issue.

It did so in 1976, approving the new laws of Georgia, Florida and Texas, while rejecting the approach taken by North Carolina and Louisiana, which required all those convicted of certain murders to be sentenced to death, without regard to individual sentencing considerations.⁶ The death penalty itself was declared constitutional under the assumption that it fit the rationales of retribution and deterrence. The Court said that being sentenced to death would no longer be random because the new statutes sufficiently restricted and guided the decision-making of prosecutors, judges, and juries—at least in theory. Whether these new laws would be less arbitrary in practice remained to be seen.

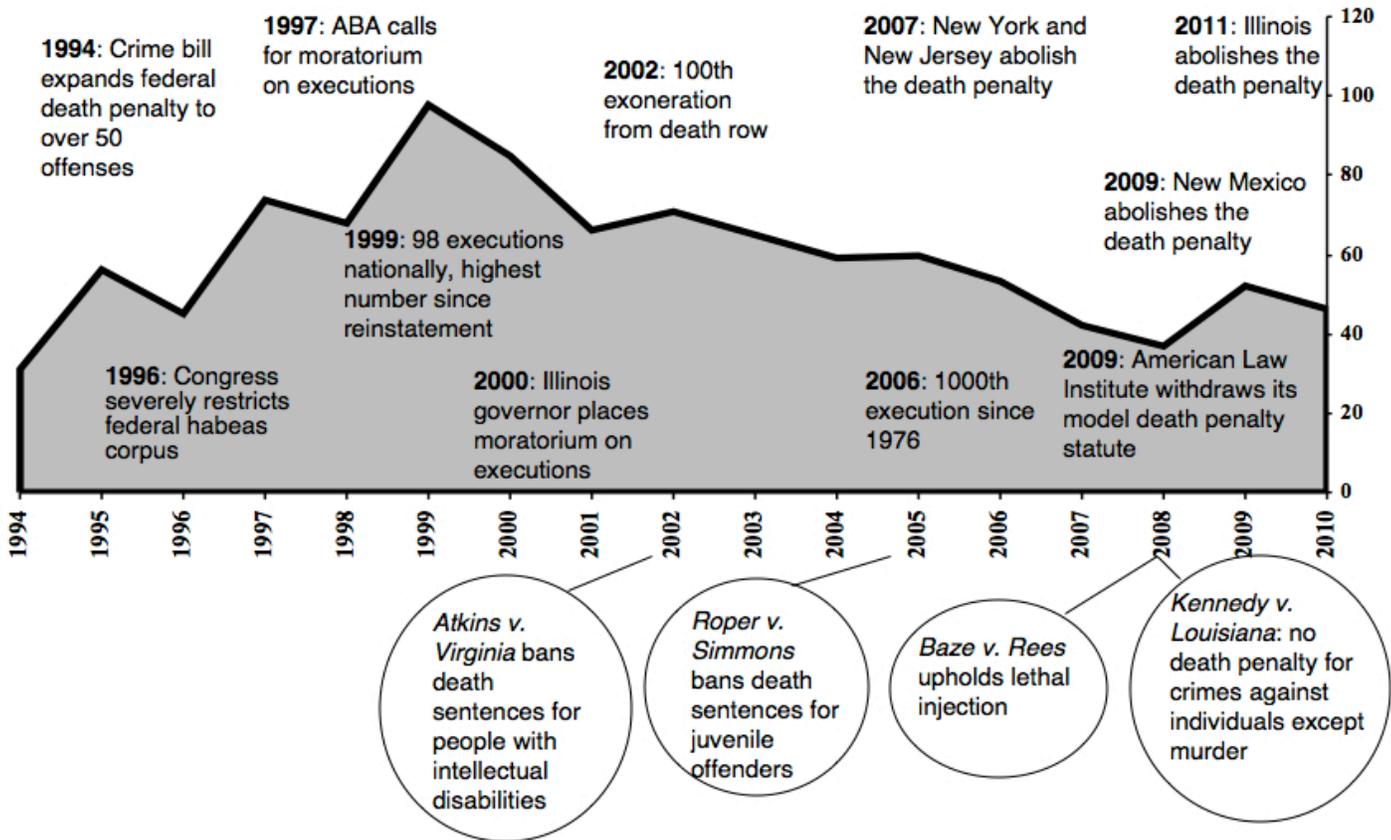
Decades of Experiment

By now thirty-five years have passed, providing ample experience to assess whether this system reliably selects the worst offenders and the most heinous crimes to merit the most severe punishment. This experience also provides an opportunity to judge whether the death penalty's twin rationales—retribution and deterrence—sufficiently justify its continued use, or whether it has devolved into the “pointless and needless extinction of life”⁷ forbidden by the Eighth Amendment.



Concerns about the death penalty before the Court's approval of new laws in 1976 stemmed not only from the lack of guidance for jurors making crucial choices between life and death sentences. The death penalty was also rarely carried out, giving rise to doubts about its consistent application. In a country with only a handful of executions each year,⁸ it was not at all clear that the few executed were the "worst of the worst." Justice Brennan, concurring with the majority in *Furman*, wrote, "When the punishment of death is inflicted in a trivial number of the cases in which it is legally available, the conclusion is virtually inescapable that it is being inflicted arbitrarily. Indeed, it smacks of little more than a lottery system."⁹

The death penalty is again in decline across the country. The number of death sentences and executions has decreased sharply in the past decade. Since 2007 four states have abandoned the death penalty. Even in the 34 states that retain it, an execution is a rare event in all but a handful of states. Less than one in a hundred murders results in a death sentence, and far fewer defendants are executed. Does the one murderer in a hundred who receives a death sentence clearly merit execution more than all, or even most, of the 99 other offenders who remain in prison for life? Or do arbitrary factors continue to determine who lives and who dies under our death penalty laws?



II. Thirty-five Years Later: The Unfairness of the Death Penalty in Practice

The death penalty system in this country is demonstrably highly selective in meting out sentences and executions, and becoming more so. There are approximately 15,000 murders a year; in 2010, there were 46 executions, a ratio of 1 execution for every 326 murders. The number of murders in the U.S. barely changed from 1999 to 2009,¹⁰ but the number of death sentences declined by 60% during that period. Studies of the

death penalty in several states since 1976 reveal a system that sweeps broadly through thousands of eligible cases but ends up condemning to death only a small number, with little rational explanation for the disparity.

- In **New Mexico**, during a 28-year span, 211 capital cases were filed. About half the cases resulted in a plea bargain for a sentence less than death. Another half went to trial, and 15 people were sentenced to death. In the end, only one person was executed (after dropping his appeals), and two people were left on death row when the state abolished the death penalty in 2009.¹¹

- In **Maryland**, over a 21-year period from 1978 to 1999, 1,227 homicides were identified as death-eligible cases. Prosecutors filed a death notice in 162 cases. Fifty-six cases resulted in a death judgment, although it has become clear the vast majority of those will never be carried out. As of 2011, five defendants have been executed, and only five remain on death row. There have been no executions since 2005.¹²
- In **Washington**, from 1981 to 2006, 254 cases were identified as death-eligible. Death notices were filed in 79, and death sentences were imposed in 30. Of the cases that completed the appeals process, 83% were reversed. Four executions took place, with three of the four defendants having waived their remaining appeals.¹³
- In **Kentucky**, from 1979 to 2009, there were 92 death sentences. Of the 50 cases that completed their appeals, 42 sentences (84%) were reversed. Three inmates were executed, including 2 who waived their appeals.¹⁴

Patterns in other states are similar. In Oregon, 795 cases were deemed eligible for the death penalty after its reinstatement in 1984; two people have been executed—both “volunteers.”¹⁵ Nationally, only about 15% of those sentenced to death since 1976 have been executed. Under the federal death penalty, from a pool of over 2,500 cases submitted by U.S. Attorneys, the Attorney General has authorized seeking the death penalty in 472 cases; 270 defendants went to trial, resulting in 68 death sentences and 3 executions to date.¹⁶

The theory behind winnowing from the many defendants who are eligible for the death penalty down to the few who are executed is that the system is selecting the “worst of the worst” for execution. The Supreme Court recently underscored this theory in a 2008 decision restricting the death penalty: “[C]apital punishment must ‘be limited to those offenders who commit “a narrow category of the most serious crimes” and whose extreme culpability makes them “the most deserving of execution.”’¹⁷

However, the notion that tens of thousands of eligible cases are carefully narrowed down to the worst ones does not withstand scrutiny. Many factors determine who is ultimately executed in the U.S.; often the severity of the crime and the culpability of the defendant fade from consideration as other arbitrary factors determine who lives and who dies.

The System of Selection

The system is too fraught with variables to survive. Whether or not one receives the death penalty depends upon the discretion of the prosecutor who initiates the proceeding, the competence of counsel who represents the defendant, the race of the victim, the race of the defendant, the make-up of the jury, the attitude of the judge, and the attitude and make-up of the appellate courts that review the verdict.

**-Judge H. Lee Sarokin, U.S.
Court of Appeals, Third Circuit
(ret.)**

Does the framework of guided discretion approved by the Supreme Court in 1976 achieve the goal of making the death penalty predictable and limited to the most heinous cases? On a national level, the answer clearly is “No.” The system was never designed to punish the worst offenders across the country. Some states have the death penalty and others do not. Many states that have the death penalty hardly ever use it, even for their worst offenders. Excluding Texas, Virginia and Oklahoma, the rest of the country has averaged far less than one execution per state per year since the death penalty was reinstated, even when only states with a death penalty are counted.

Local Choices

Although disparities among the states in using the death penalty are allowable under the constitution, the overall justifications of retribution and deterrence become far less credible when the punishment is applied so rarely and so unevenly. However, wide disparities in the use of the death penalty *within* a single state also raise serious questions about equality under law. Jurisdictions like Harris County (Houston), Maricopa County (Phoenix), and Philadelphia have produced hundreds of death sentences, while other counties within the same state have few or no death sentences.¹⁸ In almost all states, the decision to seek the death penalty is not made by a central state entity that evaluates the relative severity of committed homicides; rather, the charging decision is left to the discretion of the district attorney of each county. Prosecutors differ widely on what they consider to be the worst cases, and even on whether the death penalty should be sought at all. A defendant’s chances of being sentenced to death may vary greatly depending on which side of the county line he committed a murder.

Jury Discretion and Understanding

Following the decision to seek death by the local prosecutor, the next critical stage for choosing between life and death occurs at the sentencing phase of the trial, where typically a jury decides a convicted defendant’s fate. An individual juror, however, has no way of comparing the case under consideration with other cases in the state. For most jurors, this will be the only capital case they will ever decide. Strong emotions can easily take over as they inspect 8-by-10 glossies of the victims at the crime scene or hear heart-breaking testimony from the victim’s family. Some defendants will be spared and others condemned, but in the absence of evidence of more egregious cases, most murders can be made to look like one of the worst.

Another difficulty jurors face is that to make their sentencing decision they are given vague instructions with legal terms they do not fully understand. (See, e.g., an excerpt from an Ohio jury instruction in a capital case in the endnote below.¹⁹) Although the language may be clear to lawyers and judges, numerous studies have documented the misunderstandings that jurors have about their instructions in death penalty cases.²⁰

Uneven Appellate Review

At the third key stage of the judicial process—appellate review by the state’s highest court—there could be an opportunity, called “proportionality review,” to compare a death sentence with sentences given for similar crimes in the state. However, the practice has largely been abandoned, even where it was attempted.

In 1976 the U.S. Supreme Court in *Gregg v. Georgia* approved Georgia’s

statute, referring favorably to the provision on proportionality review. However, in 1984, in *Pulley v. Harris*,²¹ the U.S. Supreme Court rejected the principle that every state was required to systematically review whether a given death sentence was justified when compared to similar offenses in the state. Proportionality review in almost all states is now, if it occurs at all, a perfunctory process, allowing a death sentence if death sentences were given in one or more similar cases, but ignoring the vast majority of similar cases which resulted in life sentences.²² Once a death sentence has been upheld for a particular factual scenario, a death sentence in a subsequent similar crime will not be deemed disproportionate. This process results only in a lowest common denominator for a death sentence, not a search for the worst of the worst.

Thus, in our death penalty system thousands of cases go through the initial stages of prosecution and sentencing with the public assuming that the relative few that emerge are the ones most deserving of death. Appellate review, however, in both state and federal courts, then finds that prejudicial mistakes were made in two-thirds of these cases, resulting in the death sentences being overturned.²³ The stated reasons for these reversals often have nothing directly to do with the proportionality of the sentence to the crime. Cases are overturned because defense lawyers failed to perform their professional duties at trial, prosecutors withheld exculpatory evidence, or the jury was improperly selected, among many reasons. When these cases are retried (or reconsidered by the prosecution), the judgment most often changes to a life sentence, or less. No longer are these defendants deemed the worst of the worst, even though the facts of the crimes remain the same.

There are many people who commit heinous crimes, and I'd be the first to stand up with emotion and say they should lose their lives. But when I look at the unfairness of it, the fact that the poor and people of color are most often the victims when it comes to the death penalty, and how many cases we've gotten wrong now that we have DNA evidence to back us up, I mean, it just tells me life imprisonment is penalty enough.

-Sen. Dick Durbin (IL)²⁴

These reversals challenge the death-penalty selection process in two ways: first, prosecutors, juries, and judges are often making critical decisions on the basis of incomplete or incorrect information. Some of the errors, but by no means all, are caught. A defendant can have a bad lawyer at trial and another bad lawyer on appeal, so there is no one to remedy the deficiencies of the first lawyer. Evidence withheld at trial by the prosecution is not always uncovered during appeals. So, even when a defendant is near execution, critical facts bearing on the appropriateness of the sentence may remain unrevealed.

The second way in which the appeals process contributes to the arbitrariness of the death penalty is that reversals are very uneven from state to state. Virginia, for example, is the second leading state in terms of executions. Between 1973 and 1995, the Virginia Supreme Court overturned only 10% of the death sentences reviewed, compared to a national reversal rate of 41%.²⁵ At the next level, Virginia's cases are reviewed by federal courts of the Fourth Circuit, which had the lowest record of reversals in capital cases in the entire country during the same period.²⁶ As a

result, about 70% of Virginia's death sentences have resulted in executions, compared to 15% nationally. In California from 1997 to 2010, close to 90% of the Supreme Court's capital cases were affirmed, a rate higher than any other state's.²⁷

Compare this to Mississippi, where from 1973 to 1995, 61% of the capital cases reviewed were reversed by the state Supreme Court; or North Carolina, where also 61% were reversed; or South Carolina, where 54% were reversed.²⁸ Such wide disparities in reversal rates raise the specter of uneven application of the law.

Examining what happens to death-sentenced defendants the second time through the system demonstrates the critical importance of a reversal in a death penalty case:

- In **North Carolina**, about 2/3 of the death penalty cases that completed the review process were reversed. About 65% of the defendants in those cases were given life sentences or less as the final disposition of their cases; another 9% died in prison of natural causes.²⁹
- As of 2009, **Pennsylvania**, with the fourth largest death row in the country, has had 124 death sentences reversed on appeal. When these cases were retried or

otherwise resolved, 95% resulted in a life sentence, or less. The state has had 3 executions in 30 years, all involving defendants who abandoned their appeals.³⁰

- In **Washington**, 18 death sentences have been reversed; none resulted in death sentences the second time around.³¹
- In **New York** and **New Jersey**, no case made it through the entire appeals process to execution, and both states have now abandoned the death penalty.

Nationally, the most comprehensive study of death penalty appeals found that two-thirds of death sentences were overturned, and upon reconsideration over 80% received an outcome of less than death.³² In all of these re-sentencings, the judgment went from "worst of the worst" to something less severe—the difference between life and death.

In sum, this is a broken and unreliable system, compounded by wide disparities between states. In some states most death sentences are overturned and almost no one is executed, but in others, like Texas and Virginia, where reversals are rare, over 575 people have been executed since 1976, almost half of the national total.

III. The Great Divide

I have been a judge on this Court for more than twenty-five years . . . After all these years, however, only one conclusion is possible: the death penalty in this country is arbitrary, biased, and so fundamentally flawed at its very core that it is beyond repair.

-Judge Boyce Martin, U.S. Court of Appeals, Sixth Circuit

When Gary Ridgway, the worst mass murderer in this state's history, escapes the death penalty, serious flaws become apparent. The Ridgway case does not 'stand alone,' as characterized by the majority, but instead is symptomatic of a system where all mass murderers have, to date, escaped the death penalty . . . The death penalty is like lightning, randomly striking some defendants and not others.

-Justice Charles Johnson, Washington Supreme Court³³

Both our general prison population and death row contain dangerous individuals convicted of serious crimes. But it would be hard to predict whether an inmate ended up on death row or in the general prison population if you were to examine only the facts of the crime. It would be even harder to foresee who would eventually be executed. The fact that a condemned inmate was in Texas or Virginia would be a far better predictor of execution than the facts of the crime.

There are many reasons why a particular defendant does not receive the death penalty. He could be in a state that

does not have capital punishment, such as Wisconsin's Jeffrey Dahmer, a serial killer and sex offender who received a life sentence. He may have information to offer the prosecution in exchange for a plea bargain, such as former FBI Agent Robert Hanssen, who was charged with espionage and faced a federal death sentence before cooperating with the government.³⁴ Those involved in organized-crime killings may also receive leniency because of the information they can offer. Often the most notorious cases receive the best legal defense, making a death sentence less likely, even for horrific crimes.

Who is executed?	Who is spared?
<p>Clarence Carter was executed in Ohio on April 12, 2011, for the murder of another inmate. The former Director of Ohio Prisons, Terry Collins, urged the governor to spare Carter because "It is much more likely that this was an inmate fight that got tragically out hand. Inmate-</p>	<p>Eric Rudolph admitted killing two people and injuring 150 others by carrying out a series of bombings at a gay nightclub, abortion clinics, and the 1996 Olympics in Atlanta. He finally was captured in 2003. In separate plea</p>

<p>on-inmate violence in lockups is often pursued to establish oneself as fearsome and to deter others from threatening or attacking the inmate." There was no evidence that Carter planned to kill the inmate during the fight.³⁵</p>	<p>agreements with the federal government and Georgia prosecutors, he avoided the death penalty and is serving four consecutive life sentences without the possibility of parole. Prosecutors spared Rudolph from execution in exchange for his guilty pleas and his information about the location of 250 pounds of dynamite he had hidden in the mountains of North Carolina.³⁶</p>
<p>Teresa Lewis was executed in Virginia in 2010. Requests for a commutation of her death sentence had come from mental health groups, the European Union, and novelist John Grisham. Many pointed to the fact that while Lewis was a conspirator in the crime, the two co-defendants who actually carried out the killings received life sentences. Information that became available after Lewis's trial showed she had an IQ of 72, one of the key components of intellectual disability that could have rendered her death sentence unconstitutional. A letter from one of the co-defendants in prison indicated he had manipulated Lewis into going along with the murder of her husband. While on death row, she reportedly was a great help to other prisoners.³⁷</p>	<p>James Sullivan, a millionaire and former fugitive on the FBI's most-wanted list, was captured in Thailand in 2002, four years after he was indicted on murder charges and 15 years after he paid a truck driver \$25,000 to kill his wife in Georgia. A jury sentenced him to life without parole.³⁸</p>
<p>Michael Richard needed the help of his sisters to dress himself until age 14. He cut his meat with a spoon because he could not use a knife. He was diagnosed as mentally retarded by Dr. George Denkowski, but Denkowski reversed himself after the District Attorney's Office intervened.³⁹ (Dr. Denkowski has since been barred from rendering further diagnoses of intellectual disabilities in Texas.) Richard was the last person executed in the U.S. in 2007. After the U.S. Supreme Court agreed to hear a challenge to lethal injection, every other defendant was granted a stay of execution. However, Richard's attempt to file a similar appeal was blocked because a Texas appellate judge refused to keep the courthouse open after 5 pm so his lawyers could file legal papers due that day.⁴⁰</p>	<p>In Washington in 2003, Gary Ridgway pleaded guilty to killing 48 people and received a life-without-parole sentence. He was called the "Green River Killer" because of the area in which his victims were found. He was spared the death penalty in exchange for a detailed confession about all of the young women he had murdered.⁴¹</p>

<p>Kelsey Patterson was executed in Texas in 2004 despite a highly unusual 5-1 recommendation for clemency from the Board of Pardons and Paroles. He had spent much of his life in and out of state mental hospitals, suffered from paranoid schizophrenia, and rambled unintelligibly at his execution. He had killed 2 people without warning or apparent motive.⁴²</p>	<p>Charles Cullen received 11 consecutive life sentences for killing as many as 29 intensive-care patients with fatal injections. In 2004 Cullen made a plea agreement with New Jersey and Pennsylvania prosecutors in which he offered to provide information about his crimes and the names of his victims in exchange for the states' agreement not to seek the death penalty.⁴³</p>
<p>Wanda Jean Allen was executed in Oklahoma in 2001. She was sentenced to death for killing her lover, Gloria Leathers, in Oklahoma City in 1988. The two women, who met in prison, had a turbulent relationship. Leathers' death followed a protracted argument between the couple that began at a local shop, continued at their home, and culminated outside a police station. Allen maintained she acted in self-defense. In 1995, a psychologist conducted a comprehensive evaluation of Allen and found "clear and convincing evidence of cognitive and sensori-motor deficits and brain dysfunction," possibly linked to an adolescent head injury.⁴⁴</p>	<p>Thomas Capano, a former state prosecutor and prominent Delaware lawyer, was convicted of murdering his mistress and dumping her body in the ocean. He was sentenced to death, but a state court overturned his sentence. In 2006, the state decided not to pursue the death penalty at retrial, with the original prosecutor stating, "The death penalty was always a secondary issue."⁴⁵</p>
<p>Manny Babbitt lived with his brother in California after being released from a mental institution. He had been suffering from post-traumatic symptoms ever since he returned from Vietnam in 1969. During the 77-day siege at Khe Sanh, Manny picked up pieces of the bodies of his fellow G.I.s. When he was wounded, he was evacuated in a helicopter on a pile of dead bodies. He later broke into the home of an elderly woman and beat her. She died of a heart attack. His brother turned him over to authorities, expecting his war-hero brother would receive the medical attention he needed. However, Babbitt was tried, sentenced to death and executed in 1999, shortly after receiving the Purple Heart in prison.⁴⁶</p>	<p>In 2003, Stephen "The Rifleman" Flemmi was allowed to plead guilty to 10 murders, drug trafficking, racketeering and extortion, as federal prosecutors agreed not to seek the death penalty against him in exchange for his cooperation with ongoing crime investigations. Under the terms of the agreement, Flemmi--who also admitted to murders in Florida and Oklahoma--will serve a life-without-parole sentence in a secure unit reserved for cooperating inmates. Among the murders committed by Flemmi were the murder of one girlfriend and the daughter of another.⁴⁷</p>

<p>Dwayne Allen Wright was executed in Virginia in 1998. Wright was 17 at the time of his crime, the product of a failed system of juvenile care in the District of Columbia. Wright had been admitted to St. Elizabeth's mental hospital and sent to two of the city's most notorious juvenile centers. He suffered from a number of mental problems and grew up with an incarcerated father, a mentally ill mother, and an older brother serving as his father until he was murdered when Wright was ten. At trial his lawyers played down these issues. Two jurors later said they would not have voted for death if they had known of his mental illness and intellectual shortcomings. Although Wright's case captured the attention of noted civil rights, religious and political leaders, he was shown no mercy. Wright was one of three juvenile offenders executed in Virginia after the death penalty was reinstated. The Supreme Court did not bar such executions of juvenile offenders until 2005.⁴⁸</p>	<p>Brian Nichols was in custody in a crowded Atlanta courthouse on a rape charge when he grabbed the gun of a deputy and shot and killed the judge and court reporter. While escaping from the courthouse, he killed a police deputy and U.S. Customs agent and took a woman hostage. He later agreed to turn himself in. His guilt was never in question, but after the state spent over \$3 million trying to sentence him to death, the jury could not agree on sentence and hence Nichols was sentenced to life without parole.⁴⁹</p>
<p>Harold McQueen was the first person executed in Kentucky in 35 years. McQueen was tried with his half-brother, Keith Burnell, for a robbery and murder. While Burnell's father paid for a private attorney, McQueen had a court-appointed lawyer who, at the time of trial, could be paid a maximum of only \$1,000 for handling the case. McQueen was electrocuted in 1997; Burnell was sentenced to prison and paroled shortly thereafter.⁵⁰</p>	<p>Oscar Veal was a contract killer for a large drug and murder-for-hire operation. Convicted of seven counts of murder and eight counts of racketeering conspiracy, in 2011 federal prosecutors agreed not to seek the death penalty against him in exchange for his testimony about a drug organization in Washington, D.C. Although prosecutors said, "[Veal] willingly and purposely killed seven men, motivated by both greed and the desire to please the other members of this violent gang," they called his cooperation "extraordinary by any measure" and recommended a prison sentence of 25 years.⁵¹</p>
<p>Jesse Dewayne Jacobs was executed in 1995 in Texas. After Jacobs's trial, at which he was accused of firing the murder weapon, the prosecution, in an unsuccessful attempt to get another death sentence against the co-defendant, reversed itself and claimed Jacobs did not do the shooting and did not even know that his co-defendant had a gun. Despite this</p>	<p>Juan Quintero, a Mexican immigrant with no identification papers, killed a Houston police officer after being stopped for speeding in Texas in 2006. Unlike many other foreign nationals, the Mexican government learned of his case and was able to provide assistance, bringing in a mitigation specialist and an</p>

<p>blatant inconsistency about who committed the murder, Jacobs's death sentence was upheld. The Vatican, the European Parliament, and some members of the U.S. Supreme Court objected to the state's misconduct. Justice Stevens wrote: "I find this course of events deeply troubling."⁵²</p>	<p>expert capital defender from Colorado. In 2008, a jury convicted Quintero of the murder, but at least 10 of the 12 jurors voted for a life-without-parole sentence instead of the death penalty. Houston is in Harris County, which has been called the "capital of capital punishment."⁵³</p>
<p>John Spenkelink was a 24-year-old former convict and drifter. He picked up a hitchhiker, another ex-convict, in the Midwest, and together they drove to Florida. Along the way the hitchhiker, who was larger and stronger, forced Spenkelink to have sexual relations with him and bullied him into playing Russian roulette. When they reached Tallahassee, Spenkelink discovered his abuser had also stolen his money. They fought, and Spenkelink shot the man to death. He was executed in 1979, the first person put to death in Florida after the death penalty was reinstated.⁵⁴</p>	<p>In a recent New York trial in which the federal government sought the death penalty for Vincent Basciano, who was already serving life without parole, the chief witness against him was Joseph Massino, another organized-crime figure. Massino was guilty of at least seven murders but escaped the death penalty because of his cooperation with the government.⁵⁵ He is serving numerous life sentences, but his testimony may win him further relief. In the end, Basciano was also given a life sentence by the jury, despite his conviction for murder, racketeering, and conspiracy.</p>
<p>Cameron Willingham was convicted of capital murder of his three children in Texas after arson investigators concluded an accelerant had been used to set three separate fires inside his home. The only other evidence presented by prosecutors during the trial included testimony from a jailhouse snitch and reports that Willingham was acting inappropriately after the fire. Before his execution in 2004, Willingham's attorneys presented the state's highest court and the governor with new testimony from a prominent fire expert questioning the conviction, but no stay was granted. Subsequently, four national arson experts concluded the original arson investigation was flawed and there was no evidence of a crime.⁵⁶</p>	<p>Ernest Ray Willis was sentenced to death in Texas for the 1986 deaths of two women who died in a house fire that was ruled arson. Investigators originally believed they had found an accelerant in the carpet. When officers at the scene of the blaze said Willis acted strangely, prosecutors arrested him. They used his dazed mental state at trial - the result of state-administered medication - to characterize Willis as "coldhearted" and a "satanic demon." Seventeen years later, the Pecos County District Attorney revisited the case after a federal judge overturned Willis' conviction. To review the original evidence, he hired an arson specialist, who concluded there was no evidence of arson. Willis was freed in 2004.⁵⁷</p>

Aside from the issue of mistakes, these cases show that society has priorities that supersede the demands for the death penalty, regardless of the severity of the offense. They indicate that executions of the worst offenders are not necessary for the safety of the public; if they were, the most notorious killers almost certainly would be executed. In the modern death penalty era, many of the country's most infamous offenders are serving life sentences in secure state and federal prisons, while those who have fewer resources, or no valuable information to barter, or who committed their crime in the "wrong" state or county, are executed.

Even in cases evoking national fear, a death sentence is not a predictable result. From 1978 to 1995, Theodore Kaczynski, the "Unabomber," sent 16 bombs to people at universities and airlines, killing 3 and injuring 23, resulting in a national manhunt and widespread public anxiety. Although the death penalty was originally sought, the case resulted in a plea bargain and a life-without-parole sentence in federal prison.⁵⁸ Skilled representation and Kaczynski's mental illness played a role in avoiding the death penalty, but as the cases above show, many mentally ill defendants meet a different fate.

Zacharias Moussaoui admitted his involvement in the 9/11 terrorist attacks in New York and Washington, D.C. that led to the deaths of over 3,000 people. He tried to represent himself in the sentencing phase of his federal trial in Virginia, but his abuse of the process led the judge to require experienced counsel to represent him. In 2006, a jury sentenced him to life without parole.⁵⁹

Even When Notorious Killers Are Executed, Arbitrariness Remains

Of course, some notorious offenders are executed. Timothy McVeigh was the first person executed under the reinstated federal death penalty for the 1995 bombing of the Oklahoma City building, in which 167 people died. However, his co-defendant, Terry Nichols, was given life sentences following convictions in both federal and Oklahoma courts, despite being found guilty of conspiracy in the same crime. Although Nichols was probably less culpable of the bombing than McVeigh, his crime was monumental compared to those of others who were executed.

Serial killer Ted Bundy was executed in Florida in 1990. Everyone knew of his crimes and smug demeanor. What many did not know was that Bundy was offered a plea bargain similar to that given other serial killers described above. His attorneys urged him to take the deal, which would have covered all of his offenses in Florida, but at the last minute he balked, perhaps attracted by the attention an execution could bring him. Bundy's crimes fit the profile of cases for which people believe the death penalty was designed, but in the end, he controlled the process. His unpredictable decision to seize the role of anti-hero, rather than a careful process of official decision-making, determined his fate.⁶⁰

Our criminal justice system is frequently confronted with dangerous individuals guilty of heinous crimes--yet almost all of them will remain in prison and never be executed. The few who are executed generally are not the most dangerous offenders. They may not have had information to offer the prosecution, or they may have adamantly refused a plea bargain. They are put to death many years, and sometimes decades,

after their crime, and have often changed substantially from who they once were.

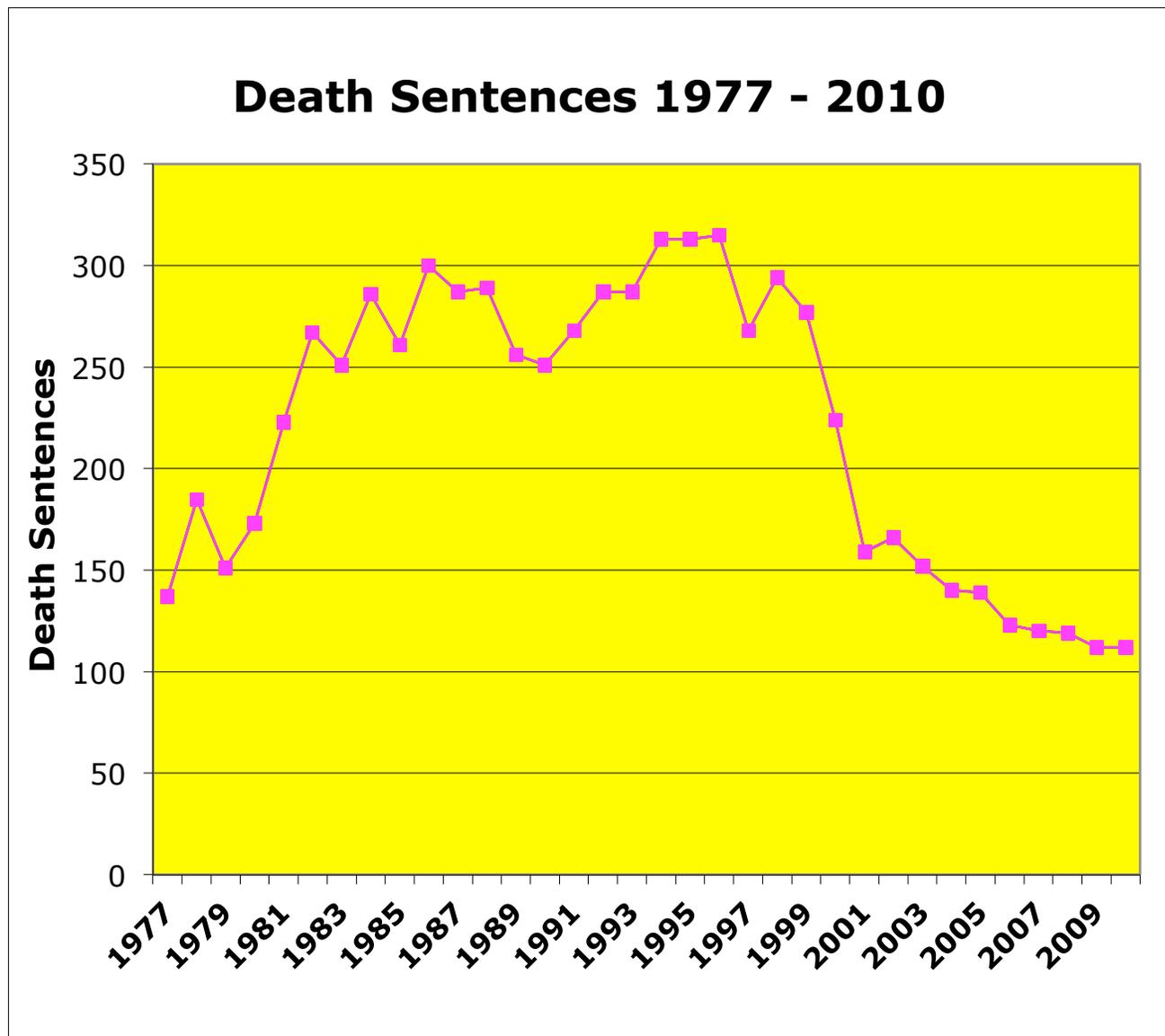
IV. The Judgment of Experts

Even before states tried to formulate a system that would satisfy the Supreme Court's concerns about the arbitrariness of the death penalty, experts warned it was a futile endeavor. In 1953, the British Royal Commission studied the death penalty and concluded, "No formula is possible that would provide a reasonable criterion for the infinite variety of circumstances that may

affect the gravity of the crime of murder."⁶¹ Ultimately, the Commission recommended that the death penalty in Great Britain be ended, and in 1973 it was.

The American Law Institute, authors of the Model Penal Code, agreed the death penalty could not easily be put into a set of rules for jurors to follow: "[T]he factors which determine whether the sentence of death is the appropriate penalty in particular cases are too complex to be compressed within the limits of a simple formula"⁶²

Nevertheless, in 1976 the Court approved a list of aggravating and mitigating factors when it allowed the death penalty to



resume. By a vote of 7 to 2, the Court approved Georgia's framework of guided-discretion in *Gregg v. Georgia*.⁶³ Justices Thurgood Marshall and William Brennan, believing the death penalty could not be saved by merely amending the old statutes, dissented.

A Majority of the 1976 Justices

It now appears that at least three of the Justices in the *Gregg* majority would belatedly have joined Justices Marshall and Brennan if they had had the opportunity. One of those Justices was Harry Blackmun, who famously announced his reconsideration of the death penalty in 1994, shortly before he left the bench. He concluded the theory he had upheld in 1976 had not worked in practice:

From this day forward, I no longer shall tinker with the machinery of death. For more than 20 years I have endeavored--indeed, I have struggled--along with a majority of this Court, to develop procedural and substantive rules that would lend more than the mere appearance of fairness to the death penalty endeavor. Rather than continue to coddle the Court's delusion that the desired level of fairness has been achieved and the need for regulation eviscerated, I feel morally and intellectually obligated to concede that the death penalty experiment has failed.⁶⁴

Justice Lewis Powell came to a similar conclusion after retiring from the Court. He told his biographer, James Jeffries, that his approval of the death penalty while on the Court was the one area he had come to regret: "I have come to think that capital punishment should be abolished."⁶⁵

Finally, Justice John Paul Stevens, who remained on the Court for almost the entire 35 years of the post-*Gregg* era, gradually became convinced the death penalty is unconstitutional:

[T]he imposition of the death penalty represents "the pointless and needless extinction of life with only marginal contributions to any discernible social or public purposes. A penalty with such negligible returns to the State [is] patently excessive and cruel and unusual punishment violative of the Eighth Amendment."⁶⁶

Thus if the composition of the Court at the time of *Gregg* in 1976 were in place today, the vote on the constitutionality of the death penalty would be at least 5-4 in favor of banning capital punishment.

Prominent Legal Organizations

The conclusion of the Justices that the death penalty should be reconsidered in light of its record since 1976 was echoed by the prestigious **American Law Institute** (ALI), an organization comprising the country's leading jurists and legal scholars. Although the ALI had been skeptical about providing adequate guidance to juries on death sentencing, it nevertheless had offered as part of the Model Penal Code a framework of aggravating and mitigating factors, which many states followed. Recently, however, the ALI decided that the entire framework should be withdrawn. In 2009, while not taking a stand on the death penalty itself, the ALI voted to rescind the parts of their Model Penal Code dealing with the death penalty because the attempt to channel the death penalty toward only the worst offenders had failed. The report submitted by the ALI Council to its members stated:

Unless we are confident we can recommend procedures that would meet the most important of the concerns, the Institute should not play a further role in legitimating capital punishment, no matter how unintentionally, by retaining the section in the Model Penal Code.⁶⁷

The ALI based its withdrawal from the death penalty arena on a research report it commissioned from law professors Carol and Jordan Steiker. Their thorough analysis of the modern death penalty concluded:

The foregoing review of the unsuccessful efforts to constitutionally regulate the death penalty, the difficulties that continue to undermine its administration, and the structural and institutional obstacles to curing those ills forms the basis of our recommendation to the Institute. The longstanding recognition of these underlying defects in the capital justice process, the inability of extensive constitutional regulation to redress those defects, and the immense structural barriers to meaningful improvement all counsel strongly against the Institute's undertaking a law reform project on capital punishment, either in the form of a new draft of § 210.6 or a more extensive set of proposals. Rather, *these conditions strongly suggest that the Institute recognize that the preconditions for an adequately administered regime of capital punishment do not currently exist and cannot reasonably be expected to be achieved.*⁶⁸

Other leading organizations have come to similar conclusions about the state of the death penalty since the *Gregg* decision in 1976. The **American Bar Association**,

after years of advocating reforms to the death penalty system, agreed in 1997 to call for a moratorium on all executions. That resolution remains in force today. The report supporting this historic step stated:

Two decades after *Gregg*, it is apparent that the efforts to forge a fair capital punishment jurisprudence have failed. Today, administration of the death penalty, far from being fair and consistent, is instead a haphazard maze of unfair practices with no internal consistency.⁶⁹

The Constitution Project, a non-profit organization of legal experts focused on reforming the justice system, similarly reviewed the status of the death penalty, issuing a report in 2001 entitled "Mandatory Justice: Eighteen Reforms to the Death Penalty." It called for a series of legislative steps to bring the death penalty into compliance with minimal constitutional requirements. On the problem of arbitrariness identified by the Supreme Court in 1972, it concluded little had changed:

We are now faced with state systems that vary vastly from one another, but most of which pose almost as great a risk of arbitrary, capricious, and discriminatory application as three decades ago, when the Court called for reform in *Furman v. Georgia*.⁷⁰

Few of its recommendations have been adopted.

Other Jurists

Other prominent individuals have also weighed in on the continuing problem of arbitrariness in the death penalty. Retired Federal Appeals Court Judge H. Lee Sarokin recently offered a harsh critique of

the system. Citing the arbitrariness at every level, Judge Sarokin concluded the death penalty should not be permitted to continue:

*The system is too fraught with variables to survive. Whether or not one receives the death penalty depends upon the discretion of the prosecutor who initiates the proceeding, the competence of counsel who represents the defendant, the race of the victim, the race of the defendant, the make-up of the jury, the attitude of the judge, and the attitude and make-up of the appellate courts that review the verdict.*⁷¹

Judge Boyce F. Martin, Jr. of the U.S. Court of Appeals for the Sixth Circuit reached a similar conclusion:

I have been a judge on this Court for more than twenty-five years. In that time I have seen many death penalty cases and I have applied the law as instructed by the Supreme Court and I will continue to do so for as long as I remain on this Court. This my oath requires. After all these years, however, only one conclusion is possible: *the death penalty in this country is arbitrary, biased, and so fundamentally flawed at its very core that it is beyond repair.*⁷²

Finally, former Chief Justice Deborah Poritz of the New Jersey Supreme Court, reflecting on her years of trying to make the state's death penalty fair, said, "We really can find no way to do this that will take the arbitrariness out of the system."⁷³

Public Opinion

Legal experts are not the only ones concerned about the arbitrary nature of the death penalty. Whatever their views about the death penalty in theory, the public is

very concerned about the manifest unfairness in its application. In a 2010 national survey of registered voters by Lake Research Partners,⁷⁴ respondents rated the problem of unfairness as one of the top reasons to replace the death penalty with a sentence of life in prison, ranking it high, along with their concerns about innocence and the frustration the death penalty causes victims' families. Sixty-nine percent (69%) found the following statement convincing:

Our criminal justice system should treat all people equally, regardless of how much money they make, where they live, or the color of their skin. In reality, the death penalty is applied unevenly and unfairly, even for similar crimes. Some people are sentenced to die because they couldn't afford a better lawyer, or because they live in a county that seeks the death penalty a lot. A system that is so arbitrary should not be allowed to choose who lives and who dies.⁷⁵

Men and women, young and old, black and white, all rated unfairness as the concern they found most convincing among the problems with the death penalty. The perception that the death penalty is not fairly administered has led many people to support repeal of capital punishment. In the same survey, when asked what the proper punishment for murder should be, 61% opted for various forms of a life sentence, and only 33% said the punishment should be the death penalty.⁷⁶

These doubts about the death penalty have contributed to the dramatic 60% decline in new death sentences in the past decade, even in states like Texas.⁷⁷ These doubts also make it difficult to select a jury in a capital case. Prospective jurors are quizzed about their views on the death penalty, and those who express serious concerns about applying it can be dismissed

by the judge or prosecution. In a separate survey, almost 40% of Americans said they believe they would be eliminated from serving on a death penalty jury because of their views on capital punishment. The percentage among some minorities was even higher.⁷⁸

V. Influences on the Decision for Death

I never saw a way that you could make the death penalty consistent across jurisdictions, juries, counties, and prosecutors.

- Dee Joyce Hayes, 20-year veteran prosecutor and former St. Louis Circuit Attorney

Although the application of the death penalty remains arbitrary, the choice of who is executed and who is spared is not random. Today's death penalty is not only determined by factors having little to do with the severity of the crime or the culpability of the criminal, but it also is unfairly applied, in that the determinative factors often are the same ones that repeatedly have marred our commitment to equal justice.

Influence of Race

One of the strongest determinants of who gets the death penalty is the race of the victim in the underlying murder. If one kills a white person, one is far more likely to get the death penalty than if one kills a member of a minority. This has been demonstrated for at least 25 years, and reinforced by careful statistical studies in almost all death penalty states and by several review commissions.

As far back as 1990, the U.S. General Accounting Office reviewed studies on race and the death penalty and concluded:

In 82% of the studies [reviewed], race of the victim was found to influence the likelihood of being charged with capital murder or receiving the death penalty, i.e., those who murdered whites were found more likely to be sentenced to death than those who murdered blacks. This finding was remarkably consistent across data sets, states, data collection methods, and analytic techniques.⁷⁹

One of the most comprehensive studies of race and the death penalty was conducted by Professor David Baldus in preparation for a case eventually reviewed by the U.S. Supreme Court. Professor Baldus and statisticians at the University of Iowa reviewed over 2,000 potential death penalty cases in Georgia and matched them with 230 variables that might influence whether a defendant would receive a death sentence. After extensive review, they concluded that the odds of receiving the death penalty in Georgia were 4.3 times greater if the defendant killed a white person than if he killed a black person.⁸⁰

Ultimately, the Supreme Court upheld Georgia's death penalty system by a vote of 5-4.⁸¹ The Court assumed the validity of the Baldus study and recognized that inequities existed in the criminal justice system. However, the Court was unwilling to reverse McCleskey's death sentence on the basis of this statistical study. Doing so would have, in the Court's view, threatened the entire criminal justice system.

In his dissent in *McCleskey*, Justice Brennan eloquently summarized the impact of Baldus's findings on individual defendants:

At some point in this case, Warren McCleskey doubtless asked his lawyer whether a jury was likely to sentence him to die. A candid reply to this question would have been disturbing. First, counsel would have to tell McCleskey that few of the details of the crime or of McCleskey's past criminal conduct were more important than the fact that his victim was white. Furthermore, counsel would feel bound to tell McCleskey that defendants charged with killing white victims in Georgia are 4.3 times as likely to be sentenced to death as defendants charged with killing blacks. In addition, frankness would compel the disclosure that it was more likely than not that the race of McCleskey's victim would determine whether he received a death sentence Finally, the assessment would not be complete without the information that cases involving black defendants and white victims are more likely to result in a death sentence than cases featuring any other racial combination of defendant and victim. The story could be told in a variety of ways, but McCleskey could not fail to grasp its essential narrative line: *there was a significant chance that race would play a prominent role in determining if he lived or died.*⁸²

Subsequent studies in states around the country have revealed how pervasive this problem is. In a report prepared for the American Bar Association, Professors Baldus and Woodworth expanded on the GAO's review of studies on race discrimination in capital cases. They found relevant data in three-quarters of the states with prisoners on death row. In 27 of those states (93% of the studies), there was evidence of race-of-victim disparities, i.e., the race of the person murdered correlated

with whether a death sentence would be given in a particular case. In nearly half of those states, the race of the defendant also served as a predictor of who received a death sentence.⁸³

In Florida, for example, a defendant's odds of receiving a death sentence is 4.8 times higher if the victim is white than if the victim is black in similar cases. In Oklahoma the multiplier is 4.3, in North Carolina it is 4.4, and in Mississippi it is 5.5.⁸⁴

Since that review new studies have reached similar results. A study conducted by Professors Glenn Pierce and Michael Radelet and published in the 2011 *Louisiana Law Review* showed that in parts of Louisiana the odds of a death sentence were 2.6 times higher for those charged with killing a white victim than for those charged with killing a black victim.⁸⁵

A study of the death penalty in Arkansas published in 2008 showed similar racial patterns in sentencing. Professor Baldus examined 124 murder cases filed in one district from 1990 to 2005. After adjusting for factors such as the defendant's criminal history and the circumstances of the crime, black people who killed white people were significantly more likely than others to be charged with capital murder and sentenced to death.⁸⁶

A sophisticated statistical study of homicide cases in South Carolina by Professor Isaac Unah of the University of North Carolina at Chapel Hill and attorney Michael Songer found that prosecutors were more likely to seek the death penalty when the victim in the underlying murder was white or female:

South Carolina prosecutors processed 865 murder cases with white victims and sought the death penalty in 7.6% of them. By contrast, prosecutors sought the death

penalty in only 1.3% of the 1614 murder cases involving black victims. . . .The data further suggest that non-Whites are far more likely than Whites to be homicide victims in the state. About 62% of homicide victims in the study were non-Whites; virtually all of these victims were African American. . . . South Carolina prosecutors were 5.8 times as likely to seek the death penalty against suspected killers of Whites as against suspected killers of Blacks.⁸⁷

In a comprehensive study in 2005 covering 20 years and almost two thousand capital cases in Ohio, the Associated Press found the death penalty had been applied in an uneven and arbitrary fashion. The study analyzed 1,936 indictments reported to the Ohio Supreme Court by counties with capital cases from October 1981 through 2002 and concluded that offenders facing capital charges were twice as likely to be sentenced to death if they killed a white person than if they killed a black person. Death sentences were handed down in 18% of cases where the victims were white, compared with 8.5% of cases where victims were black.⁸⁸

Interaction With Geography

The reasons for racial disparities in death sentencing are not hard to find. For prosecutors and juries, choosing which cases are the worst and the most deserving of death is largely a subjective judgment. If the prosecutor is white, if the media highlights the death of a prominent white victim or if the jury is predominantly or entirely white, the perception that white-victim cases are more heinous, and thus more deserving of death, is predictable.

This is not necessarily the result of racial prejudice; it also can correlate with geography. Murders are affronts to the

community, but prosecutors in communities with largely black populations may believe their constituents are not as supportive of the death penalty, or that jurors in that community would be less likely to vote for the death penalty. Opinion polls appear to bear this out.

When selecting a jury, prosecutors with no racial agenda may still prefer an all-white jury because they believe such a jury would be more likely to convict the defendant and sentence him to death than a mixed-race jury. The system becomes self-reinforcing. For example, a prosecutor who knows the jury will be mainly black may choose not to seek the death penalty. The net result is a preference for white victims killed in predominantly white communities.

These race-correlated disparities in outcome may be explicable, but it does not follow that racial differences in death sentencing should be sanctioned in a criminal justice system committed to even-handed, non-arbitrary outcomes.

There's indifference to excluding people on the basis of race, and prosecutors are doing it with impunity. Unless you're in the courtroom, unless you're a lawyer working on these issues, you're not going to know whether your local prosecutor consistently bars people of color.

-Bryan Stevenson, Equal Justice Initiative

A recent study of the Equal Justice Initiative (EJI), a human rights and legal services organization in Alabama, found the practice of excluding blacks and other racial minorities from juries remains widespread

and largely unchecked, especially in the South. "Illegal Racial Discrimination in Jury Selection: A Continuing Legacy" revealed that Alabama courts have found racially discriminatory jury selection in 25 death penalty cases since 1987, and in some counties 75% of black jury pool members in capital cases were excluded.⁸⁹

The same study revealed that in Jefferson Parish, Louisiana, the Louisiana Capital Assistance Center found blacks were struck from juries more than three times as often as whites between 1999 and 2007. In North Carolina, at least 26 current death row inmates were sentenced by all-white juries. According to Bryan Stevenson, Executive Director of EJI, "There's indifference to excluding people on the basis of race, and prosecutors are doing it with impunity. Unless you're in the courtroom, unless you're a lawyer working on these issues, you're not going to know whether your local prosecutor consistently bars people of color."⁹⁰

Cases Cluster Within a State

Clearly the death penalty is applied unevenly around the country. Eighty-two percent (82%) of the country's executions occur in the South.

However, even within states death sentences and capital prosecutions typically cluster in a few areas.⁹¹ An investigation by seven Indiana newspapers in 2001 found that seeking the death penalty depended on factors such as the views of individual prosecutors and the financial resources of the county in which the crime was committed. Two Indiana counties have produced almost as many death sentences as all of the other Indiana counties combined.⁹²

When New York had the death penalty, upstate counties experienced 19% of the state's homicides but accounted for 61% of all capital prosecutions. Three counties (out of 62 in the state) were responsible for over one-third of all of the cases in which a death notice was filed.⁹³

A report by the ACLU of Northern California revealed that in 2009 three counties—Los Angeles, Orange, and Riverside—accounted for 83% of the state's death sentences.⁹⁴

A recent article in *Second Class Justice*, a blog dedicated to addressing unfairness and discrimination in the criminal justice system, cited figures from the American Judicature Society revealing that only 10% of U.S. counties accounted for all of the death sentences imposed between 2004 and 2009, and only 5% of the counties accounted for all of the death sentences imposed between 2007 and 2009. Even in states that frequently impose death sentences (such as Texas, Alabama, Florida, California, and Oklahoma), only a few counties produce virtually all of the state's death sentences. According to the study:

The murders committed in those counties are no more heinous than murders committed in other counties, nor are the offenders in those counties more incorrigible than those who commit crimes in other counties. Examination of prosecutorial practices demonstrate that some prosecutors seek death in cases in their jurisdictions while other prosecutors in the rest of the state do not seek death for the same—or even more aggravated—murders.⁹⁵

In Maryland for many years almost all of the death cases came from predominantly white Baltimore County, and almost none

from predominantly black Baltimore City. In 2002, Baltimore City had only one person on Maryland's death row, but suburban Baltimore County, with one tenth as many murders as Baltimore, had nine times as many on death row.⁹⁶

In Ohio's Cuyahoga County (Cleveland), a Democratic stronghold, just 8% of offenders charged with a capital crime received a death sentence. In conservative Hamilton County (Cincinnati), 43% of capital offenders ended up on death row.⁹⁷

Death penalty prosecutions in Missouri also illustrate the county-by-county arbitrariness across the country. St. Louis Circuit Attorney Jennifer Joyce, whose jurisdiction covers the city, has never taken a capital case to trial since her election in 2001, but Prosecuting Attorney Robert McCulloch, whose jurisdiction is the neighboring suburban county, has won death sentences against 10 people since 2000, although the county has only one-fourth as many murders as the city.⁹⁸ The two longtime Democrats have adjacent jurisdictions, one urban and one more rural.

The St. Louis Circuit Attorney's predecessor, Dee Joyce Hayes, after 20 years working as a prosecutor and circuit attorney, acknowledged she found death sentences arbitrary: "I never saw a way that you could make the death penalty consistent across jurisdictions, juries, counties, and prosecutors."⁹⁹

Political considerations

It's a roll of the dice. When I look at a lineup of a panel in this kind of case, you can almost go to the bank on what the result is going to be.

-Judge Nathaniel Jones, U.S. Court of Appeals, Sixth Circuit (ret.)

The death penalty has always been plagued with political influence. Elected prosecutors and judges know the power of seeking and supporting the death penalty when a murder shocks the community. More surprising is that even federal judges with lifetime appointments can be affected by politics in the death penalty decisions.

A *Cincinnati Enquirer* examination of death penalty decisions of the U.S. Court of Appeals for the Sixth Circuit, which considers cases from Ohio, Kentucky and Tennessee, revealed federal judges appear to vote consistently along party lines, thereby injecting arbitrariness into their death penalty rulings. The judges work mostly on randomly selected three-judge panels. Sixteen judges are eligible to sit on those panels, including nine Republican and seven Democratic appointees. Life-and-death decisions often hinge on the defendant's luck of the draw. A defendant who gets a panel with 2 liberals has a far greater chance of avoiding execution than one with 2 conservatives.

"It's a roll of the dice. When I look at a lineup of a panel in this kind of case, you can almost go to the bank on what the result is going to be," said Nathaniel Jones, a retired Sixth Circuit judge appointed by President Jimmy Carter.¹⁰⁰ Arthur Hellman, a University of Pittsburgh law professor added, "It looks very much like a lottery.

Literally, if someone lives or dies depends on the panel they get."¹⁰¹

According to the *Cincinnati Enquirer* investigation, appointees of President George H. W. Bush posted the most lopsided track record, voting 50-4 against granting inmates' capital appeals. President George W. Bush's appointees voted 34-5 against granting such appeals. By contrast,

President Carter's appointees voted 31-4 in favor of the inmates' appeals. Appointees of Presidents Clinton and Reagan were slightly less skewed. President Clinton's voted 75-32 in favor of inmates' appeals, and President Reagan's voted 39-13 against them. Ten of the 16 judges who currently hear Sixth Circuit death penalty appeals vote the same way (for or against the defendant) at least 80% of the time.

ARBITRARINESS IN THE COURTS: Votes in Capital Appeals by judges of the U.S. Court of Appeals for the Sixth Circuit

President Making Appointments	% of Votes by Judges Against Defendant	% of Votes by Judges for Defendant
Jimmy Carter	11%	89%
Ronald Reagan	75%	25%
George H.W. Bush	93%	7%
Bill Clinton	30%	70%
George W. Bush	87%	13%

Source: *Cincinnati Enquirer*, April 15, 2007.

Regardless of one's position on which set of judges was "correct," the influence of politics on what should be apolitical legal judgments is disturbing. Statistics like these do not prove that judges' decisions are influenced by their political leanings, but the stark contrast in outcomes strongly suggests that judgments in death penalty cases are subjective and influenced by other factors that interject a high degree of arbitrariness into the process.

Costs

Part of the reason why geography plays such a prominent role in determining the use of the death penalty is the disparate resources available to counties responsible for paying for capital prosecutions. Death penalty cases are exorbitantly expensive,

often putting them out of reach for smaller counties. For a poorer rural county, paying for one death penalty case has been compared to coping with the effects of a natural disaster, and may require an increase in taxes.¹⁰²

Texas prosecutors acknowledge that many smaller counties never send anyone to death row, partly because of a lack of funding. Wharton County District Attorney Josh McCown noted:

This is one of those things a district attorney doesn't like to talk about. You don't want to think that you're letting money come into play. You ought to consider the facts of a case and make your decisions in a vacuum. In a perfect world, that's the

way you do it. But in a county this size, you have to consider the level of expertise, the financial resources. If you don't, you're stupid. This is not a perfect system or a perfect world.¹⁰³

Michael Rushford, president of the Criminal Justice League Foundation, a California pro-death penalty advocacy group, said, "I've got to believe in some places that money becomes a problem. If it's going to clean out the budget, there may be some pressure not to go for the death sentence."¹⁰⁴

In Florida, a budget crisis has led to a cut in funds for state prosecutors. As a result, some prosecutors are cutting back on their use of the death penalty, and perhaps on other prosecutions. Florida State Attorney Harry Shorstein explained how available funds affect the administration of justice: "There will be cases that can't be tried. . . . We are strained to the breaking point. . . . Instead of seeking the death penalty, maybe we'll seek something else."¹⁰⁵

Other Factors

Several other factors that have nothing to do with the severity of the crime or the culpability of the criminal can affect the ultimate outcome of a capital case. States differ vastly in the quality of representation afforded indigent defendants. The number of attorneys assigned, their experience in death penalty matters, their rate of pay, and the funding made available for defense investigators and experts all affect a defendant's chances of avoiding a death sentence.¹⁰⁶

The same is true on appeal. There are no binding national standards for appellate representation, and states are not constitutionally required to provide attorneys

for death row inmates throughout the entire appeals process.¹⁰⁷ While some states have public defender offices completely dedicated just to comprehensive capital defense, others leave defendants with no representation for parts of their appeal. Although a few fortunate defendants have their appeals voluntarily taken on by large law firms that work for free and provide a high quality defense, many cases slip through the cracks—poorly defended at trial and even more poorly defended on appeal.

On rare occasions, the U.S. Supreme Court will review the quality of representation provided capital defendants, but the standard of review it and lower courts apply is highly deferential to the strategic decisions made by defense attorneys and to the state court that conducted or reviewed the trial. Even where inadequate representation is apparent, such as when a lawyer has slept through part of the trial or failed to investigate critical facts, a court may still affirm the death judgment on the rationale that in its view better representation would not have made a difference in the outcome.

Victim Impact Evidence

Since 1991 prosecutors have been allowed to interject another influential variable into death penalty sentencing trials: in-person statements from members of the victim's family about how they were affected by the murder. Although this may be accepted as a way to counterbalance evidence about the redeeming qualities or disabilities of the accused, it can introduce arbitrariness into the proceedings. Jurors are likely to be heavily influenced by emotional stories from distraught and angry family members about how the death of a loved one impacted them.¹⁰⁸ In contrast, some victims' families may oppose the death penalty; other victims may have no family at all.¹⁰⁹ Whether the defendant

receives a death sentence may be more heavily influenced by statements of the victim's family than by the crime he committed.

In a recent California case, the family of a murdered young woman was allowed to put on a lengthy video about their daughter's childhood, friends, and important life milestones. The video was carefully edited, accompanied by moving, professionally produced music; it concluded

with beautiful pictures of people—unrelated to the victim—riding horses in Canada as the music reached an emotional climax.¹¹⁰ This compelling video may have been the deciding factor in the jury's death sentence, even though it made the crime no worse than a similar one in which the victim had a tough life that was not amenable to a moving portfolio of a photogenic family.

VI. Conclusion

When the death penalty was permitted to go forward in 1976, many distinguished legal scholars warned that the task of creating an objectively fair system for deciding which criminals deserved to die and which should be allowed to live was impossible. A majority of those on the Supreme Court that approved the experiment ultimately concluded the attempt to fix the death penalty had failed.

Thirty-five years later a strong body of empirical evidence confirms that race, geography, money, politics, and other arbitrary factors exert a powerful influence on determining who is sentenced to death. This is the conclusion not only of experts, but increasingly that of the general public as well. Unfairness ranks near the top of the American public's concerns about the death penalty.

As the use of the death penalty has declined, the rationale for its continuation has disappeared. With defendants already facing life without parole, no one is likely to be deterred by an added punishment that is rarely imposed and even more rarely carried out many years later, and that is dependent on so many unpredictable factors. Nor does the wish for retribution justify a death penalty that is applied so sporadically. The reality is that those in society generally, and those families of murder victims in particular, who look to an execution to counter a terrible homicide will very likely be disappointed. Very few of those cases result in execution, and those that do are often not the most heinous, but merely the most unlucky, recalling Justice Stewart's comparison in 1972 that receiving the death penalty is like being struck by lightning.

No longer looking only to the Supreme Court to review these issues, some states are choosing to act on their own. Four states in the past four years have abolished the death penalty, bringing the total of states without capital punishment to sixteen. As growing costs and stark unfairness become harder to justify, more states are likely to follow that path.

The post-*Gregg* death penalty in the United States has proven to be a failed experiment. The theory that with proper guidance to juries the death penalty could be administered fairly has not worked in practice. Thirty-five years of experience have taught the futility of trying to fix this

system. Many of those who favored the death penalty in the abstract have come to view its practice very differently. They have reached the conclusion that if society's ultimate punishment cannot be applied fairly, it should not be applied at all.

The Death Penalty Information Center (DPIC) 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 Institute, and the European Union. The contents of this document are the sole responsibility of DPIC and can under no circumstances be regarded as reflecting the position of the European Union or other donors.

Endnotes

- ¹ . *Furman v. Georgia*, 408 U.S. 238 (1972).
- ² . "Arbitrariness is pregnant with discrimination." *Furman*, 408 U.S. at 257 (Douglas, J., concurring).
- ³ . *Furman*, 408 U.S. at 310 (Stewart, J., concurring).
- ⁴ . *Id.* at 309.
- ⁵ . *Furman*, 408 U.S. at 313 (White, J., concurring).
- ⁶ . *Gregg v. Georgia*, 428 U.S. 153 (1976) and companion cases decided the same day.
- ⁷ . *Furman*, 408 U.S. at 312.
- ⁸ . From 1965 to 1972, there were a total of 10 executions in the country. Bureau of Justice Statistics, *Sourcebook of Criminal Justice Statistics* (2000), at Table 6.92.
- ⁹ . *Furman*, 408 U.S. at 293 (Brennan, J., concurring).
- ¹⁰ . The number of murders in 1999 was 15,552; in 2009, it was 15,241. FBI Uniform Crime Reports, U.S. Dept. of Justice (2010).
- ¹¹ . M. Wilson, "The Application of the Death Penalty in New Mexico, July 1979 through December 2007: An Empirical Analysis," 38 *New Mexico Law Review* 255 (2008).
- ¹² . Urban Institute, "The Cost of the Death Penalty in Maryland," March 2008.
- ¹³ . "Final Report Of The Death Penalty Subcommittee Of The Committee On Public Defense," Washington State Bar Association, December 2006 <<http://www.wsba.org/lawyers/groups/committeonpublicdefense.htm>>. Many of those who "volunteer" for execution are suffering from mental illness. See J. Blume, "Killing the Willing: 'Volunteers,' Suicide and Competency," 103 *Michigan Law Review* 939 (2005).
- ¹⁴ . Department of Public Advocacy Press Release, November 23, 2009.
- ¹⁵ . *The Oregonian*, May 6, 2011.
- ¹⁶ . Federal Death Penalty Resource Counsel, March 24, 2010, available at <http://www.capdefnet.org/FDPRC/pubmenu.aspx?menu_id=94&id=2094>.
- ¹⁷ . *Kennedy v. Louisiana*, No. 07-343 (U.S. 2008), slip op. at 9, citing *Roper v. Simmons*, 543 U.S. 551, 568 (2005) (quoting *Atkins v. Virginia*, 536 U.S. 304, 319 (2002)) (death penalty too extreme for crime of child-rape).
- ¹⁸ . See, e.g., F. Baumgartner, "[The Geography of the Death Penalty](#)," (2010), available at <<http://www.unc.edu/%7Efbaum/Innocence/NC/Baumgartner-geography-of-capital-punishment-oct-17-2010.pdf>>.

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27. Any one mitigating factor standing alone is sufficient to support a sentence of life imprisonment if the aggravating circumstance is not sufficient to outweigh that mitigating factor beyond a reasonable doubt. Also, the cumulative effect of the mitigating factors will support a sentence of life imprisonment if the aggravating circumstance is not sufficient to outweigh the mitigating factors beyond a reasonable doubt.

Hamilton County, Ohio, Public Defender memo < http://www.hamilton-co.org/pub_def/orders_and_entries.htm > (visited May 20, 2011).

²⁰ . See, e.g., W. Bowers, et al., "Foreclosed Impartiality in Capital Sentencing. Jurors' Predispositions, Guilt-Trial Experience, and Premature Decision Making," 83 Cornell L. Rev. 1476 (1998) (multi-state data).

²¹ . 465 U.S. 37 (1984).

²² . See, e.g., "Mandatory Justice: Eighteen Reforms to the Death Penalty," Constitution Project (2001), at 27.

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¹⁰⁸ . See R. Paternoster & J. Deise, "[A Heavy Thumb on the Scale: The Effect of Victim Impact Evidence on Capital Decision Making](#)," 21 *Criminology* 129 (2011).

¹⁰⁹ . See T. Mowen & R. Schroeder, "Not In My Name: An Investigation of Victims' Family Clemency Movements and Court Appointed Closure," 12 *Western Criminology Review* 65 (2011).

¹¹⁰ . See *Kelly v. California*, No. 07-11073 (U.S. Nov. 10, 2008) (Breyer, J., dissenting from denial of certiorari review) ("the film's personal, emotional, and artistic attributes themselves create the legal problem").

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

Washington, DC
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www.deathpenaltyinfo.org

Table of Contents

Executive Summary	iii
Introduction	1
The Death Penalty by County	3
A Geographic Snapshot of the Death Penalty	4
The Two-Percent National Death Penalty	6
A Few Counties Dominate Within States	11
Costs Borne by All	15
Legal Failings in Representative Counties	19
Conclusion	26
Appendices (top 2% counties)	27

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:

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

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.

The 2% Death Penalty, p.2

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.

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*].

The 2% Death Penalty, p.3

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

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

The 2% Death Penalty, p.4

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.

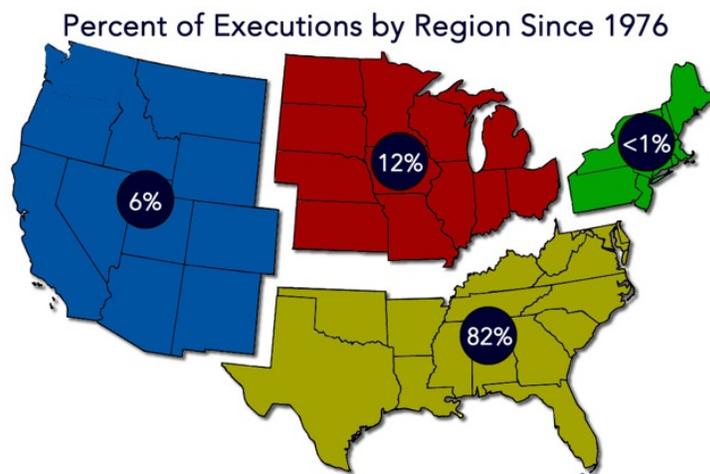
¹⁰ . *Pulley v. Harris*, 465 U.S. 37 (1984).

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 2% Death Penalty, p.5

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

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

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

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

2,294,706 (8.8%); Tarrant - population 1,446,219 (5.5%); Bexar - population 1,392,931 (5.3%).

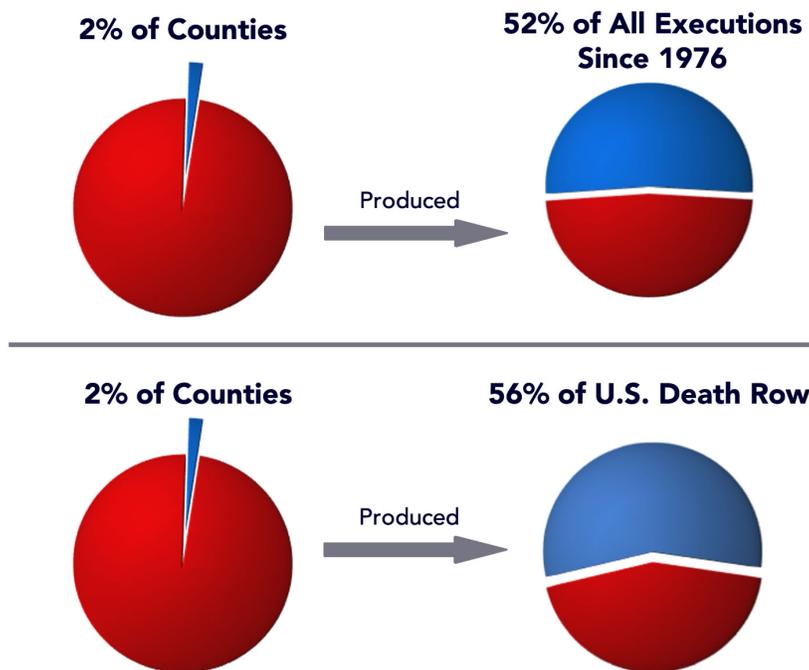
¹⁴ . See DPIC *Database*, note 11 above. As of July 30, 2013, Texas has carried out 502 executions; California has carried out 13.

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 2% Death Penalty, p.6

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

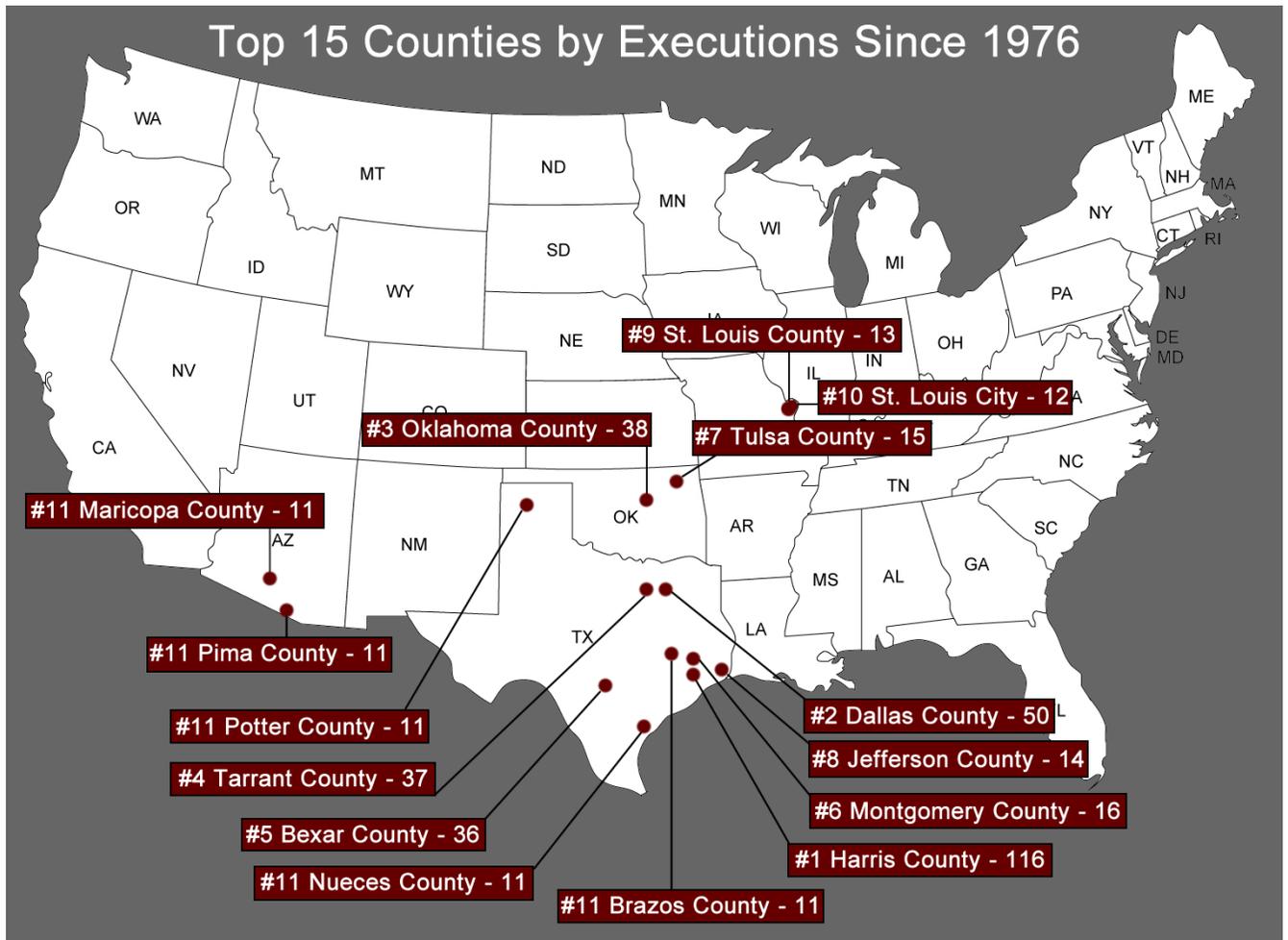
counties responsible for the inmates on death row, see note 15 above.

The 2% Death Penalty, p.7

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)

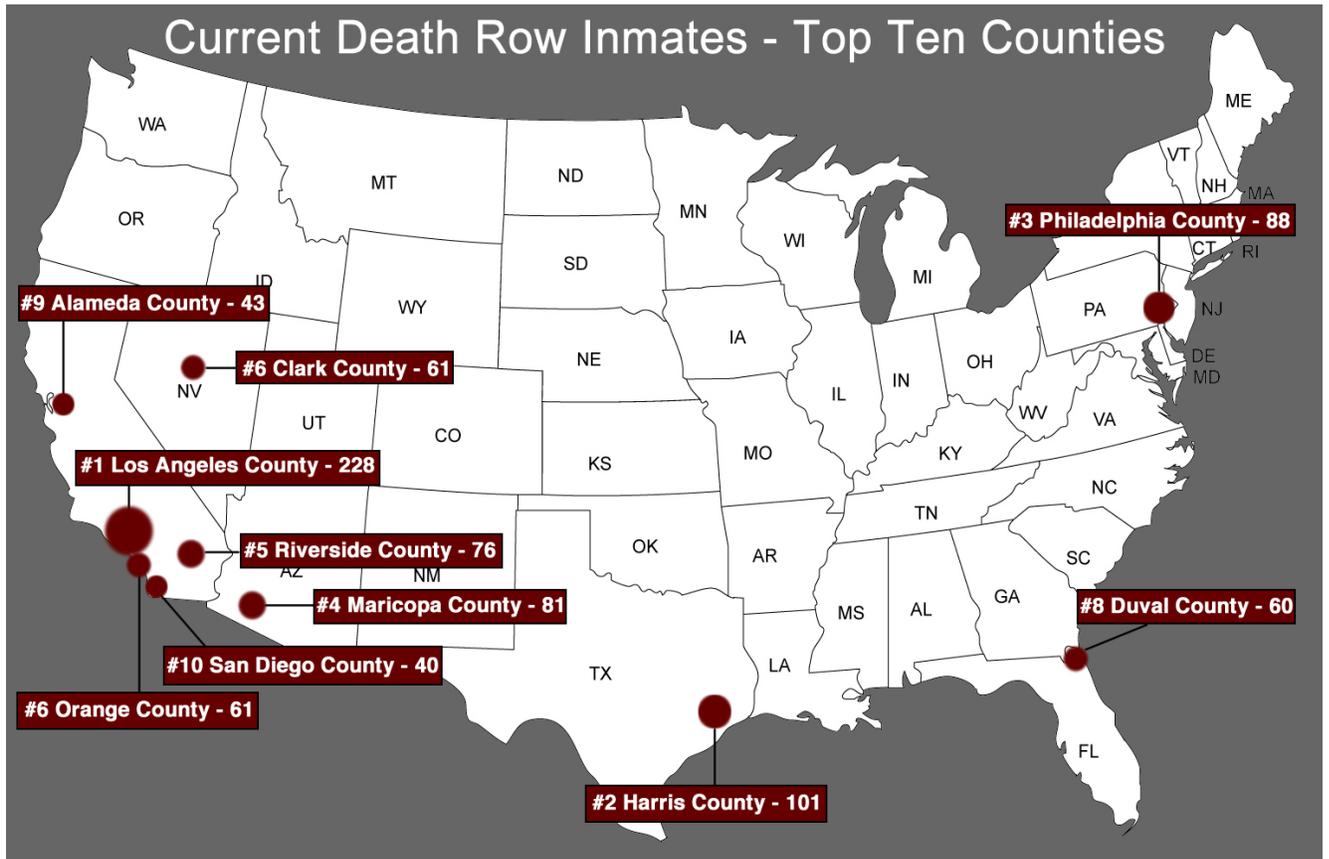


These 15 counties accounted for 30% of the executions in the U.S. since 1976, but are fewer than 1% of the counties in the U.S.

The 2% Death Penalty, p.8

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.



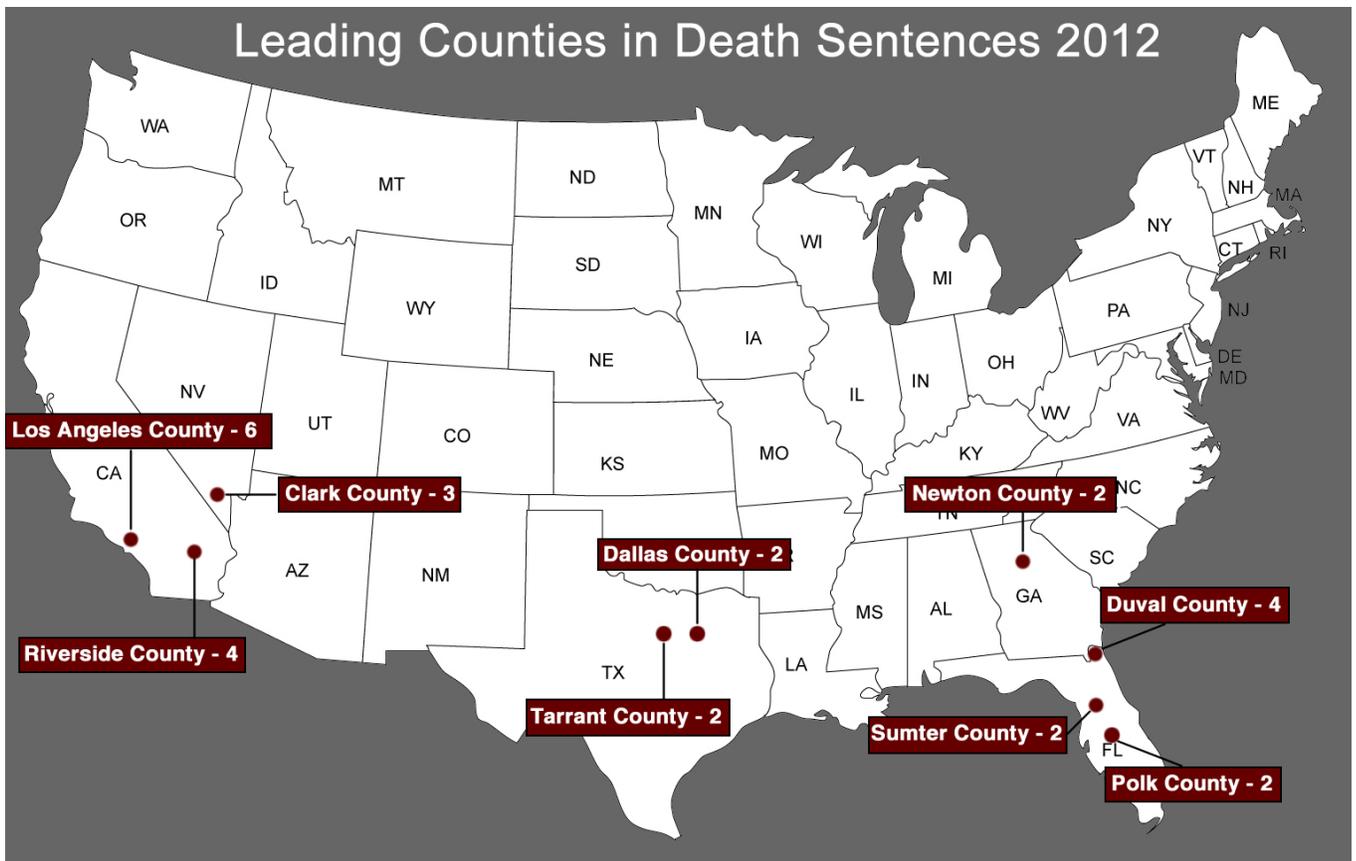
These 10 counties account for over 27% of all death row inmates as of Jan. 1, 2013, but are fewer than 1% of the counties in the U.S.

The 2% Death Penalty, p.9

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.

The 2% Death Penalty, p.10

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 sentence²¹ 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

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/broken_system2/ [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 2% Death Penalty, p.11

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 Practice²⁶**

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

²⁵ . *Id.* at 233.

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

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,

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).

The 2% Death Penalty, p.12

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

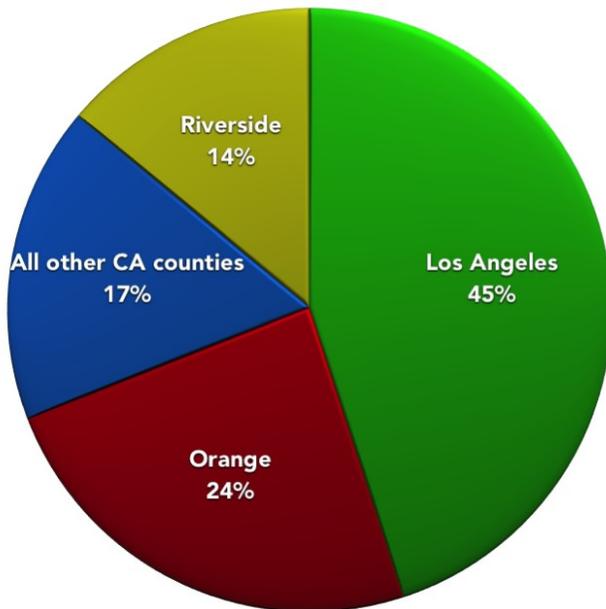
tolerating such immense geographic variation in capital sentencing.²⁸

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



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 2% Death Penalty, p.13

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

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.

The 2% Death Penalty, p.14

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

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).

The 2% Death Penalty, p.15

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.

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 2% Death Penalty, p.16

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

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.

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.

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

The 2% Death Penalty, p.17

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.

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).

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.)

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.

The 2% Death Penalty, p.18**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

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.

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 Minnesota 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

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

The 2% Death Penalty, p.19

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

bargain, thereby avoiding the possibility of a death sentence.

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,

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

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

The 2% Death Penalty, p.20

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.

The 2% Death Penalty, p.21

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

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

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 capital charged. The Maricopa County Attorney alleged that aggravator in 78% of its capital-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

⁵⁵ . *Id.*

⁵⁶ . *Id.* at 217.

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

The 2% Death Penalty, p.22

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 justice⁵⁸

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

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.

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

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.

The 2% Death Penalty, p.23

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.

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).

The 2% Death Penalty, p.24

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.

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

A recent study headed by Professor Steven Shatz of the University of San Francisco School of Law⁶⁸ 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

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.

The 2% Death Penalty, p.25

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.

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.

The 2% Death Penalty, p.27**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

The 2% Death Penalty, p.28

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%.)

The 2% Death Penalty, p.29**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

The 2% Death Penalty, p.30

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 2% Death Penalty, p.31

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.

The Federal Death Penalty

September 22, 2015

Since 1988, the federal government has taken to trial a total of 202 federal death penalty cases involving 295 defendants in 231 trials. These 295 defendants were culled from a larger pool of 498 against whom the Attorney General had authorized the government to seek the death penalty. Excluding 11 defendants who are awaiting or currently on trial on capital charges, 234 of the remaining 487 defendants avoided trial by negotiated plea, when the government dropped its request for the death penalty without a plea agreement, dismissed charges entirely or the judge barred the death penalty. Fourteen were found not guilty of the capital charge. Two others were declared innocent by the government. Charges were dismissed against a third when grave questions were raised about his guilt. There have been three executions. One death row inmate was granted clemency. In cases where juries actually reached the point of choosing between life and death, they imposed 151 (65%) life sentences and 81 (35%) death sentences. Of these 81 sentences of death, 3 defendants received a death sentence twice. Three additional defendants received death verdicts, but new trials were granted and life sentences resulted - one by jury, another by plea, a third by judge. The dispositions of these cases is summarized below:

Executed	3
Sentenced to death and now pending on appeal	11
Sentenced to death and now pending on 2255	49
Died Before Execution	1
Clemency	1
Awaiting retrial or re-sentencing after reversal	2
Death sentence vacated and request for the death penalty withdrawn	5
Life sentences imposed by juries (151) or judges (3)	154
Acquittal	14
Capital charges dismissed before trial on grounds of actual innocence	3
Dismissal of death penalty by Judge after death notice filed	26
Requests for the death penalty withdrawn by the government before trial	62
Requests for the death penalty withdrawn at trial	12
Capital prosecution discontinued by government due to plea bargain before trial	117
Capital prosecution discontinued by government due to plea bargain at trial	21
Committed suicide/died	3
Lesser included conviction	3
Incompetent after authorization	2
Awaiting or on trial on capital charges	9
TOTAL	498

Of the total of 498 defendants against whom the Attorney General has authorized the government to request the death penalty, 131 have been white, or 26%, 92 Hispanic, or 19%, 21 Asian/Indian/Pacific Islander/Native American/Filipino, or 4%, 3 Arab, or 1% and 251 African-Americans, or 50%. 367 of the 498, or 74%, of the defendants approved for a capital prosecution by the Attorney Generals to date are members of minority groups. Thirty-seven of the sixty defendants now on federal death row under active death sentences, or 62%, are non-white. 34, or 57%, of federal death row were convicted of killing whites.

**DECLARATION OF KEVIN McNALLY REGARDING
THE GEOGRAPHIC LOCATION OF CASES, THE FREQUENCY OF FEDERAL
DEATH SENTENCES AND THE RACE AND GENDER OF DEFENDANTS AND VICTIMS**

1. I currently serve as the Director of the Federal Death Penalty Resource Counsel Project, assisting court-appointed and defender attorneys charged with the defense of capital cases in the federal courts. I have served as Resource Counsel since the inception of the Resource Counsel Project in January, 1992. The Project is funded and administered under the Criminal Justice Act by the Defender Services Office of the Administrative Office of the United States Courts.

2. My responsibilities as federal resource counsel include the monitoring of all federal capital prosecutions throughout the United States in order to assist in the delivery of adequate defense services to indigent capital defendants in such cases. This effort includes the collection of data on the initiation and prosecution of federal capital cases.¹

¹The work of the Federal Death Penalty Resource Counsel Project is described in a report prepared by the Subcommittee on Federal Death Penalty Cases, Committee on Defender Services, Judicial Conference of the United States, FEDERAL DEATH PENALTY CASES: RECOMMENDATIONS CONCERNING THE COST AND QUALITY OF DEFENSE REPRESENTATION (May, 1998), at 28-30. www.uscourts.gov/dpenalty/1COVER.htm. The Subcommittee report “urges the judiciary and counsel to maximize the benefits of the Federal Death Penalty Resource Counsel Project ..., which has become essential to the delivery of high quality, cost-effective representation in death penalty cases ...” *Id.* at 50. An update to the Report states: “Many judges and defense counsel spoke with appreciation and admiration about the work of Resource Counsel. Judges emphasized their assistance in recruiting and recommending counsel for appointments and their availability to consult on matters relating to the defense, including case budgeting. Defense counsel found their knowledge, national perspective, and case-specific assistance invaluable.” <http://www.uscourts.gov/FederalCourts/AppointmentOfCounsel/Publications/UpdateFederalDeathPenaltyCases.aspx>

3. In order to carry out the duties entrusted to me, I maintain a comprehensive list of federal death penalty prosecutions and information about these cases. I accomplish this by internet news searches, by reviewing dockets and by downloading and obtaining indictments, pleadings of substance, notices of intent to seek or not seek the death penalty, and by telephonic or in-person interviews with defense counsel or consultation with chambers. This information is regularly updated and is checked for accuracy by consulting with defense counsel. The Project's information regarding federal capital prosecutions has been relied upon by the Administrative Office of the United States Courts, by the Federal Judicial Center and by various federal district courts.

4. This declaration concerns: (1) the frequency with which the federal death penalty has been sought and imposed since 1988; (2) the race of the defendants as to whom a capital prosecution has been authorized; (3) the frequency with which the federal death penalty is authorized and imposed on a regional basis; and (4) the race and gender of victims.

I.

**FREQUENCY WITH WHICH THE FEDERAL DEATH PENALTY
IS SOUGHT AND IMPOSED**

5. The Project has collected information regarding all federal executions and all potential and actual federal death penalty prosecutions initiated pursuant to 21 U.S.C. § 848(e) *et seq.*, enacted in 1988, and/or 18 U.S.C. §3591, *et seq.*, enacted in 1994.

6. Based on the Project's figures, as well as the reports published by the Department of Justice in September 2000 and June 2001, the "pool" of potential capital defendants in the federal system since 1988 totals 3,992. This figure is current as of September 8, 2015. This consists of, among others, 52 cases reviewed prior to the 1995 Death Penalty Protocols put into place by Attorney General Reno,² 682 reviewed by Ms. Reno after the Protocols went into effect (2000 DOJ Study), 638 reviewed by Attorney General Ashcroft (RCP total), 426 reviewed by Attorney General Gonzales (RCP total), 18 reviewed by Acting Attorney General Keisler (RCP total), 161 reviewed by Attorney General Mukasey (RCP total), 4 reviewed by Acting Attorney General Filip (RCP total), 968 reviewed by Attorney General Holder (RCP total) and 11 reviewed by Attorney General Lynch (RCP total). There are also an additional 303 cases identified by United States Attorneys as potential capital cases that were never submitted for review (2001 DOJ Report).³ The Project has also identified

²Prior to the Protocols, which went into effect on January 27, 1995, the Attorney General only reviewed those cases in which a United States Attorney requested permission to seek the death penalty. Potential capital cases where the local determination was not to seek the death penalty were not reviewed by Main Justice. The change wrought by the Protocols was a requirement that *all* potential death-penalty cases, whether the United States Attorney wished to pursue the death penalty or not, be submitted to Main Justice for review and a final decision by the Attorney General. However, the United States Attorney remained free to enter into a plea agreement specifying a sentence other than death. Attorney General Ashcroft required Main Justice review of all such proposed plea agreements in 2001.

³See the discussion of this figure at n. 10 of the June 2001 Supplemental Justice Department Study.

additional cases reviewed by the various Attorneys General as well as others that were never submitted for review and/or charged as capital offenses even though there was justification for doing so. Of the total of 3,992 potential federal capital defendants, 150 are currently pending review by the Department of Justice, bringing the total defendants reviewed so far to 3,842.

7. From this group of 3,842 potential capital defendants, a total of 498 defendants have actually been authorized for capital prosecution. Thus, the Department of Justice has authorized capital prosecutions involving approximately 13% (498/3,842) of the defendants against whom the penalty could have been sought. To date, juries have returned 81 death verdicts as to 78 different defendants (three of those defendants were sentenced to death at both an original trial and then, after having their death sentence overturned on appeal, again at a resentencing retrial). Three defendants have been executed.⁴ One defendant was granted clemency. There are 60 defendants presently on the federal death row under an active sentence of death. These cases are in various stages of review via direct appeal or post-conviction proceedings brought pursuant to 28 U.S.C. § 2255. There are 11 defendants presently pending or in trial who have been “authorized” by the Attorney General, including two defendants who were previously sentenced to death.

⁴Two federal executions took place in the year 2001 (Timothy McVeigh and Juan Garza) and one in the year 2003 (Louis Jones). Messrs. McVeigh and Jones were executed pursuant to the Federal Death Penalty Act of 1994. Mr. Garza was executed pursuant to the 1988 enactment, 21 U.S.C. § 848(e).

8. To date, juries have sentenced 151 defendants to a life sentence and 81 defendants to death. Judges have sentenced three defendants to life in prison.

II.

**RACE OF DEFENDANTS AUTHORIZED
FOR FEDERAL CAPITAL PROSECUTIONS**

9. The racial composition of the pool of 498 defendants whose cases were authorized for a federal capital prosecution is as follows: (A) African-American, 251 (50%); (B) Caucasian, 131 (26%); (C) Latino, 92 (19%); and (D), "other," 24 (5%). These figures are current as of September 8, 2015.

III.

RACE AND GENDER OF VICTIMS

10. Since 2000, in a grossly disproportionate number of cases, juries have imposed the death penalty when the victim was a white female. As of September 8, 2015, white female victim cases constituted 38% (23 of 60) of federal death row but only 8% (202 of 2470)⁵ of the available pool of potential defendants since the year 2000. Moreover, 45% (25 of 55) of all death sentences between 2000 and 2014 have involved white female victims. This is many times greater than one would expect given the pool of white female victim cases.

⁵We have information as to the race and gender of the victim for 2470 defendants (out of 2728).

11. Attached as Exhibit B is a 2008 declaration by undersigned describing 403 “completed” federal death penalty cases with race and gender information as to each defendant and victim. Attached as Exhibit C is a complete data set of all such cases as of September 2008.

12. Attached as Exhibit D is a 2008 declaration by an expert, Lauren Cohen Bell, Ph.D., which concludes that federal capital defendants accused of the murder of a white female are three times more likely than other federal capital defendants to be sentenced to death. Dr. Bell concludes: “[T]his correlation between white female victims and death sentencing is highly statistically significant, systemic, and not the result of chance.” [Exhibit D at 3]. Dr. Bell states that there is an “essentially zero” or “one in one thousand” chance that the race and gender of the victim is not related to the capital sentencing outcome. [Exhibit D at 4, 5, 6]. Attached as Exhibit E is Dr. Bell’s 2008 curriculum vita. This opinion holds regardless of the race of the defendant.

IV.

REGIONAL VARIATIONS

13. Based on figures compiled by the Death Penalty Information Center (current as of September 24, 2015) the states which currently lead the nation in post-*Gregg* executions are Texas (528), Oklahoma (112), Virginia (110) and Florida (90). The states whose federal districts have the most authorized federal death penalty prosecutions (including pending

cases) are Virginia (57), New York (45), California (42), Texas (31), Missouri (29) and Maryland (26). Federal districts in the following states have had more than one federal death sentence returned by juries: Texas (14), Missouri (10), Virginia (8), Louisiana (4), Georgia (3), Oklahoma (3), Maryland (2), Pennsylvania (2), Arkansas (2), California (2), Florida (2), Illinois (2), Iowa (2), New York (2), North Carolina (4), South Carolina (2), Massachusetts (2) and West Virginia (2). Of the 81 federal death sentences imposed by juries since 1988, 52 (or 64%) have come from the traditional “death belt” states, the states that have historically executed the most people.

14. The United States Courts system has 94 districts. Of those, 23 districts (or 24%) have never had a case authorized for a federal death penalty prosecution.⁶

15. There have been 10 federal death-penalty cases tried in the First Circuit involving a total of 12 defendants, as follows: 3 trials in the District of Massachusetts (3 defendants - 1 life sentence and 2 death sentences), 7 trials in the District of Puerto Rico (9 defendants - 2 acquittals and 7 life sentences). The First Circuit trials, involving 12 defendants, resulted in 2 death sentences (or 17%).

⁶1) M.D. Alabama; 2) S.D. California; 3) D. Delaware; 4) D. Guam; 5) C.D. Illinois; 6) M.D. Louisiana; 7) D. Maine; 8) D. Minnesota; 9) D. Montana; 10) D. Nebraska; 11) D. Nevada; 12) D. New Hampshire; 13) D. Northern Mariana Islands; 14) N.D. Oklahoma; 15) D. Oregon; 16) D. South Dakota; 17) D. Utah; 18) D. Virgin Islands; 19) E.D. Washington; 20) W.D. Washington; 21) E.D. Wisconsin; 22) W.D. Wisconsin and 23) D. Wyoming.

16. In the Second Circuit there have been 22 federal death-penalty cases tried in New York State involving a total of 31 defendants, as follows: 4 trials in the District of Connecticut (4 defendants - 1 acquittal, 2 life sentences and 1 death sentence), 1 trial in the District of Vermont (1 defendant - 1 death sentence), 12 trials (1 trial was a retrial) in the Eastern District of New York (12 defendants - 11 life sentences and 1 death sentence), 2 trials in the Northern District of New York (5 defendants - 1 authorization withdrawn at trial and 4 life sentences) and 6 trials in the Southern District of New York (9 - 1 guilty plea at trial, 1 acquittal and 7 life sentences). Only 1 death verdict has been returned.⁷ The Second Circuit's trials involving 31 defendants resulted in 3 death sentences (or 10%).

17. In the Third Circuit there have been 12 federal death-penalty cases tried, involving a total of 17 defendants, as follows: 2 trials in New Jersey (2 defendants - one life sentence, the other committed suicide at trial), 6 trials in the Eastern District of Pennsylvania (10 defendants resulting in 1 authorization withdrawn at trial, 3 guilty pleas at trial, 1 acquittal, 4 life sentences and 1 death sentence), 4 trials in the Middle District of Pennsylvania (4 defendants resulting in 1 authorization withdrawn at trial, 1 life sentence by the judge, 1 life sentence by the jury and 1 death sentence) and 2 trials in the Western District of Pennsylvania (2 defendants - 2 life sentences). The Third Circuit's trials involving 17 defendants resulted in 2 death sentences (or 12%).

⁷Ronell Wilson (ED NY) received a death sentence at his trial and at his resentencing after appeal.

18. In the Fourth Circuit there have been 46 federal death penalty cases tried, involving 70 defendants, as follows: 11 trials in the District of Maryland (13 defendants - 1 guilty plea at trial, 1 lesser included conviction, 8 life sentences by a jury and 1 life sentence by a judge and 2 death sentences), 3 trials in the District of South Carolina (3 defendants - 1 life sentence and 2 death sentences), 20 trials in the Eastern District of Virginia (35 defendants - 1 guilty plea at trial, 2 lesser included convictions, 2 acquittals, 22 life sentences by jury, 1 life sentence by judge and 7 death sentences), 2 trials in the Northern District of West Virginia (2 defendants - 1 guilty plea at trial and 1 dismissal after notice), 2 trials in the Southern District of West Virginia (1 trial resulting in 2 death sentences but a new trial was granted resulting in a guilty plea by one defendant and a life sentence from the jury for the other defendant), 5 trials in the Western District of North Carolina (5 defendants - 1 authorization withdrawn at trial, 1 life sentence and 3 death sentences) and 8 trials in the Western District of Virginia (10 defendants - 2 authorizations withdrawn at trial, 2 acquittals, 5 life sentences and 1 death sentence). The Fourth Circuit's trials involving 70 defendants resulted in 14 death sentences or (20%).

19. In the Fifth Circuit there have been 21 federal death penalty cases tried, involving 29 defendants, as follows: 5 trials in the Eastern District of Louisiana (5 defendants - but one defendant twice - so 6 outcomes) - 1 guilty plea at trial, 1 life sentence and 4 death sentences), 8 trials in the Eastern District of Texas (10 defendants - 5 life sentences and 5

death sentences), 5 trials in the Northern District of Texas (5 defendants - 1 life sentence and 4 death sentences), 2 trials in the Southern District of Mississippi (2 defendants - 2 life sentences), 3 trials in the Southern District of Texas (3 defendants - 1 life sentence and 2 death sentences), 1 trial in the Western District of Louisiana (1 defendant - 1 death sentence) and 2 trials in the Western District of Texas (3 defendants - 3 death sentences). The Fifth Circuit's trials involving 29 defendants resulted in 19 death sentences (or 66%).

20. There have been 16 federal death-penalty cases tried in the Sixth Circuit involving a total of 19 defendants, as follows: 3 trials in the Eastern District of Michigan (3 defendants - 1 guilty plea at trial and 2 life sentences), 1 trial in the Eastern District of Tennessee (1 defendant - 1 death sentence), 2 trials in the Middle District of Tennessee (2 defendants - 1 guilty plea at trial and 1 life sentence), 2 trials in the Northern District of Ohio (2 defendants - 2 life sentences), 3 trials in the Southern District of Ohio (3 defendants - 2 life sentences and 1 death sentence), 2 trials in the Western District of Kentucky (2 defendants - 2 life sentences), 3 trials in the Western District of Michigan (3 defendants - 2 life verdicts and 1 death verdict) and 2 trials in the Western District of Tennessee (3 defendants - 2 guilty pleas at trial and 1 life verdict). The Sixth Circuit's trials involving 19 defendants resulted in 3 death sentences (or 16%).

21. There have been 6 federal death-penalty cases tried in the Seventh Circuit, involving a total of 9 defendants, as follows: 5 trials in the Northern District of Illinois (5

defendants - 3 life sentences and 2 death sentences) and 3 trials in the Northern District of Indiana (4 defendants - 1 authorization withdrawn at trial, 2 life sentences and 1 death sentence). In the Seventh Circuit's trials involving 9 defendants, there have been 3 death verdicts (or 33%).

22. In the Eighth Circuit there have been 20 federal death penalty cases tried, involving 31 defendants, as follows: 1 trial in North Dakota (1 defendant - 1 death sentence), 3 trials in the Eastern District of Arkansas (4 defendants - 1 guilty plea at trial, 2 life sentences and 1 death sentence), 4 trials in the Eastern District of Missouri (5 defendants - 2 life sentences and 3 death sentences), 2 trials in the Northern District of Iowa (2 defendants - 2 death sentences), 2 trials in the Western District of Arkansas (2 defendants - 1 life sentence and 1 death sentence), 12 trials in the Western District of Missouri (17 defendants - 1 authorization withdrawn at trial, 9 life sentences and 7 death sentences). The Eighth Circuit's 31 defendants who went to trial resulted in 15 death sentences (or 48%).

23. There have been 11 federal death-penalty cases tried in the Ninth Circuit involving a total of 22 defendants, as follows: 7 trials in the Central District of California (15 defendants - 3 authorizations withdrawn at trial, 2 guilty pleas at trial, 2 acquittals, 6 life sentences and 2 death sentences), 1 trial in the District of Arizona (1 defendant - 1 death sentence), 1 trial in the District of Hawaii (1 defendant - 1 life sentence), 1 trial in the

District of Idaho (1 defendant - 1 death sentence), 1 trial in the Eastern District of California (1 defendant - 1 guilty plea at trial), 3 trials in the Northern District of California (3 defendants - 1 guilty plea at trial and 2 life sentences). There were 4 death verdicts returned in the Ninth Circuit in trials involving 22 defendants (or 18%).

24. In the Tenth Circuit there have been 13 federal death penalty cases tried, involving 18 defendants, as follows: 4 trials in the District of Colorado (4 defendants - 3 life sentences and 1 death sentence), 4 trials in the District of Kansas (4 defendants - 1 authorization withdrawn at trial, 2 life sentences and 1 death sentence), 4 trials in the District of New Mexico (4 defendants - 2 guilty pleas at trial and 2 life sentences), 4 trials in the Eastern District of Oklahoma (5 defendants - 2 life sentences and 3 death sentences) and 1 trial in the Western District of Oklahoma (1 defendant - 1 guilty plea at trial). The Tenth Circuit's trials involving 18 defendants resulted in 5 death sentences (or 28%).

25. In the Eleventh Circuit there have been 17 federal death penalty cases tried, involving 20 defendants, as follows: 2 trials in the Middle District of Florida (2 defendants - 2 life sentences), 1 trial in the Middle District of Georgia (1 defendant - life sentence), 3 trials in the Northern District of Alabama (3 defendants - 1 guilty plea at trial, 1 life sentence and 1 death sentence), 3 trials in the Northern District of Georgia (3 defendants - 1 life sentence and 2 death sentences), 1 trial in the Southern District of Alabama (1 defendant - 1 life sentence), 5 trials in the Southern District of Florida (8 defendants - 3 acquittals, 3 life

sentences and 2 death sentences) and 2 trials in the Southern District of Georgia (2 defendants - 1 life sentence and 1 death sentence). The Eleventh Circuit's trials involving 20 defendants resulted in 6 death sentences (or 30%).

28. In the D.C. Circuit there have been 3 federal death penalty cases tried, involving 4 defendants, resulting in 4 life sentences, or 0% death sentences.

29. I also have information on the number of authorized federal death penalty cases, since 1988, by the state in which each such prosecution was brought. According to the Project's records, the following compilation accurately sets forth the particular state in which each of the 498 federal death penalty cases authorized since 1988 was prosecuted:

Alabama (6), Alaska (2), Arizona (6), Arkansas (7), California (44), Colorado (8), Connecticut (5), DC (17), Florida (15), Georgia (9), Hawaii (2), Idaho (1), Illinois (13), Indiana (7), Iowa (4), Kansas (7), Kentucky (5), Louisiana (11), Maryland (26), Massachusetts (5), Michigan (19), Mississippi (3), Missouri (29), New Jersey (4), New Mexico (9), New York (45), North Carolina (10), North Dakota (2), Ohio (6), Oklahoma (6), Pennsylvania (23), Puerto Rico (24), Rhode Island (1), South Carolina (3), Tennessee (15), Texas (31), Vermont (3), Virginia (57), West Virginia (8).

I declare under the penalty of perjury under the laws of the United States of America, 28 U.S.C. §1746, that the foregoing is true and correct. Executed this 25th day of September, 2015.

/s/ Kevin McNally
Kevin McNally

Declaration of LAUREN COHEN BELL, Ph.D., regarding sentencing dynamics in federal death penalty cases.

1. I am currently Associate Professor of Political Science and Associate Dean of the College at Randolph-Macon College in Ashland, Virginia, where I have been a faculty member since September 1999. Among the subjects I teach are public policy, judicial process, constitutional law, and research methodology.
2. In my research, I regularly perform quantitative analysis of data and rely on the Statistical Package for the Social Sciences (SPSS) to organize and analyze such data. The use of quantitative analysis in social science and the use of SPSS in particular is an integral part of the research methodology course I teach. I have authored or coauthored a total of 21 books, book chapters, and peer-reviewed articles and have presented nearly 30 academic papers at scholarly meetings. I am a member of the editorial board of *Justice System Journal* and a regular manuscript reviewer for *American Politics Research*, Routledge Publishers, *Journal of Politics*, Congressional Quarterly Press, Longman Publishers, Cambridge University Press, *Law and Society Review*, *American Journal of Political Science*, *Justice System Journal*, *Judicature*, *Political Studies Quarterly*, and *PS: Political Science and Politics*.
3. Between August 2006 and August 2007, I served as one of four United States Supreme Court Fellows. I was posted at the U.S. Sentencing Commission where I worked closely with the Office of Research and Data on the design and implementation of the Commission's 2007 study of the effect of minor offenses on the calculation of offenders' criminal history scores.

4. I hold Masters and Ph.D. degrees in political science from the University of Oklahoma's Carl Albert Congressional Research and Studies Center. A copy of my *curriculum vitae* is attached.
5. I have been asked to conduct an analysis of federal capital prosecutions focusing on the dynamics of death sentencing in cases involving white female victims in comparison with the dynamics of death sentencing in cases not involving white female victims.
6. In order to conduct this analysis, I was provided with data maintained by Kevin McNally on behalf of the Federal Death Penalty Resource Counsel Project. I used SPSS to create a database of 403 cases authorized and completed as capital prosecutions by the U.S. Department of Justice between 1989 and August 2008. For purposes of analyzing sentencing dynamics, I excluded from the analysis six cases: one in which the charged offense was treason and there were no identified victims; and five in which there were mass numbers of victims. (These were large-scale terrorist attacks: the Oklahoma City bombing, the September 11 attack, and the bombing of two U.S. embassies in Africa.) The cases were excluded because where there is either no victim or where there are mass casualties it is not possible to isolate a white female victim effect on sentencing. This is consistent with the way other researchers have addressed this issue. This left 397 authorized capital prosecutions for analysis.
7. I used statistical procedures generally applied in the analysis of quantitative data to assess whether the death penalty was imposed differently in cases involving defendants who killed white females as opposed to other types of victims: descriptive statistics provide a "snapshot" of the characteristics of the data; crosstabulations show how two variables interact with one another; and chi-square analysis provides an indicator of whether an

observed relationship occurs by chance or because of a systematic interaction between the two variables.

8. My analysis, as reflected in the charts below, demonstrates that defendants who kill white female victims receive the death penalty at a substantially higher rate than defendants whose victims are not white women and that this correlation between white female victims and death sentencing is highly statistically significant, systematic, and not the result of chance.
9. The data used in the analysis have the following characteristics:

Condition of Interest	Number of Cases
All Authorized Cases	403
Authorized Cases Involving Victim	402 (see paragraph 6, above)
Authorized Cases Excluding Mass Killings	397 (see paragraph 6, above)
Death Penalty Imposed	60
Death Penalty Not Imposed	337
White Female Victim (WFV)	76
No WFV	321
Sentencing Trial Completed	182
Sentencing Trial Involving WFV	42
Sentencing Trial, No WFV	140
Death Penalty Imposed, WFV	25
Death Penalty Imposed, No WFV	35

10. The results of the chi-square analysis are as follows. Table 1 summarizes the analysis of death sentences among the set of 397 authorized federal capital cases. As explained in paragraph 6, this includes all but six authorized prosecutions.

Table 1: Relationship between the Presence of a White Female Victim (WFV) and Imposition of a Death Sentence, All Authorized Cases (Excluding Mass Killings) [N=397]

Data Source	Condition (N)	Percent (Formula)
Set of All Cases (N =76) with WFV	Death-Sentenced (25)	32.9% (25 of 76)
	Non-Death Sentenced (51)	67.1% (51 of 76)
Set of All Cases (N=321) with no WFV	Death-Sentenced (35)	10.9% (35 of 320)
	Non-Death-Sentenced (286)	89.1% (286 of 320)
Set of All Cases (N=60) Involving a Death Sentence	Cases with WFV (25)	41.7% (25 of 60)
	Cases with no WFV (35)	58.3% (35 of 60)
Set of All Cases (N=337) Not Involving a Death Sentence	Cases with WFV (51)	15.1% (51 of 337)
	Cases with no WFV (286)	84.9% (286 of 337)

11. Table 1 indicates that defendants in cases involving a white female victim were sentenced to death 32.9 percent of the time (in 25 of 76 cases). Defendants in cases not involving a white female victim were sentenced to death 10.9 percent of the time (in 35 of 321 cases). A defendant charged with killing a white female victim was more than three times (3.02) more likely to be sentenced to death than a defendant charged with killing a victim who was not a white female. These results are statistically significant at the $p < .001$ level, indicating that the probability that this relationship has been observed by chance is essentially zero.
12. Table 2 looks at the smaller set of authorized capital cases that proceeded through to a capital sentencing trial. It indicates that among those for whom life or death decisions were made by judges or juries, defendants in cases involving a white female victim received a death sentence 59.5 percent of the time (in 25 of 42 cases). Defendants in cases where there was no white female victim were sentenced to death 25.0 percent of the

time (in 35 of 140 cases). A defendant in a federal capital trial thus was almost two-and-one-half times (2.38) more likely to be sentenced to death in a case involving a white female victim than a defendant in a case in which there was no white female victim. These results are statistically significant at the $p < .001$ level, indicating the probability that this relationship has been observed by chance is essentially zero.

Table 2: Relationship between the Presence of a White Female Victim (WFV) and Imposition of a Death Sentence, Trial Cases Only (Excluding Mass Killings) [N=182]

Data Source	Condition (N)	Percent (Formula)
Set of All Cases (N=42) with WFV	Death-Sentenced (25)	59.5 % (25 of 42)
	Non-Death Sentenced (17)	40.5 % (17 of 42)
Set of All Cases (N=140) with no WFV	Death-Sentenced (35)	25.0 % (35 of 140)
	Non-Death-Sentenced (105)	75.0 % (105 of 140)
Set of All Cases (N=60) Involving a Death Sentence	Cases with WFV (25)	41.7% (25 of 60)
	Cases with no WFV (35)	58.3% (35 of 60)
Set of All Cases (N=122) Not Involving a Death Sentence	Cases with WFV (17)	13.9 % (17 of 122)
	Cases with no WFV (105)	86.1 % (105 of 122)

13. Based on the bivariate results discussed here, I conclude without hesitation that there is a statistically significant and systematic correlation between the presence of a white female victim and the likelihood of a death sentence in a federal capital case. Defendants who killed white female victims are overrepresented among federal death sentenced defendants. They represent 19.1 percent of all authorized prosecutions (76 of 397) and 23.1 percent of authorized prosecutions completing a penalty phase trial (42 of 182); however they represent 41.7 percent of death sentences (25 of 60).

14. The analysis reveals a robust correlation between the presence of a white female victim and the imposition of a death sentence. Social scientists consider a result to be robust when changing the assumptions undergirding an analysis would be unlikely to affect its results. The generally accepted standard for statistical significance in political science research is $p < .05$, meaning the probability that the results occurred by chance is less than five percent. In the case of these analyses, the findings are statistically significant at a higher level of $p < .001$, meaning the probability they occurred by chance is less than one-tenth of one percent, or one in one thousand. Given the robust quality of these findings, it is my opinion to a reasonable degree of scientific certainty that this correlation of more severe sentencing outcomes and white female victims is unlikely to disappear even in the presence of other potentially explanatory variables.

I declare under the penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed this 16th day of September, 2008.

A handwritten signature in black ink, reading "Lauren Cohen Bell", written over a horizontal line.

Lauren Cohen Bell

Appendix: Bivariate SPSS Results Used to Generate Tables 1 and 2

Table 1:

Case Processing Summary

	Cases					
	Valid		Missing		Total	
	N	Percent	N	Percent	N	Percent
Death Penalty Imposed * White Female Victim	397	100.0%	0	.0%	397	100.0%

Death Penalty Imposed * White Female Victim Cross-tabulation

			White Female Victim		Total
			No	Yes	
Death Penalty Imposed	No	Count	286	51	337
		% within Death Penalty Imposed	84.9%	15.1%	100.0%
		% within White Female Victim	89.1%	67.1%	84.9%
	Yes	Count	35	25	60
		% within Death Penalty Imposed	58.3%	41.7%	100.0%
		% within White Female Victim	10.9%	32.9%	15.1%
Total	Count	321	76	397	
	% within Death Penalty Imposed	80.9%	19.1%	100.0%	
	% within White Female Victim	100.0%	100.0%	100.0%	

Chi-Square Tests

	Value	df	Asymp. Sig. (2-sided)	Exact Sig. (2-sided)	Exact Sig. (1-sided)
Pearson Chi-Square	23.165 ^b	1	.000		
Continuity Correction ^a	21.482	1	.000		
Likelihood Ratio	19.743	1	.000		
Fisher's Exact Test				.000	.000
Linear-by-Linear Association	23.107	1	.000		
N of Valid Cases	397				

a. Computed only for a 2x2 table

b. 0 cells (.0%) have expected count less than 5. Minimum expected count is 11.49.

Table 2:

Case Processing Summary

	Cases					
	Valid		Missing		Total	
	N	Percent	N	Percent	N	Percent
Death Penalty Imposed * White Female Victim	182	100.0%	0	.0%	182	100.0%

Death Penalty Imposed * White Female Victim Crosstabulation

			White Female Victim		Total
			No	Yes	
Death Penalty Imposed	No	Count	105	17	122
		% within Death Penalty Imposed	88.1%	13.9%	100.0%
		% within White Female Victim	75.0%	40.5%	67.0%
	Yes	Count	35	25	60
		% within Death Penalty Imposed	58.3%	41.7%	100.0%
		% within White Female Victim	25.0%	59.5%	33.0%
Total	Count	140	42	182	
	% within Death Penalty Imposed	76.9%	23.1%	100.0%	
	% within White Female Victim	100.0%	100.0%	100.0%	

Chi-Square Tests

	Value	df	Asymp. Sig. (2-sided)	Exact Sig. (2-sided)	Exact Sig. (1-sided)
Pearson Chi-Square	17.425 ^b	1	.000		
Continuity Correction ^a	15.898	1	.000		
Likelihood Ratio	16.611	1	.000		
Fisher's Exact Test				.000	.000
Linear-by-Linear Association	17.329	1	.000		
N of Valid Cases	182				

a. Computed only for a 2x2 table

b. 0 cells (.0%) have expected count less than 5. Minimum expected count is 13.85.

Authorized Federal Capital Prosecutions Pending Trial - 6/3/2015

Jones, Ulysses

W.D. MO 6:10-CR-03090-DGK

Pending trial

Name of AG Holder

Race & gender of def B M Victim R BM Date of DP notice 10/4/2012

a BOP murder by a black inmate of another black inmate at the US Medical Correctional Facility in Springfield, Illinois. Jones was serving a life sentence for a previous murder of an inmate.

Santiago, Richard

D. CO No. 1:10-CR-00164-LTB

Pending trial

Name of AG Holder

Race & gender of def H M Victim R HM Date of DP notice 2/28/2011

a BOP inmate murder at "Supermax," ADX Florence, Colorado. Santiago is already serving a life sentence for an La EME murder at USP Lompoc. All involved are Hispanic.

Merriweather, William, Jr.

N.D. AL No. 2:07-CR-243-RDP-JEO

Pending trial

Name of AG Mukasey

Race & gender of def B M Victim R WF BF Date of DP notice 6/3/2008

murder during an Alabama bank robbery. Merriweather killed two female bank employees and wounded two others. One of the homicide victims is a white female, the other three are black females. Merriweather's prior criminal record involves child sexual abuse and drug trafficking. He is an African-American who was addicted to drugs. He was shot at the scene and arrested. He made false statements that there was another person involved.

Sablan, Joseph Cabrerar

E.D. CA No. 08 CR 00259. change to C.D. CA No. 2:14-

Pending trial

Name of AG Holder

Race & gender of def H M Victim R HM Date of DP notice 4/7/2009

law enforcement officer victim - the stabbing death of a BOP Hispanic prison guard at Atwater by two inmates. The killing is on videotape. Co-defendant Sablan is suspected of being involved in a prior correctional officer murder. The victim was a 22 year old military veteran who served two tours in Iraq. He was chased down and tackled by Sablan and stabbed by Guerrero with an eight inch ice pick type weapon. Leon Guerrero is from Guam. Sablan is from Saipan. This was Attorney General Holder's first decision to "authorize" a case.

Millner, John Travis

E.D. KY No. 7:13-CR-15-ART

Pending trial

Name of AG Holder

Race & gender of def B M Victim R BM Date of DP notice 10/3/2013

a BOP inmate homicide of a cellmate at USP Big Sandy, with a prison-made ice pick and by strangulation. Millner was convicted of a previous murder in Washington, DC and an attempted murder of another inmate in Virginia. He is serving a life without release sentence. Both are African-Americans.

Authorized Federal Capital Prosecutions Pending Trial - 6/3/2015

Duran-Gomez, Wilmar Rene

S.D. TX No. H-10-459

Pending trial

Name of AG Holder

Race & gender of def H M Victim R HM Date of DP notice 9/19/2012

charged in the deaths of two illegal aliens resulting from a conspiracy to transport and harbor illegal aliens into the United States. The government alleged that Duran-Gomez, Bolanos-Garza and others engaged in a conspiracy to smuggle illegal aliens into the United States, during which they were held in warehouses in Texas until their families paid the smugglers' fees. While being held in a warehouse in Houston, two of the aliens set fire to the warehouse in an effort to escape. The government alleges that Duren-Gomez, Rodrigues-Mendoza and Bolanos-Garza later beat them to death. Only Duran-Gomez has been authorized. All involved are Hispanic.

Roland, Farad

D. NJ No. 2:12-CR-00298-ES

Pending trial

Name of AG Holder

Race & gender of def B M Victim R Date of DP notice 1/5/2015

three RICO gun murders, by the "Bloods" gang, one in 2007 and a double murder in 2008. Roland is charged in all three, Williams and Lowery in one. All involved are African-American.

Con-ui, Jessie

M.D. PA No. 3:CR-13-123

Pending trial

Name of AG Holder

Race & gender of def O M Victim R Date of DP notice 10/2/2014

murder of a guard at USP Canaan. The victim is white, defendant Filipino.

Ham, James Wayne

S.D. TX No. 4:13-CR-00363

Pending trial

Name of AG Holder

Race & gender of def W M Victim R BF Date of DP notice 9/18/2014

involves a gun murder of a postal worker (a letter carrier) because the white defendant thought the black female carrier was diverting his mail to his estranged wife. After the shooting, the victim's car, with her body still inside, was set on fire by the defendant and the victim's body was reduced to ashes and a few bones.

Ciancia, Paul Anthony

C.D. CA No. 2:13-CR-00902-PSG

Pending trial

Name of AG Holder

Race & gender of def W M Victim R HM Date of DP notice 12/29/2014

a 2013 shooting rampage and gun murder of a law enforcement officer at Los Angeles International Airport. A Transportation Security Administration officer was intentionally murdered. He is the first TSA agent to be killed. Three others were wounded. Ciancia was shot and seriously wounded. He is white. The slain officer was Hispanic.

Authorized Federal Capital Prosecutions Pending Trial - 6/3/2015

Watts, James

S.D. IL No. 4:14-CR-40063-JPG

Pending trial

Name of AG Holder

Race & gender of def B M Victim R WF Date of DP notice 4/21/2015

cross-racial double stabbing murders of white, female bank employees by a black male, a convicted felon and sex offender who had just been released from prison. A third employee was stabbed, but survived.

Case 5:01-cr-00012-gwc Document 668-2 Filed 11/16/15 Page 106 of 272
**Authorized Federal Capital Prosecutions Sentenced to Death
but Who are Now Awaiting Retrial or Resentencing- 6/3/2015**

Fell, Donald

D. VT 2:01-CR-12-01

Awaiting resentencing or retrial

Name of AG Ashcroft

Race & gender of def W M

Victim R WF WM

Date of DP notice 1/30/2002

three murders, a carjacking and an interstate kidnapping. The defendants were high on crack when an argument erupted with Fell's mother and a male friend. The male friend's throat was slashed by Fell and Fell's mother stabbed to death by Lee, the co-defendant. The two then carjacked a 53 year old grandmother at a supermarket. Crossing into New York, they told her to get out and she attempted to run into the woods. They followed her and allegedly killed her by kicking her. The defendants both made incriminating statements. They were arrested three days later in Arkansas. All involved are Caucasian. Lee committed suicide in 2001 by hanging himself in jail. Authorities said it was an accident. Attorney General Ashcroft rejected a plea agreement stipulating life in prison, and required a capital prosecution. The Attorney General also rejected a bench trial. The court declared the FDPA unconstitutional. 217 F.Supp.2d 469 (2002). This ruling was reversed by the Second Circuit. 360 F.3d 135 (2004). The direct appeal was denied. 531 F.3d 197 (2008). A 28 USC 2255 motion was granted on July 24, 2014.

Sampson, Gary

D. MA No. 01-CR-10384

Awaiting resentencing or retrial

Name of AG Ashcroft

Race & gender of def W M

Victim R WM

Date of DP notice 11/19/2002

Sampson plead guilty to two separate car-jacking murders in Massachusetts that took place three days apart in the summer of 2001. The victims were a 69-year old grandfather and a 19-year old college student. Sampson confessed to those crimes as well as to a strangulation murder in New Hampshire that he committed three days after the second carjacking murder, and to a subsequent unsuccessful attempted carjacking in Vermont. The crimes all occurred within an 8-day period. He confessed, as well, to having committed a series of 5 bank robberies in North Carolina prior to coming to New England. The day before he committed the first murder, Sampson had called the FBI in Boston in an effort to surrender on the bank robberies. The FBI accidentally or deliberately disconnected the call or chose not to follow up. A 28 U.S.C. §2255 motion was granted. A government interlocutory appeal was denied. 2013 WL 3828663 (1st Cir. 2013). All involved are white. The resentencing trial is scheduled for 2015.

Cooper, Alex

N.D. IL No. 89-CR-580

Life sentence from jury

Name of AG Thornburg

Race & gender of def B M Victim R BM Date of DP notice 5/10/1990

two black Chicago gang members received life sentences for the cocaine-related murder of an informant after separate trials. The Government had offered one defendant, but not the other, a plea bargain prior to trial. 19 F.3d 1154 (7th Cir. 1994).

Davis, Darnell Anthony

N.D. IL No. 89-CR-580

Life sentence from jury

Name of AG Thornburg

Race & gender of def B M Victim R BM Date of DP notice 5/10/1990

two black Chicago gang members received life sentences for the cocaine-related murder of an informant after separate trials. The Government had offered one defendant, but not the other, a plea bargain prior to trial. 19 F.3d 1154 (7th Cir. 1994).

Pitera, Thomas

E.D. NY CR No. 90-0424 (RR)

Life sentence from jury

Name of AG Barr

Race & gender of def W M Victim R WF WM Date of DP notice 2/8/1991

a white Mafia contract killer, the first person with mob connections to face the federal death penalty, received a life sentence from a Brooklyn, New York jury after being convicted of seven murders, two of which qualified as capital crimes under 21 U.S.C. § 848(e). Several of the murders involved torture and dismemberment of the victims. 5 F.3d 624 (2d Cir. 1993).

Villarreal, Reynaldo Sambrano

E.D. TX No. 9:91-CR4

Life sentence from jury

Name of AG Barr

Race & gender of def H M Victim R WM Date of DP notice 4/23/1991

law enforcement officer victim. Two Hispanic men were sentenced to life imprisonment and 40 years, respectively, for the marijuana-related murder of a white law enforcement officer after a joint trial. The sentencing jury found no facts legally warranting the death penalty. 963 F.2d 725 (5th Cir.) (1992). A third Hispanic defendant, Jesus Zambrano, was also initially approved for capital prosecution but received a sentence of 30 years after he testified for the government against the Villarreal brothers.

Villarreal, Baldemar

E.D. TX No. 9:91-CR4

Life sentence from jury

Name of AG Barr

Race & gender of def H M Victim R WM Date of DP notice 4/23/1991

law enforcement officer victim. Two Hispanic men in Texas were sentenced to life imprisonment and 40 years, respectively, for the marijuana-related murder of a white law enforcement officer after a joint trial. The sentencing jury found no aggravating factors. 963 F.2d 725 (5th Cir.), cert. denied, 113 S.Ct. 353 (1992). A third Hispanic defendant, Jesus Zambrano, was also initially approved for capital prosecution but received a sentence of 30 years after he testified for the government against the Villarreal brothers.

Hutching, James Norwood | E.D. OK CR No. 1:92-032-S

Life sentence from jury | Name of AG Barr

Race & gender of def W M Victim R WM Date of DP notice 9/11/1992

two white and one Hispanic defendants were tried jointly in connection with the drug- related intrastate kidnap/murder of a Muskogee, Oklahoma auto dealership employee. The two capitally-charged "managers" of the drug enterprise received life sentences from the jury. A wheelman, present on the scene, was sentenced to death, but that sentence was overturned on appeal. The victim was white.

Molina, Ramon Medina | E.D. OK CR No. 1:92-032-S

Life sentence from jury | Name of AG Barr

Race & gender of def H M Victim R WM Date of DP notice 9/11/1992

two white and one Hispanic defendants were tried jointly in connection with the drug- related intrastate kidnap/murder of a Muskogee, Oklahoma auto dealership employee. The two capitally-charged "managers" of the drug enterprise received life sentences from the jury. A wheelman, present on the scene, was sentenced to death, but that sentence was overturned on appeal. The victim was white.

Henry, Arnold Mark | E.D. VA No. 93-CR-131

Life sentence from jury | Name of AG Reno

Race & gender of def B M Victim R BF BM Date of DP notice 11/22/1993

three blacks, two brothers born in Haiti, another man born in Grenada, were accused of two killings of an African-American man and a woman in related incidents where the victims were suspected of stealing crack cocaine. A Norfolk, Virginia jury refused, in March, 1994, to impose the death penalty upon any of the three capitally-charged defendants. Attorney General Reno authorized a capital prosecution in this case in 1993. Arnold Mark Henry is intellectually disabled. Life sentences were affirmed on appeal. 82 F.3d 419 (4th Cir. 1996) (unpub.).

Moore, Todd | E.D. VA No. 2:93CR162

Life sentence from judge | Name of AG Reno

Race & gender of def B M Victim R BM Date of DP notice 3/9/1994

a black New York-based crack cocaine distributor was spared in the first judge-sentencing procedure. Attorney General Reno approved the death penalty in this case in 1994. Moore pled guilty to an indictment charging him with having ordered the murder of a member of his Newport News, Virginia drug organization. The government waived a jury for sentencing, and a sentencing hearing was held before the district court. One month later, the district judge declined to impose the death penalty, and sentenced Moore to life without possibility of release. The sentence was affirmed on appeal, 81 F.3d 152 (4th Cir. 1996) (mem.). At the trial of the admitted triggerman in the murder, Derek Kelley, Moore offered to testify. However, the government declined to use Moore's testimony, and Kelley was subsequently acquitted of all charges and released.

Oscar, Frantz

E.D. VA No. 93-CR-131

Life sentence from jury

Name of AG Reno

Race & gender of def B M Victim R BF BM Date of DP notice 11/22/1993

three blacks, two brothers born in Haiti, another man born in Grenada, were accused of two killings of an African-American man and a woman in related incidents where the victims were suspected of stealing crack cocaine. A Norfolk, Virginia jury refused, in March, 1994, to impose the death penalty upon any of the three capitally-charged defendants. Attorney General Reno authorized a capital prosecution in this case in 1993. Life sentences were affirmed on appeal. 82 F.3d 419 (4th Cir. 1996) (unpub.).

Oscar, Jean Claude

E.D. VA No. 93-CR-131

Life sentence from jury

Name of AG Reno

Race & gender of def B M Victim R BF BM Date of DP notice 11/22/1993

three blacks, two brothers born in Haiti, another man born in Grenada, were accused of two killings of an African-American man and a woman in related incidents where the victims were suspected of stealing crack cocaine. A Norfolk, Virginia jury refused, in March, 1994, to impose the death penalty upon any of the three capitally-charged defendants. Attorney General Reno authorized a capital prosecution in this case in 1993. Life sentences were affirmed on appeal. 82 F.3d 419 (4th Cir. 1996) (unpub.).

Diaz, Walter

N.D. NY No. 94-CR-328

Life sentence from jury

Name of AG Reno

Race & gender of def B M Victim R WF Date of DP notice 5/31/1995

two African-Americans on a drug-related crime spree were approved for capital prosecution by Attorney General Reno in April 1995. The spree involved the drug-related murder of a white victim by two African-American defendants. Two additional cross-racial homicides were alleged in aggravation, one during the course of a robbery in New York City, another of an elderly lawyer in upstate New York. Trial began in 1995 and sentences of life were returned after a vote of 11 to 1 for life for Diaz and 11 to 1 for death for Walker.

Moore, Dennis B., Sr.

W.D. MO CR No. 94-00194

Life sentence from jury

Name of AG Reno

Race & gender of def W M Victim R WM Date of DP notice 8/22/1995

recruited his associate (Wyrick) to kill a rival drug marijuana dealer. Murder for hire is alleged as an aggravating circumstance. Both the defendants and the deceased are Caucasian. In 1996, the jury deadlocked on the punishment for Moore, resulting in a life sentence.

Nguyen, Phouc H.

D. KS CR No. 94-10129-01

Life sentence from jury

Name of AG Reno

Race & gender of def A M Victim R AF Date of DP notice 6/2/1995

the co-defendant of Bountaem Chanthadara was also involved in a Hobbs Act robbery/murder. A Wichita, Kansas jury voted to sentence the defendant to life imprisonment in 1996, following his conviction for a murder committed during a commercial robbery. Mr. Chanthadara was previously sentenced to death by a different Wichita jury.

Walker, Tyrone | N.D. NY No. 94-CR-328

Life sentence from jury | Name of AG Reno

Race & gender of def B M Victim R WF Date of DP notice 5/31/1995

two African-Americans on a drug-related crime spree were approved for capital prosecution by Attorney General Reno in April 1995. The spree involved the drug-related murder of a white victim by two African-American defendants. Two additional cross-racial homicides were alleged in aggravation, one during the course of a robbery in New York City, another of an elderly lawyer in upstate New York. Trial began in 1995 and sentences of life were returned after a vote of 11 to 1 for life for Diaz and 11 to 1 for death for Walker.

Nichols, Terry Lynn | D. CO No. 96-CR-68-M

Life sentence from jury | Name of AG Reno

Race & gender of def W M Victim R WF + Date of DP notice 10/20/1995

the co-defendant in the Oklahoma City bombing case. At a separate trial following McVeigh's, a Denver federal jury failed to reach a unanimous finding on Nichols' alleged intent to kill, a legal requirement for imposing the death penalty. The same jury's guilt phase verdicts indicated that the government had failed to prove that Nichols intended a lethal attack on the Murray Building. He was sentenced in 1998 to life imprisonment and faces the death penalty in state court.

Beckford, Dean Anthony | E.D. VA No. 3:95CR00087

Life sentence from jury | Name of AG Reno

Race & gender of def B M Victim R BM Date of DP notice 10/1/1996

another New York - Richmond cocaine connection was uncovered which involved members of a Brooklyn gang, all African-American, who transported crack cocaine to Richmond, Virginia. The 32-count indictment charged five of the alleged members of the so-called "Poison Clan" with capital murder in six killings, two in 1988 and four in 1994. (Devon Dale Beckford, 33, brother of Dean Beckford, identified by the FBI as a gang leader was not arrested until July, 1997.) After a seven-week trial, a jury declined to impose the death penalty on all four defendants: Dean Beckford, 32, Leonel Romeo Cazaco, 22, Claude Gerald Dennis, 28 and Richard Thomas, 22. Dean Beckford and Claude Dennis were found guilty of the 1998 double murder. (Dennis had previously been acquitted on these charges in state court in 1989.) Cazaco and Thomas were also convicted of a capitol charge. Thomas had been acquitted in state court on the one homicide count on which he was convicted in federal court.

Cazaco, Leonel | E.D. VA No. 3:95CR00087

Life sentence from jury | Name of AG Reno

Race & gender of def B M Victim R BM Date of DP notice 10/1/1996

another New York - Richmond cocaine connection was uncovered which involved members of a Brooklyn gang, all African-American, who transported crack cocaine to Richmond, Virginia. The 32-count indictment charged five of the alleged members of the so-called "Poison Clan" with capital murder in six killings, two in 1988 and four in 1994. (Devon Dale Beckford, 33, identified by the FBI as a gang leader was not arrested until July, 1997.) After a seven-week trial, a jury declined to impose the death penalty on all four defendants: Dean Beckford, 32, Leonel Romeo Cazaco, 22, Claude Gerald Dennis, 28 and Richard Thomas, 22. Dean Beckford and Claude Dennis were found guilty of the 1998 double murder. (Dennis had previously been acquitted on these charges in state court in 1989.) Cazaco and Thomas were also convicted of a capitol charge. Thomas had been acquitted in state court on the one homicide count on which he was convicted in federal court.

Authorized Federal Capital Prosecutions Resulting in a Life Sentence - 6/3/2015

Dennis, Claude | E.D. VA No. 3:95CR00087

Life sentence from jury | Name of AG Reno

Race & gender of def B M | Victim R BM | Date of DP notice 10/1/1996

another New York - Richmond cocaine connection was uncovered which involved members of a Brooklyn gang, all African-American, who transported crack cocaine to Richmond, Virginia. The 32-count indictment charged five of the alleged members of the so-called "Poison Clan" with capital murder in six killings, two in 1988 and four in 1994. (Devon Dale Beckford, 33, identified by the FBI as a gang leader was not arrested until July, 1997.) After a seven-week trial, a jury declined to impose the death penalty on all four defendants: Dean Beckford, 32, Leonel Romeo Cazaco, 22, Claude Gerald Dennis, 28 and Richard Thomas, 22. Dean Beckford and Claude Dennis were found guilty of the 1998 double murder. (Dennis had previously been acquitted on these charges in state court in 1989.) Cazaco and Thomas were also convicted of a capitol charge. Thomas had been acquitted in state court on the one homicide count on which he was convicted in federal court.

Hammer, David Paul | M.D. PA No. 4-96-CR-239

Life Sentence from Judge | Name of AG Reno

Race & gender of def W M | Victim R WM | Date of DP notice 4/9/1997

a strangulation murder of a federal prison inmate by his cellmate. The defendant and the victim are white. Hammer was serving a 1200+ year Oklahoma state sentence at the time of the homicide, but had been incarcerated in the federal penitentiary at Allenwood, Pennsylvania. Mr. Hammer abandoned his direct appeal. 226 F.3d 229 (3d Cir. 2000). An execution date was set for November 15, 2000, but was vacated when Mr. Hammer decided (and was allowed) to file a post-conviction action. Penalty phase relief was granted in December 2005, and upheld on appeal. 404 F.Supp.2d 676 (MD PA 2005). A life sentence was imposed at his resentencing bench trial.

Ingle, Trinity Edward | W.D. AR No. 6:96CR60022

Life sentence from jury | Name of AG Reno

Race & gender of def W M | Victim R WM | Date of DP notice 1/23/1997

two white teenagers charged with the robbery-murder of an elderly retired National Parks employee who was found shot and bound with tape near a hiking path in Hot Springs National Park (USPS), federal land within the city of Hot Springs, Arkansas. Ingle was convicted of the murder in 1997 after a 6-day trial; two days later a Hot Springs federal jury unanimously sentenced him to life imprisonment. Paul was sentenced to death following a separate, eight-day trial. All involved are white.

Jones, Anthony | D. MD CR No. WMN-96-0458

Life sentence from jury | Name of AG Reno

Race & gender of def B M | Victim R BM | Date of DP notice 3/20/1997

involves five killings: one in '94, three in '96, one in '97. Authorization was granted to seek the death penalty for three murders, including an allegation that Jones ordered his step-brother killed from jail because he feared he was about to become a government witness. Jones also ordered the murder, by the victim's own bodyguards, of a rival Baltimore drug dealer who had earlier attempted to arrange the murder of Mr. Jones. Numerous other homicides, attributed to Jones, were alleged in aggravation. Murder for hire is alleged as an aggravating circumstance. Jones was convicted in 1998, sentenced to life without release. Eight co-conspirators were involved in the murders but did not face the death penalty. Chapman, Hill and Ross were charged in at least 2 killings. Jones was sent to the "Control Unit" at "super-max," ADX in Florence, Colorado, where he is under severe communication restrictions for 10 years.

Ray, Quan

N.D. IL No. 96 CR 379

Life sentence from jury

Name of AG Reno

Race & gender of def B M Victim R BM Date of DP notice 10/1/1996

a "Gangster Disciple" enforcer. In 1997, a Chicago jury declined to impose the death penalty after convicting Mr. Ray of having murdered a fellow gang drug trafficker on orders of a Gangsters Disciples' higher-up, Darryl Johnson. Murder for hire is alleged as an aggravating circumstance. The jury found that no statutory aggravating factor had been established beyond a reasonable doubt, rejecting the government's allegation that the murder had been committed "after substantial planning and premeditation." Johnson was sentenced to death for the same and one additional murder.

Thomas, Richard

E.D. VA No. 3:95CR00087

Life sentence from jury

Name of AG Reno

Race & gender of def B M Victim R BM Date of DP notice 10/1/1996

another New York - Richmond cocaine connection was uncovered which involved members of a Brooklyn gang, all African-American, who transported crack cocaine to Richmond, Virginia. The 32-count indictment charged five of the alleged members of the so-called "Poison Clan" with capital murder in six killings, two in 1988 and four in 1994. (Devon Dale Beckford, 33, identified by the FBI as a gang leader was not arrested until July, 1997.) After a seven-week trial, a jury declined to impose the death penalty on all four defendants: Dean Beckford, 32, Leonel Romeo Cazaco, 22, Claude Gerald Dennis, 28 and Richard Thomas, 22. Dean Beckford and Claude Dennis were found guilty of the 1998 double murder. (Dennis had previously been acquitted on these charges in state court in 1989.) Cazaco and Thomas were also convicted of a capitol charge. Thomas had been acquitted in state court on the one homicide count on which he was convicted in federal court.

Bobbitt, LaFawn

E.D. VA No. 97 CR 129

Life sentence from jury

Name of AG Reno

Race & gender of def B M Victim R BF Date of DP notice 9/22/1997

two defendants were charged with the fatal shooting of an bank teller during an attempted robbery of a Nationsbank branch in Richmond, Virginia. Both defendants and the victim are African-American. A security guard was shot and blinded during the robbery, but survived. Trial began in 1998. The jury opted against the death penalty for both defendants.

Jones, Rashi

E.D. VA No. 97 CR 129

Life sentence from jury

Name of AG Reno

Race & gender of def B M Victim R BF Date of DP notice 9/22/1997

two defendants were charged with the fatal shooting of a female bank teller during an attempted robbery of a Nationsbank branch in Richmond, Virginia. Both defendants and the victim are African-American. A security guard was shot and blinded during the robbery, but survived. Trial began in 1998. The jury opted against the death penalty for both defendants.

Gonzales-Lauzan, Luis | S.D. FL No. 02-CR-20572

Life sentence from jury | Name of AG Ashcroft

Race & gender of def H M | Victim R HM | Date of DP notice 6/19/2003

a murder-for-hire/informant killing case. Gonzales-Lauzan was convicted of the murder of a government witness in a federal firearms case against his father. 18 U.S.C. §§ 924(j), 1111, 1512 and 1513. He provided a gun and a silencer and waited in another car nearby. Wiggins, the triggerman, shot the victim at his home in order to work off a drug debt to Gonzales-Lauzan. Hernandez is charged with having helped set up the shooting. Wiggins entered into a plea agreement to testify against Gonzales-Lauzan, who was the only one to face the death penalty. The jury unanimously voted for a life sentence. All involved are Cuban/Americans.

Johnson, Shaheem | E.D. VA CR No. 97-00314-A

Life sentence from jury | Name of AG Reno

Race & gender of def B M | Victim R BF BM | Date of DP notice 2/12/1998

five killings of African-Americans, four males, one female, all cocaine-related murders, two in Virginia (a supplier/witness and his girlfriend with Raheem Johnson as the triggerman), one in Maryland (drug supplier with both Raheem and Shaheem firing weapons), one in Philadelphia (supplier/witness with Raheem Johnson as the triggerman) and another "murder for hire" in New York (drug supplier hit ordered by both Shaheem and Raheem Johnson). The two lead defendants, brothers Shaheem and Raheem Johnson, were authorized for a capital prosecution. Trial began in Alexandria in November, 1998 and ended in life verdicts for both brothers.

Johnson, Raheem | E.D. VA CR No. 97-00314-A

Life sentence from jury | Name of AG Reno

Race & gender of def B M | Victim R BF BM | Date of DP notice 2/12/1998

five killings of African-Americans, four males, one female, all cocaine-related murders, two in Virginia (a supplier/witness and his girlfriend with Raheem Johnson as the triggerman), one in Maryland (drug supplier with both Raheem and Shaheem firing weapons), one in Philadelphia (supplier/witness with Raheem Johnson as the triggerman) and another "murder for hire" in New York (drug supplier hit ordered by both Shaheem and Raheem Johnson). The two lead defendants, brothers Shaheem and Raheem Johnson, were authorized for a capital prosecution. Trial began in Alexandria in November, 1998 and ended in life verdicts for both brothers.

Kehoe, Chevy | E.D. AR No. LR-CR-97-243

Life sentence from jury | Name of AG Reno

Race & gender of def W M | Victim R WF WM | Date of DP notice 3/20/1998

the murder of a family of three (an Arkansas gun dealer, his wife and their 8 year old child) in the Fall of 1996 by white supremacists. Chevie Kehoe faced sentencing before the jury first and was sentenced to life imprisonment. Co-defendant Lee followed and was sentenced to death.

O'Driscoll, Michael | M.D. PA No. 4-CR-01-277

Life sentence from jury | Name of AG Ashcroft

Race & gender of def W M | Victim R WM | Date of DP notice 10/9/2001

the stabbing and killing of an inmate at USP Allenwood in 1997. There were half a dozen correctional officers who witnessed the end of the stabbing. Both the defendant and victim are white.

Dhinsa, Gurmeet Singh | E.D. NY CR No. 97-672 (S-3) (ERK)

Life sentence from jury | Name of AG Reno

Race & gender of def | I M | Victim R | OM | Date of DP notice 9/25/1998

RICO murders and a murder for hire. A wealthy Indian businessman led a racketeering enterprise which killed two. Murder for hire was an aggravating circumstance.

Lightfoot, Xavier Lamar | W.D. MO No. 00 CR 395

Life sentence from jury | Name of AG Reno

Race & gender of def | B M | Victim R | WM | Date of DP notice 1/8/1999

the murder of a federal witness. Co-defendant Peoples, 24, conspired with Lightfoot to prevent the victim from testifying at Lightfoot's federal trial on charges of bank robbery. The victim, 33, was Lightfoot's roommate and was found dead of gunshot wounds in their rental home in Kansas City. Peoples acted as a go-between (along with co-defendant Barfield) with the professional hit man (Haskell) who committed the murder which Lightfoot arranged from federal prison. Murder for hire is alleged as an aggravating circumstance. All defendants are black. The victim is white. After Lightfoot was sentenced to life in prison, the government withdrew its request for the death penalty for Peoples. The Eighth Circuit reversed the convictions and the government again sought the death penalty. 250 F.3d 360 (2001). A "double jeopardy" appeal was rejected. 360 F.2d 892 (8th Cir. 2004).

Hargrove, Demetrius R. | D. KS No. 2:03-CR-20192-CM-DJW

Life sentence from jury | Name of AG Ashcroft

Race & gender of def | B M | Victim R | WF WM | Date of DP notice 7/30/2004

three murders by an African-American federal prisoner already serving a 35 year sentence for kidnapping and use of a firearm, at the United States Penitentiary in Leavenworth . One of the victims was a potential federal witness. Prosecutors claim Hargrove killed two Leavenworth residents Elmer Berg and Misty Castor, a brother and a sister, in February of 1998 during a drug trafficking crime. They say he also murdered an informant, Tyrone Richards, also of Leavenworth, in June 1998 to prevent him from testifying at a federal trial. Berg and Castor were white, Richards and Hargrove black.

Al-'Owhali, Mohamed Rashed Daoud | S.D. NY No. S6 98 CR 1023

Life sentence from jury | Name of AG Reno

Race & gender of def | AR M | Victim R | WF + | Date of DP notice 6/26/2000

accomplice of Osama bin Ladin, the organizer of two bombings of American embassies in Africa. The 1998 bombings in Kenya and Tanzania killed 224 people (11 in Tanzania), including 12 Americans, and more than 5,000 people injured. Al-'Owhali was a 21 year old Saudi citizen who was arrested in Nairobi after the Kenya bombing. He is a member of al-Qaida, an international terrorist organization, led by bin Laden, a Saudi millionaire, who issued various "fatwahs" against the United States. Bin Laden was killed in a 2011 military raid in Pakistan. Al-'Owhali was ordered to create a diversion for the Kenya bomb by throwing grenades. Mohamed rented the house where the Tanzania bomb was made. The 12 dead Americans included 4 blacks, 4 whites and 1 Asian. The other victims were mostly black Africans.

Finley, James A.

W.D. NC No. 4:98CR243

Life sentence from jury

Name of AG Reno

Race & gender of def W M Victim R WF WM Date of DP notice 12/4/1998

the murder of two campers at a national park by a young man with a history of drug abuse but no violence. The crime may have been a robbery\murder. All parties are white. Mitigation involved Finley's drug abuse and depression. The defendant was sentenced to life after an April 1999 trial.

Gilbert, Kristin

D. MA CR No. 98-30044-MAP

Life sentence from jury

Name of AG Reno

Race & gender of def W F Victim R WM Date of DP notice 5/14/1999

the killing of four patients at a Department of Veterans Affairs Hospital, on federal property, and the attempted killing of three others. Ms. Gilbert, 31, used epinephrine, a drug that can overstimulate the heart, on her patients. Federal prosecutors said Gilbert murdered one patient, a 41-year-old invalid, after asking a supervisor if she could "leave early if he died." All involved are Caucasian. The jury deadlocked and Gilbert was sentenced to life in prison.

Tello, Plutarco

W.D. MO No. 98- 00311-01/05-CR-W-2

Life sentence from jury

Name of AG Reno

Race & gender of def B M Victim R HM Date of DP notice 5/19/1999

four Colombians charged in a drug related murder. The alleged ringleader, Hinestroza, was a fugitive who was eventually arrested and received a life sentence at a separate trial. Hinestroza and his gang sold cocaine in the Kansas City area. The victim and his nephew (who sold cocaine for the gang) stole \$240,000 from them. The defendants tied up, interrogated, duck taped and shot both victims. The nephew lived, escaped and identified the defendants. Sinisterra shot and killed one victim. Ortiz or Tello shot the surviving victim. Sinisterra and Ortiz were sentenced to death. The jury deadlocked on punishment for Tello, and he was sentenced to life in prison.

Hinestroza, Edwin R.

W.D. MO No. 98- 00311-01/05-CR-W-2

Life sentence from jury

Name of AG Gonzales

Race & gender of def H M Victim R HM Date of DP notice 5/4/2005

four Colombians charged in a drug related murder. The alleged ringleader, Hinestroza, was a fugitive who was eventually arrested and received a life sentence at a separate trial. The victim and his nephew (who sold cocaine for the gang) stole \$240,000 from them. The defendants tied up, interrogated, duck taped and shot both victims. The nephew lived, escaped and identified the defendants. Sinisterra shot and killed one victim. Ortiz or Tello shot the surviving victim. Sinisterra and Ortiz were sentenced to death. The jury deadlocked on punishment for Tello, and he was sentenced to life in prison.

Authorized Federal Capital Prosecutions Resulting in a Life Sentence - 6/3/2015

Bass, John | E.D. MI CR No. 97-80235

Life sentence from jury | Name of AG Reno

Race & gender of def | B M | Victim R | BM | Date of DP notice 2/17/2001

eleven death eligible defendants who were charged in a four victim (continuing criminal enterprise) Detroit drug/murder case under 21 U.S.C. §848(a)(1)(A). Of the eleven, only Bass was chosen to face a federal capital prosecution. All involved are African-American. A pretrial appeal involved the issue of discovery of Department of Justice charging practices in capital cases. In a per curiam opinion, the United States Supreme Court reversed the order granting discovery. United States v. Bass, 122 S.Ct. 2389 (2002). John Bass and his brother Patrick allegedly started a drug gang called the "Dog Pound" (because members owned many pit bulls), which sold crack in Michigan and Ohio. John Bass is charged with arranging two murders - of his brother and a rival.

Edelin, Tommy | D. DC CR No. 98-264

Life sentence from jury | Name of AG Reno

Race & gender of def | B M | Victim R | BM x | Date of DP notice 6/30/2000

a drug conspiracy, racketeering, murder CCE prosecution. Tommy Edelin faced the death penalty alone among many capital eligible defendants, including his father. Edelin, 30, was charged with ordering 14 murders and attempting to have another dozen killed during the 1990's, in his role as the so-called "drug kingpin" of the "1-5 Mob". Murder for hire is alleged as an aggravating circumstance. The gang was charged with the shooting of a D.C. police officer and in another incident in which three people were shot while attending a crowded neighborhood picnic. One victim was shot several times while returning from a prom with his girlfriend. Two teenagers were targeted by mistake on their way to a church Christmas Party. Edelin was acquitted of this double killing by co-defendant Bostick. Much of the violence stemmed from a turf battle with members of the "Stanton Terrace Crew," which is now essentially out of business after numerous members were killed or convicted of first-degree murder. Edelin was convicted of four murders, including paying a hit man to kill a 19 year old who alleged robbed an associated. 11 jurors deliberated 3 hours before voting for a life sentence. The capital charge was a conviction of murder for hire of a 14 year old who allegedly robbed an associate of Tommy Edelin. Edelin was born as a result of a brief sexual encounter to a convicted drug addict. He had an abusive, deprived, depraved childhood in a crime infested neighborhood. This was the first death penalty trial in the District of Columbia since the last execution in 1957. D.C. voters rejected the death penalty in 1992.

Haynes, Willis | D. MD CR No. PJM-98- 0520

Life sentence from jury | Name of AG Reno

Race & gender of def | B M | Victim R | BF | Date of DP notice 10/22/1999

the January 1996 triple intrastate kidnapping/murder of three black females from D.C. Patuxent Wildlife Research Center (USFW), federal property. Haynes has confessed three time, blaming Higgs the first two. A third defendant, Victor Gloria, also confessed and is considered an accessory after the fact. The government sought the death penalty for both Haynes and Higgs. They were involved in another shooting six weeks before. Haynes was sentenced to life, Higgs to death, at separate trials. All involved are African-American.

Authorized Federal Capital Prosecutions Resulting in a Life Sentence - 6/3/2015

Martinez, Mariano | C.D. CA CR No. 99-83-(A)-DT

Life sentence from jury | Name of AG Reno

Race & gender of def H M | Victim R HM | Date of DP notice 7/19/1999

involves defendants in one of three related Mexican Mafia prosecutions. "Chuy" Martinez, 41, is a defendant in one indictment, and the target of a murder plot in another. There are a total of four murders and 13 conspiracies to commit murder charged. Three men, one a drug dealer and two innocent bystanders, were killed in a Monticello autobody shop. Martinez, head of a drug organization orchestrated the killing using a walkie-talkie. Max Torvisco, once Martinez's right hand man, obtained a plea agreement. He admitted ordering 140 murders and planning to kill Martinez who had survived a 1997 assassination attempt. Wiretaps show Martinez ordering hits on numerous targets.

Shakir, Jamal | M.D. TN CR No. 3:98-00038 (NIXON)

Life sentence from jury | Name of AG Ashcroft

Race & gender of def B M | Victim R BF BM | Date of DP notice 10/29/2002

a gang called the "Rollin" 90s Crips or Bangside 90s faction out of Los Angeles which allegedly moved 150 kilos of crack to Las Vegas. From there sales operations were allegedly set up in Oklahoma City and Nashville. The government called the gang the "Shakir Enterprise." A Crips gang member and his wife were killed in Oklahoma City, and their 3 year old daughter, who was also shot, stayed with her dead parents and slept with them at night for several days. Richard Chambers, 59, was shot to death in Cheatham County, Tennessee. There may have been up to 13 killings in three states. Three victims were themselves charged with murder in the indictment. The indictment charged Shakir, 25, with six killings from 1995-97, Payne, 20, with participating in two killings and in the shooting of the gang associate's 3-year-old-girl, and Young, 24, with helping kill one person and assaulting and torturing two others. Four of the killings were said to be to silence potential witnesses, other slayings were allegedly motivated by revenge. Murder for hire is alleged as an aggravating circumstance. Payne was found to be incompetent to stand trial.

Lyon, Billy Joe | W.D. KY No. 4:99-CR-11-M

Life sentence from jury | Name of AG Reno

Race & gender of def W M | Victim R WM | Date of DP notice 8/23/1999

contract killing of men in Alabama and Kentucky. Lyon, 19, and co-defendant Charles Stewart, 54, were charged with conspiracy and murder for hire. Stewart and Richard Dorman, 62, were partners in an 18-month forged-check and fraud scheme, using the deceased's identity. Lyon and his deceased father, Stewart's nephew, were hired to murder James Norris in Kentucky. Norris was found under a bale of hay beaten to death in a barn behind his home. Lyon was also hired to kill James Nichols in Alabama, whose body was discovered in 1999 in a partially submerged van. Nichols' 85 year old mother was also in the van, but survived. Co-conspirator Dorman was kidnapped (interstate) and locked into the trunk of a car that was then run into the Green River in Henderson County. He survived to be charged as part of the conspiracy. The elder Lyon committed suicide to avoid apprehension. Stewart was arrested in the Spring of 2000 after appearing on "America's Most Wanted." Lyon faced the death penalty but was sentenced to life in prison after his jury was instructed that Stewart would not because the Attorney General took too long to file a notice of intent to seek the death penalty. A third fraud victim is missing and presumed dead. Lyon committed an unrelated fourth murder. All involved are white.

Tatum, Kenneth A.

E.D. TX No. 2:99 CR 5

Life sentence from jury

Name of AG Reno

Race & gender of def B M Victim R WF WM Date of DP notice 10/22/1999

three young black defendants, who were members of the "Crips" gang, were involved in a series of robberies and killings in East Texas. Stephens, 21, Smith, 20, and Tatum, 20, faced the death penalty in both state and federal court for a botched bank robbery. They were accused of a bank robbery and fatally shooting teller Betty Paddle, 61. A 54 year old bank manager, was also shot, but survived. They are also charged with an intrastate kidnapping/robbery of a used car dealership (a Hobbs Act count) in which the victim was killed with a gun (a 924(j) count). The victim was a 63 year old retired minister. Tatum is also charged in a 1998 slaying of Ronnie Dale Ritch, president of the First State Bank in Overton. Stephens and Tatum abducted Ritch, 50. Stephens had a brain tumor and died after surgery. The USA requested permission to seek the death penalty against all three, and was permitted to do so. All three deceased victims were white.

Smith, Daymon

E.D. TX No. 2:99 CR 5

Life sentence from jury

Name of AG Reno

Race & gender of def B M Victim R WF WM Date of DP notice 10/22/1999

three young black defendants, who were members of the "Crips" gang, were involved in a series of robberies and killings in East Texas. Stephens, 21, Smith, 20, and Tatum, 20, faced the death penalty in both state and federal court for a botched bank robbery. They were accused of a bank robbery and fatally shooting teller Betty Paddle, 61. A 54 year old bank manager, was also shot, but survived. They are also charged with an intrastate kidnapping/robbery of a used car dealership (a Hobbs Act count) in which the victim was killed with a gun (a 924(j) count). The victim was a 63 year old retired minister. Tatum is also charged in a 1998 slaying of Ronnie Dale Ritch, president of the First State Bank in Overton. Stephens and Tatum abducted Ritch, 50. Stephens had a brain tumor and died after surgery. The USA requested permission to seek the death penalty against all three, and was permitted to do so. All three deceased victims were white.

Garrett, Lemond

S.D. GA CR No. 4-99-133

Life sentence from jury

Name of AG Reno

Race & gender of def B M Victim R WF BM Date of DP notice 1/14/2000

two young death eligible defendants, ages 18 and 20, involved in a drug conspiracy, in which a long time federal informant was killed. Both defendants and the victim are African-American. The United States Attorney requested and received permission to seek the death penalty against Lemond. Savannah police arrested Lemond Garrett in March of 1999 for the shooting death of Joseph Smart, Sr., 52. DeLoach, the get-a-way driver, was convicted for killing his cousin outside a sports bar in December 1998, and sentenced to life in prison in state court. Joe Perry Garrett was not arrested until shortly before trial. He ordered the killing of the DEA informant who was wearing a bullet-proof vest when he was shot. The bullet pierced his side in an unprotected area. The government failed to meet the Court's deadline as to Joe Perry and he did not face the death penalty.

Authorized Federal Capital Prosecutions Resulting in a Life Sentence - 6/3/2015

Mohamed, Khalfan Khamis | S.D. NY No. S6 98 CR 1023

Life sentence from jury | Name of AG Reno

Race & gender of def | AR M | Victim R | WF + | Date of DP notice 6/26/2000

accomplice of Osama bin Ladin, the organizer of two bombings of American embassies in Africa. The 1998 bombings in Kenya and Tanzania killed 224 people (11 in Tanzania), including 12 Americans, and more than 5,000 people injured. He is a member of al-Qaida, an international terrorist organization, led by bin Laden, a Saudi millionaire, who issued various "fatwahs" against the United States. Bin Laden was killed in a 2011 military raid in Pakistan. Al-'Owhali was ordered to create a diversion for the Kenya bomb by throwing grenades. Mohamed rented the house where the Tanzania bomb was made. The 12 dead Americans included 4 blacks, 4 whites and 1 Asian. The other victims were mostly black Africans.

Wills, Christopher Andaryl | E.D. VA CR No. 99-00396

Life sentence from jury | Name of AG Reno

Race & gender of def | B M | Victim R | OM | Date of DP notice 12/28/1999

a witness-elimination in Alexandria, Virginia. Wills, 33, an African American, lured the victim from suburban Virginia to Washington, D.C. by means of a phony job advertisement. The victim disappeared and is presumed to have been murdered. The Afghan national victim had recently testified against Wills at a preliminary hearing on state burglary charges. Wills was permitted to represent himself. He filed a motion to dismiss and the Court ruled that Wills cannot be charged with the capital crime of interstate kidnapping leading to death because his victim crossed state lines voluntarily and alone. The 4th Circuit reversed. 2000 WL 1781402. The jury deadlocked and Wills was sentenced to life in prison. Wills, who has 5 other felony convictions, is also serving 14 years for an unrelated Baltimore carjacking.

Sanders, Marcus | S.D. AL CR No. 98-0056-CB

Life sentence from jury | Name of AG Reno

Race & gender of def | B M | Victim R | BM | Date of DP notice 3/27/2000

the April 1999 murder of a witness in a federal drug prosecution two days before Sanders drug conspiracy trial. Sanders did not appear for trial. Sanders was alleged to be the triggerman and was the only defendant authorized for a federal capital prosecution, but he was sentenced to life in prison at a separate trial.

Hyles, Tyrese | E.D. MO No. 01-CR-73

Life sentence from jury | Name of AG Ashcroft

Race & gender of def | B M | Victim R | BM | Date of DP notice 10/31/2002

a witness killing §1512 murder for hire involving interstate travel from Tennessee to Missouri. Hyles faced state drug charges. The victim was murdered after his preliminary hearing testimony. Cannon allegedly murdered the victim by shooting him in his bed. Attorney General Ashcroft required a capital prosecution. Attorney General Gonzales rejected a jury waiver conditioned upon withdrawal of the notice of intent to seek the death penalty.

Denis, Jose

S.D. FL No. 99-00714 CR (KING)

Life sentence from jury

Name of AG Ashcroft

Race & gender of def H M Victim R HM Date of DP notice 5/20/2002

one capital eligible 924(c) count - a homicide occurring during a 1996 drug rip-off at Hialech motel. Everyone involved is Hispanic. Denis was the alleged triggerman. He had no prior criminal record. The defendant was attending Florida State University at the time of his arrest. The victim was allegedly tortured prior to his death.

Gray, Kevin

D. DC No. 1:00CR00157

Life sentence from jury

Name of AG Ashcroft

Race & gender of def B M Victim R BM HM Date of DP notice 7/27/2001

a Southeast Washington, D.C., gang, alleged to be connected to approximately 40 slayings. The indictment charges 30 murders. Murder for hire was alleged as an aggravating circumstance. The leader, Kevin Gray, 28, is charged with carrying out the racketeering slayings of 10 people. Members of this heroin and marijuana conspiracy allegedly gunned down rivals and people they thought might testify against them, catching victims by surprise at a gas station, a beauty salon and on street corners, sometimes in broad daylight. Three of the victims were killed because they were viewed as potential witnesses. Another victim was shot by mistake. The 158 count indictment alleges 10 attempted murders. Gang members allegedly took outside contracts as hit men. Gray is charged in 22 murders. He and Moore are the only defendants to face the death penalty. The victims were Hispanic and African-American.

Minerd, Joseph

W.D. PA CR No. 99-215

Life sentence from jury

Name of AG Reno

Race & gender of def W M Victim R WF AM Date of DP notice 9/13/2000

a case, 1999 New Year's Day arson resulting in the death of the defendant's girlfriend, her three year old child by another man and her fetus, the defendant's child. The ATF believed there was a pipe bomb as there was a shard of metal found in the deceased's exhumed body. All involved are white. Attorney General Ashcroft approved a plea agreement but the defendant backed out of the deal. 176 F. Supp. 424. 182 F.Supp.2d 459. 197 F.Supp.2d 272.

Moore, Rodney

D. DC No. 1:00CR00157

Life sentence from jury

Name of AG Ashcroft

Race & gender of def B M Victim R BF BM Date of DP notice 7/27/2001

a Southeast Washington, D.C., gang, alleged to be connected to approximately 40 slayings. The indictment charges 30 murders. Murder for hire was alleged as an aggravating circumstance. The leader, Kevin Gray, 28, is charged with carrying out the racketeering slayings of 10 people. Members of this heroin and marijuana conspiracy allegedly gunned down rivals and people they thought might testify against them, catching victims by surprise at a gas station, a beauty salon and on street corners, sometimes in broad daylight. Three of the victims were killed because they were viewed as potential witnesses. Another victim was shot by mistake. The 158 count indictment alleges 10 attempted murders. Gang members allegedly took outside contracts as hit men. Gray is charged in 22 murders. He and Moore are the only defendants to face the death penalty. Moore relied on evidence of low intellectual functioning at trial. The victims were Hispanic and African-American.

Johnson, Coleman

W.D. VA No. 3:00CR00026

Life sentence from jury

Name of AG Reno

Race & gender of def W M Victim R WF Date of DP notice 10/23/2000

one §844(ii) count for allegedly leaving a pipe bomb in 1997 which killed his ex-girlfriend, who was eight months pregnant, to avoid the child support that he would have to pay. DNA indicates he was the father of the child the victim was carrying. All involved are white. 136 F.Supp.2d 553.

Quinones, Alan

S.D. NY No. 00 CR 0761 (JSR)

Life sentence from jury

Name of AG Ashcroft

Race & gender of def H M Victim R HM Date of DP notice 10/26/2001

murder for hire of a New York Police Department informant, who was beaten and tortured. The victim, a drug dealer, had recently arranged two controlled buys from Quinones. The victim's body was burned post-mortem. Attorney General Ashcroft rejected a plea agreement and required a capital prosecution. The district court's decision that the death penalty was unconstitutional due to the execution of the innocent was reversed on appeal. 313 F.3d 49 (2nd Cir. 2002). The jury unanimously voted for life. All involved are Hispanic.

Rodriguez, Diego

S.D. NY No. 00 CR 0761 (JSR)

Life sentence from jury

Name of AG Ashcroft

Race & gender of def H M Victim R HM Date of DP notice 10/26/2001

murder for hire of a New York Police Department informant, who was beaten and tortured. The victim, a drug dealer, had recently arranged two controlled buys from Quinones. Rodriguez participated in the killing under the direction of Quinones. The victim's body was burned post-mortem. Attorney General Ashcroft rejected a plea agreement and required a capital prosecution. The district court's decision that the death penalty was unconstitutional due to the execution of the innocent was reversed on appeal. 313 F.3d 49 (2nd Cir. 2002). The jury unanimously voted for life. All involved are Hispanic.

Williams, Michael

S.D. NY No. 00-CR-1008

Life sentence from jury

Name of AG Ashcroft

Race & gender of def B M Victim R BM Date of DP notice 2/4/2003

involves drug-related murders. Three black men were killed in 1996. The defendants, two brothers and their father, are also black. Attorney General Ashcroft required a capital prosecution.

Williams, Elijah Bobby

S.D. NY No. 00-CR-1008

Life sentence from jury

Name of AG Ashcroft

Race & gender of def B M Victim R BM Date of DP notice 2/4/2003

involves drug related murders. Three black men were killed in 1996. The defendants, two brothers and their father, are also black. Attorney General Ashcroft required a capital prosecution.

Authorized Federal Capital Prosecutions Resulting in a Life Sentence - 6/3/2015

Sablan, William | D. CO No. 00-CR-531

Life sentence from jury | Name of AG Reno

Race & gender of def PI M Victim R HM Date of DP notice 5/1/2001

inmate killing at USP Florence - evisceration stabbing of cellmate (in their cell). William Sablan confessed, on videotape, and said that he was defending himself. The letter "S" was written on the cell wall in the victim's blood. The United States Attorney requested permission to seek the death penalty and, on her last day in office, Attorney General Janet Reno agreed. The defendants are Pacific Islanders, "Chmorran", from Saipan. The victim is Hispanic. The defendants, cousins, were doing federal time for a hostage-taking in Guam. Attorney General Gonzales rejected a plea agreement for William Sablan. William, allegedly more culpable, was sentenced to life. There was evidence that William suffered from an intellectual disability. A pre-trial claim of being intellectually disabled was rejected after an evidentiary hearing. William had a 20 year history of violent crime.

Sablan, Rudy | D. CO No. 00-CR-531

Life sentence from jury | Name of AG Reno

Race & gender of def PI M Victim R HM Date of DP notice 5/1/2001

inmate killing at USP Florence - evisceration stabbing of cellmate (in their cell). William Sablan confessed, on videotape, and said that he was defending himself. The letter "S" was written on the cell wall in the victim's blood. The United States Attorney requested permission to seek the death penalty and, on her last day in office, Attorney General Janet Reno agreed. The defendants are Pacific Islanders, "Chmorran", from Saipan. The victim is Hispanic. The defendants, cousins, were doing federal time for a hostage-taking in Guam. Attorney General Gonzales refused to withdraw the death penalty request as to Rudy Sablan after the more culpable William Sablan was sentenced to life in prison.

Ealy, Samuel Stephen | W.D. VA No. 00-CR-104

Life sentence from jury | Name of AG Ashcroft

Race & gender of def W M Victim R WF WM Date of DP notice 5/11/2001

the April 1989 shotgun murder of a family of three. Ealy avoided trial in state court in 1991 by a successful motion to suppress. A federal grand jury indicted Ealy and Church, charging them with two capital murders in the furtherance of a drug-trafficking enterprise and a third murder of a potential federal witnesses. They are charged with these killings while trying to rob one victim of \$30,000 that he was holding for a drug ring. The victims were white. 2001 WL 686954, 855894, 1661706. 151 F.Supp.2d 715. 163 F.Supp.2d 633. 2002 WL 229700, 273317, 376880, 1205035.

Waldon, Carl | M.D. FL No. 3:00-CR-436-J25-TJC

Life sentence from jury | Name of AG Ashcroft

Race & gender of def B M Victim R OM Date of DP notice 7/30/2001

involves a CCE-related murder. Sinclair was a narcotics detective and Waldon an uniformed patrol officer. Three drug dealers apparently implicated Sinclair in drug trafficking as part of a 5K1 deal. Waldon and Sinclair are charged with murder. Sinclair worked as a guard. He saw an Arab-American storeowner withdraw \$50,000 from the bank. Sinclair tipped Waldon who detained the victim on a pretext traffic stop and tried to rob him. The victim was strangled in the police cruiser, near a school in broad daylight. Two others were present, including Kenneth McLoughlin, who participated and testified as a government witness. The penalty phase was bifurcated and the jury deadlocked on whether the mental state threshold (intentional killing) or sole aggravating circumstance (pecuniary gain) was present. Attorney General Ashcroft required a capital prosecution.

Haskell, Carl

W.D. MO No. 00-CR-395

Life sentence from jury

Name of AG Ashcroft

Race & gender of def B M Victim R WM Date of DP notice 2/25/2002

involves the sequel to the Peoples and Lightfoot trial in October of 1999, resulting in life sentences. The government's theory is that Peoples, on behalf of Lightfoot and himself, enlisted the services of hired killers, one of whom allegedly was Haskell, to do away with one Jovan Ross, a white male. Ross was Lightfoot's homosexual live-in lover. The pair lived in a house in KC. After a lover's quarrel, Ross informed on Lightfoot regarding robberies pulled by Lightfoot and Peoples in Nebraska and led police to a cache of blank certified checks stored in the crawl space under the Lightfoot/Ross home. Shortly after, Lightfoot was arrested, and while in jail received information about Ross' involvement. Not long after that, Ross ended up dead. Attorney General Ashcroft approved Haskell, the alleged triggerman, for a capital prosecution, but denied permission to seek the death penalty against co-defendant Barfield.

Mosher, Ellis

E.D. TX No. 1:06 CR 00101-TH

Life sentence from jury

Name of AG Gonzales

Race & gender of def W M Victim R WM Date of DP notice 12/11/2006

a 1998 BOP inmate killing at Beaumont FCI. An original prosecution was dismissed on the government's motion (99-CR-4-ALL). In 2006, the prosecution resurfaced (06-CR-101). The jury was unable to agree on a sentence after three days of deliberations, so a life sentence was imposed. All involved are white.

Britt, L.J.

N.D. TX No. 00-CR-260

Life sentence from jury

Name of AG Ashcroft

Race & gender of def B M Victim R HM BM Date of DP notice 10/19/2001

a Fort Worth drug trafficking prosecution of the leaders of an Arlington-based drug ring responsible for three murders. The first killing involved a 1998 shooting of an African-American, mistaken for the intended victim, in a car traveling on Cential Expressway. A second 1999 killing was of an Hispanic person, mistaken for the intended victim, his brother, who allegedly sold a fake kilo of cocaine to Robinson. Britt was the triggerman in the third 1999 killing of another drug dealer, a Mexican national, who had stolen 20 kilos from a Laredo drug kingpin. Robinson was following in another car. Britt and Robinson, African-American, both allegedly fired weapons in the first and second incidents. Britt was sentenced to life in prison at a separate trial.

Taylor, Styles

N.D. IN CR No. 2:01 CR 073 JM

Life sentence from jury

Name of AG Ashcroft

Race & gender of def B M Victim R WM Date of DP notice 7/25/2003

a Hobbs act robbery of a gun store, "Firearms Unlimited" and the killing of the proprietor. 18 U.S.C. §§ 924 and 1951. The defendants are African-American and the victim was white. Taylor was on parole. He has a juvenile record involving the robbery and shooting of a pizza delivery man. Taylor was alleged to be more culpable and after the jury voted to sentence him to life in prison, Attorney General Ashcroft approved withdrawal of the "death notice" as to Thomas. In a rule 11 proffer, Taylor told the government "that the man in the store was reaching on me."

Authorized Federal Capital Prosecutions Resulting in a Life Sentence - 6/3/2015

Lentz, Jay | E.D. VA No. 01-CR-150

Life sentence from jury | Name of AG Ashcroft

Race & gender of def W M Victim R WF **Date of DP notice** 8/29/2001

involves a domestic killing, interstate domestic violence and kidnapping resulting in death. The defendant lived in Virginia and his ex-wife was kidnapped from Maryland. Her body was never located. A bloody car was found in D. C. All involved are white. A government pretrial appeal involved statements by the defendant. 225 F.Supp.2d 672, aff'd, 2003 WL 253949 (4th Cir. (VA)). Lentz was convicted and the jury unanimously recommended a life sentence. However, the judge vacated the conviction for lack of any evidence of interstate kidnapping. 275 F.Supp.2d. A government appeal was successful. 2004 WL 2035326.

Frye, James Ernest | S.D. MS No. 01-CR-8

Life sentence from jury | Name of AG Ashcroft

Race & gender of def B M Victim R BF BM **Date of DP notice** 1/18/2002

involves the 1999 carjacking and gun murders of two black victims, a boyfriend and a girlfriend, who were attempting to buy about \$30,000 worth of cocaine and were ripped off and killed. The male victim was shot first. The female victim, a 19 year old nursing student, was driven around in the trunk of her auto for an hour before being killed. Both African-American defendants confessed, blaming the other as the triggerperson. There was a post-mortem attempt to dismember (head and hands) and rebury the bodies. Frye was convicted of robbery in 1994. He escaped from custody in January of 2000. The Notice of Intent to Seek the Death penalty against Frye was dismissed as filed too late but the decision was reversed. 372 F.3d 729 (2004). The defendants were each sentenced to life in prison at separate trials. Cooper's life sentence was affirmed. 2003 WL 21672845 (5th Cir.). The jury was deadlocked after five hours of deliberation.

Cooper, Billy D. | S.D. MS No. 01-CR-8

Life sentence from jury | Name of AG Ashcroft

Race & gender of def B M Victim R BF BM **Date of DP notice** 1/18/2002

involves carjacking and killings of two black victims who were attempting to buy about \$30,000 worth of cocaine and were ripped off and killed. The male victim was shot first. The female victim was driven around in the trunk of her auto for an hour before being killed. Both African-American defendants confessed, blaming the other as the triggerperson. There was a post-mortem attempt to dismember (head and hands) and rebury the bodies. Cooper has a low I.Q. Frye was convicted of robbery in 1994. He escaped from custody in January of 2000. The Notice of Intent to Seek the Death penalty against Frye was dismissed as filed too late but the decision was reversed. 372 F.3d 729 (2004). The defendants were each sentenced to life in prison at separate trials. Cooper's life sentence was affirmed. 2003 WL 21672845 (5th Cir.).

Ostrander, Michael Paul | W.D. MI No. 01-CR-00218

Life sentence from jury | Name of AG Ashcroft

Race & gender of def W M Victim R WM **Date of DP notice** 2/21/2003

slaying of a man on federal land found buried in a previously dug grave in the Manistee National Forest (USFS). The Ostrander brothers are charged with the August 2000 use of a firearm causing death during drug trafficking, involving marijuana and cocaine. Attorney General Ashcroft required a capital prosecution.

McClure, Cornell Winfrei

D. MD No. 01-CR-367

Life sentence from judge

Name of AG Ashcroft

Race & gender of def B M Victim R WF Date of DP notice 3/4/2002

the gun murder of a white woman by two black men at a secluded location on federal property, the Beltsville Agricultural Research Center (USDA). The victim was shot eleven times with two different types of ammunition. There are signed confessions by both defendants. Millegan confessed that he committed the murder, along with McClure, both shooting the victim with their weapons. McClure wrote that he told Millegan they should "press her" about a robbery of drugs from Millegan's apartment. The deceased was taken to a road on federal land in Beltsville, where both allegedly shot her. Attorney General Ashcroft required a capital prosecution. Millegan plead guilty. McClure declined to plead guilty and had a bench trial.

Ostrander, Robert Norman

W.D. MI No. 01-CR-00218

Life sentence from jury

Name of AG Ashcroft

Race & gender of def W M Victim R WM Date of DP notice 2/21/2003

slaying of a man on federal land, found buried in a previously dug grave in the Manistee National Forest (USFS). The Ostrander brothers are charged with the August 2000 use of a firearm causing death during drug trafficking, involving marijuana and cocaine. Attorney General Ashcroft required a capital prosecution.

Williams, Tyrone

S.D. TX No. 03-CR-221

Life sentence from jury

Name of AG Ashcroft

Race & gender of def B M Victim R HF HM Date of DP notice 3/15/2004

an alien smuggling operation that led to 19 immigrants' deaths by dehydration, overheating and suffocation in the back of a truck trailer driven by Williams. Joya was alleged to be the leader of this alien smuggling ring. She was extradited from Guatemala. She was also accused of coordinating three smaller operations, gathering illegal immigrants together in South Texas, arranging them to be fed and housed and then placing them on trucks headed north. All involved are Latino, except Williams, who is black. Williams was the only one of the 17 defendants to face the death penalty in this case and the only alien smuggling defendant of approximately 70 in the nation to face the death penalty. The first jury failed to reach agreement on the capital charges. The second jury convicted Williams and he was sentenced to life in prison. The Fifth Circuit reversed and the third trial resulted in 34 year sentence.

Davis, Johnny

E.D. LA No. 2:01-CR-282

Life sentence from jury

Name of AG Ashcroft

Race & gender of def B M Victim R BM Date of DP notice 9/18/2002

involves allegations of four killings - 924(c) 2001 gun murders by a drug gang pushing heroin in a New Orleans Housing project. The alleged kingpin, Richard Porter, was convicted of one murder and did not face the death penalty. The enforcer for the group, Johnny Davis, was convicted of three of four murders. All involved are African-American. The government sought the death penalty against only Davis.

Haynes, Aaron

W.D. TN No. 01-CR-20247

Life sentence from jury

Name of AG Ashcroft

Race & gender of def B M Victim R BF Date of DP notice 9/19/2002

bank robbery resulting in the death of a black female employee of Union Planters Bank. A security guard was also shot in the face by Johnson, but survived. The defendants are African-American. Haynes was a shooter. The state and federal government both sought the death penalty against Haynes and Maxwell but not against Johnson who may be intellectually disabled. A federal jury sentenced Haynes to life imprisonment. After this verdict, Attorney General Ashcroft reversed his position and approved a plea agreement specifying a life sentence for Maxwell. 242 F.Supp.2d 540. 269 F.Supp.2d 970. 265 F.Supp.2d 914.

Moussaoui, Zacarias

E.D. VA No. 01-CR-455

Life sentence from jury

Name of AG Ashcroft

Race & gender of def B M Victim R WF + Date of DP notice 3/28/2002

alleged co-conspirator in the September 11, 2001 terrorist attack on the World Trade Center and Pentagon which killed over 3,000 and resulted in four airline crashes in New York, Pennsylvania and Washington, D.C. Moussaoui is French of Moroccan descent and is accused as a member of al-Qaida. He was in jail on September 11 after suspicious actions at a Minnesota flight school. There were victims of many nationalities and races. Moussaoui plead guilty but the jury deadlocked at the penalty trial.

Caraballo, Gilberto

E.D. NY No. 01-CR-1367

Life sentence from jury

Name of AG Ashcroft

Race & gender of def H M Victim R HM Date of DP notice 5/14/2004

two drug related CCE murders. Caraballo was the kingpin of a large scale narcotics group in Brooklyn for a decade and the owner of the 5th Avenue Gym. Caraballo was involved in a romantic relationship with Quincy Martinez, the wife of one victim and the mother of his two daughters. She conspired with Caraballo to have her husband killed. Caraballo paid the others in either drugs, cash or both to assist him in killing this victim, who was shot to death by Aguilar in the presence of Caraballo in a van owned by Caraballo, and with the assistance of Taylor. Aguilar confessed to shooting the victim repeatedly with two different guns and implicated the others. Caraballo was charged in a second murder in 1992 with Molina and Rosario. Only Caraballo and Augilar faced the death penalty.

Aguilar, Martin

E.D. NY No. 01-CR-1367

Life sentence from jury

Name of AG Ashcroft

Race & gender of def H M Victim R HM Date of DP notice 5/14/2004

two drug related CCE murders. Caraballo was the kingpin of a large scale narcotics group in Brooklyn for a decade and the owner of the 5th Avenue Gym. Caraballo was involved in a romantic relationship with Quincy Martinez, the wife of one victim and the mother of his two daughters. She conspired with Caraballo to have her husband killed. Caraballo paid the others in either drugs, cash or both to assist him in killing this victim, who was shot to death by Aguilar in the presence of Caraballo in a van owned by Caraballo, and with the assistance of Taylor. Aguilar confessed to shooting the victim repeatedly with two different guns and implicated the others. Caraballo was charged in a second murder in 1992 with Molina and Rosario. Only Caraballo and Augilar faced the death penalty. Aguilar, a member of the Latin Kings, has a history of violence. He was acquitted in 1993 of stabbing a man in the brain with a screwdriver. He stabbed a person in the prison law library on the first day of trial. He was tried first. Only two jurors voted for the death penalty.

Duong, Anh The | N.D. CA No. 5:01CR20154 JF

Life sentence from jury | Name of AG Ashcroft

Race & gender of def A M | Victim R AM HM | Date of DP notice 5/13/2004

eight murders by "the Duong" racketeering enterprise involving the armed robbery of jewelry stores, banks and computer-related companies by defendants of Chinese and Vietnamese descent. Anh The Duong is alleged to be the leader and is charged in all seven RICO murders. He alone faced the death penalty. He attempted suicide and was in a coma for three weeks. Soewin Chan and Philip Garza were charged in one 2001 RICO murder during commission of robbery. Lisbio Couto, Ricky Vong, Cuong Chi Yuong, Eng Yong Feng and Jerry Hu were charged in one 1997 and one 1998 murder. Johnnie Tangha and Ted Vu Nguyen were charged in one 1998 murder. One robbery/murder in 1997 and one in 1999 were charged as racketeering murders. Four other 1999 murders were charged as 924 murders and under the Hobbs Act. Duong received 4 death sentences in Los Angeles for a gang-related bar shoot-out. Yuong has a prior murder conviction.

Regan, Brian Patrick | E.D. VA No. 01-CR-40

Life sentence from jury | Name of AG Ashcroft

Race & gender of def W M | Victim R none | Date of DP notice 4/19/2002

a 20 year veteran of the Air Force who worked in the headquarters of the National Reconnaissance Office, charged with three counts of attempted espionage and one count of mishandling classified information. The government charged Regan of creating a "grave risk of death" to U.S. military pilots patrolling the no-fly zone over Iraq. Regan intended to sell Iraqi president Saddam Hussein secret details about American satellites. Prosecutors said Regan apparently used a form letter to solicit money from at least two foreign countries. Investigators said Regan told Hussein in a letter, "If I am caught, I will be imprisoned for the rest of my life, if not executed for this deed." Two of the charges carried the death penalty.

Cannon, Amesheo D. | E.D. MO No. S1-1:01CR00073RWS

Life sentence from jury | Name of AG Ashcroft

Race & gender of def B M | Victim R BM | Date of DP notice 10/31/2002

a witness killing §1512 murder for hire involving interstate travel from Tennessee to Missouri. Hyles faced state drug charges. The victim was murdered after his preliminary hearing testimony. Cannon allegedly murdered the victim by shooting him in his bed. Attorney General Ashcroft required a capital prosecution. Attorney General Gonzales rejected a jury waiver conditioned upon withdrawal of the notice of intent to seek the death penalty.

Matthews, Lavin | N.D. NY No. 3:00 CR-269

Life sentence from jury | Name of AG Ashcroft

Race & gender of def B M | Victim R BM | Date of DP notice 9/25/2002

murder during a CCE, motivated by a drug rip off. Another drug dealer was tortured and beaten to death and his marijuana, phone, jewelry and \$2000 cash were stolen. Attorney General Ashcroft required a capital prosecution against three defendants, later withdrawing the notice of intent as to McMillian, who has intellectual deficits. All involved are African-American.

Dixon, Emile | E.D. NY No. 01-CR-389

Life sentence from jury | Name of AG Ashcroft

Race & gender of def B M Victim R BM Date of DP notice 4/8/2002

Dixon is one of the leaders of the inter-state "Patio Crew" gang, charged with taking part in a 2002 gun murder of a witness and another murder. A government informant, Robert Thompson, 30, was machine-gunned to death in his car, and his brother was wounded. The main witness, the brother who survived, admitted lying about Dixon. A superceding indictment was filed charging a 1992 drug-related murder. Attorney General Ashcroft required a capital prosecution overruling, press accounts indicated, his own review committee. Dixon is a Jamaican immigrant. The victims were African-American.

Tucker, Tebiah Shelah | N.D. NY No. 00-CR-269

Life sentence from jury | Name of AG Ashcroft

Race & gender of def B M Victim R BM Date of DP notice 9/25/2002

murder during a CCE, motivated by a drug rip off. Another drug dealer was tortured and beaten to death and his marijuana, phone, jewelry and \$2000 cash were stolen. Attorney General Ashcroft required a capital prosecution against three defendants, later withdrawing the notice of intent as to McMillian, who was found to be intellectually disabled by both the defense and government experts. All involved are African-American.

Perez, Wilfredo | D. CT No. 02-CR-7

Life sentence from jury | Name of AG Ashcroft

Race & gender of def H M Victim R HM Date of DP notice 1/21/2003

a drug gang, "the Perez Organization" at war with "the Savage Nomads" in Hartford, Connecticut because of a turf dispute and a drug and money kidnapping and robbery. Gonzalez was the alleged triggerman in this murder for hire. The government claims that Gonzalez is a hired contract killer responsible for nine other murders. The judge ruled that these unadjudicated homicides were not admissible. 2004 WL 1920492. All involved are Hispanic. Attorney General Ashcroft required a capital prosecution. Santiago Feliciano testified for the government that he arranged the murder of the head of the Nomads for Perez.

Gonzalez, Fausto | D. CT No. 02-CR-7

Life sentence from jury | Name of AG Ashcroft

Race & gender of def H M Victim R HM Date of DP notice 1/21/2003

a drug gang, "the Perez Organization" at war with "the Savage Nomads" in Hartford, Connecticut because of a turf dispute and a drug and money kidnapping and robbery. Gonzalez was the alleged triggerman in this murder for hire. The government claims that Gonzalez is a hired contract killer responsible for nine other murders. The judge ruled that these unadjudicated homicides were not admissible. 2004 WL 1920492. All involved are Hispanic. Attorney General Ashcroft required a capital prosecution. Santiago Feliciano testified for the government that he arranged the murder of the head of the Nomads for Perez.

Authorized Federal Capital Prosecutions Resulting in a Life Sentence - 6/3/2015

Krylov, Petro | C.D. CA CR No. 02-220 (A)-NM

Life sentence from jury | Name of AG Ashcroft

Race & gender of def | W M | Victim R | WM | Date of DP notice 8/3/2004

five kidnapping ransom murders by the Russian mob. Wealthy Russian immigrants were kidnapped, held for ransom, murdered and their bodies dumped in a reservoir. 1.2 million was collected in ransom. All involved are Caucasian. Mikhel and Kadamovas are charged in four, the others in two, except Krylov, who is charged in three murders. The indictment charged hostage taking resulting in death. 18 U.S.C. §1203. Mikhel, Kadamovas and Krylov faced the death penalty. Mikhel and Kadamovas were sentenced to death. At a separate trial, Krylov was sentenced to life imprisonment after Attorney General Gonzales rejected an offer to plead guilty.

Moses, Keon | D. MD No. 02-CR-410

Life sentence from jury | Name of AG Ashcroft

Race & gender of def | B M | Victim R | BM | Date of DP notice 3/31/2003

leaders of one of West Baltimore's most violent drug gangs, the Lexington Terrace Boys, who are charged in eight killings, including one potential government witness who was killed to prevent him from testifying about an earlier double homicide of two members of a rival gang, the Stricker Street group. Since 1999 the gang operated from the Lexington Terrace and Edgar Allan Poe Homes public housing projects. During trial, the government presented evidence linking the gang to nine killings. Taylor had a direct role in seven. The mitigation evidence focused on the trauma of a childhood growing up in this neighborhood. When Moses was 4, his father was gunned down in a drug hit in the lobby of one of the buildings. Foster was acquitted of attempted murder in state court in 1998. Taylor and Moses were charged together in the double homicide and in a witness killing. There was also an attempted kidnapping of another potential witness to the 2001 killings. The latest victim is the third brother of one family to die on the streets of Baltimore. Investigators claim the group is in some way connected to 40 homicides. Shortly before trial, a critical witness in the case was shot 10 times and killed. He had been shot at twice before. Separate indictments (03-343 and 03-560) charge Kaarman Hawkins, Parker, Foster and Taylor in that case. The jury returned unanimous life verdicts for Moses and Taylor in 5 hours. All involved are African-American.

Taylor, Michael Lafayette | D. MD No. 02-CR-410

Life sentence from jury | Name of AG Ashcroft

Race & gender of def | B M | Victim R | BM | Date of DP notice 3/31/2003

leaders of one of West Baltimore's most violent drug gangs, the Lexington Terrace Boys, who are charged in eight killings, including one potential government witness who was killed to prevent him from testifying about an earlier double homicide of two members of a rival gang, the Stricker Street group. Since 1999 the gang operated from the Lexington Terrace and Edgar Allan Poe Homes public housing projects. During trial, the government presented evidence linking the gang to nine killings. Taylor had a direct role in seven. The mitigation evidence focused on the trauma of a childhood growing up in this neighborhood. When Moses was 4, his father was gunned down in a drug hit in the lobby of one of the buildings. Foster was acquitted of attempted murder in state court in 1998. Taylor and Moses were charged together in the double homicide and in a witness killing. There was also an attempted kidnapping of another potential witness to the 2001 killings. The latest victim is the third brother of one family to die on the streets of Baltimore. Investigators claim the group is in some way connected to 40 homicides. Shortly before trial, a critical witness in the case was shot 10 times and killed. He had been shot at twice before. Separate indictments (03-343 and 03-560) charge Kaarman Hawkins, Parker, Foster and Taylor in that case. The jury returned unanimous life verdicts for Moses and Taylor in 5 hours. All involved are African-American.

Authorized Federal Capital Prosecutions Resulting in a Life Sentence - 6/3/2015

Mills, Barry Byron

C.D. CA CR No. 02-00938-GHK

Life sentence from jury

Name of AG Gonzales

Race & gender of def W M

Victim R WM BM

Date of DP notice 6/28/2005

a RICO indictment of 40 reputed members and associates of the Aryan Brotherhood [AB] for a string of murders and violent attacks allegedly designed to expand the power of the white racist prison gang, which was founded at San Quentin state prison in 1964. Authorities say the gang has about 100 members. In 1980, the federal faction of the AB allegedly formed a three-man "Commission" to oversee AB members in federal prisons, and, in 1993, the Federal Commission allegedly formed a "Council" to oversee the day-to-day activities of the federal faction. 17 murders were alleged. At least six murders have occurred since 1996. Twenty-seven defendants initially were eligible for the death penalty. Mills and Bingham are alleged to have made all major decisions involving the criminal activities of the federal faction. Mills was also charged with personally committing one murder and involvement in as many as a dozen murders. AB members selected to face the death penalty were: McIntosh, Knorr, Sahakian, McElhiney, Littrell, Bridgewater, Terflinger, Schwyhart, Houston, Griffin, Chance, Stinson, Mills and Bingham. Mills and Bingham were sentenced to life in prison in 2006, as were Bridgewater and Houston at a separate trial in 2007.

Bingham, Tyler Davis

C.D. CA CR No. 02-00938-GHK

Life sentence from jury

Name of AG Gonzales

Race & gender of def W M

Victim R WM BM

Date of DP notice 6/28/2005

a RICO indictment of 40 reputed members and associates of the Aryan Brotherhood [AB] for a string of murders and violent attacks allegedly designed to expand the power of the white racist prison gang, which was founded at San Quentin state prison in 1964. Authorities say the gang has about 100 members. In 1980, the federal faction of the AB allegedly formed a three-man "Commission" to oversee AB members in federal prisons, and, in 1993, the Federal Commission allegedly formed a "Council" to oversee the day-to-day activities of the federal faction. 17 murders were alleged. At least six murders have occurred since 1996. Twenty-seven defendants initially were eligible for the death penalty. Mills and Bingham are alleged to have made all major decisions involving the criminal activities of the federal faction. Mills is also charged with personally committing one murder and involvement in numerous bad acts, as many as a dozen murders. AB members selected to face the death penalty were: McIntosh, Knorr, Sahakian, McElhiney, Littrell, Bridgewater, Terflinger, Schwyhart, Houston, Griffin, Chance, Stinson, Mills and Bingham. Mills and Bingham were sentenced to life in prison in 2006, as were Bridgewater and Houston at a separate trial in 2007.

Authorized Federal Capital Prosecutions Resulting in a Life Sentence - 6/3/2015

Bridgewater, Wayne | C.D. CA CR No. 02-00938-GHK

Life sentence from jury | Name of AG Gonzales

Race & gender of def | W M | Victim R | BM | Date of DP notice 11/14/2006

a RICO indictment of 40 reputed members and associates of the Aryan Brotherhood [AB] for a string of murders and violent attacks allegedly designed to expand the power of the white racist prison gang, which was founded at San Quentin state prison in 1964. Authorities say the gang has about 100 members. In 1980, the federal faction of the AB allegedly formed a three-man "Commission" to oversee AB members in federal prisons, and, in 1993, the Federal Commission allegedly formed a "Council" to oversee the day-to-day activities of the federal faction. 17 murders were alleged. At least six murders have occurred since 1996. Twenty-seven defendants initially were eligible for the death penalty. Mills and Bingham are alleged to have made all major decisions involving the criminal activities of the federal faction. Mills is also charged with personally committing one murder and involvement in numerous bad acts, as many as a dozen murders. Stinson, Terflinger, Griffin and Chance, allegedly made all major decisions involving the criminal activities of the California faction of the AB. Slocum, a member of both the Federal and California councils allegedly relayed information between the two and is alleged to have participated in actual murders. McElhiney and Sahakian are alleged to be responsible for running the day-to-day operations of the AB at USP Marion in Illinois. Littrell, Roy, West, Grizzle, Kennedy and Filkins are accused of allegedly murdering AB members who had run afoul of the organization or violated rules. Grizzle allegedly helped Litrell in one strangulation in the victim's cell. Bridgewater, a member of the Federal Council, is alleged to have murdered two black inmates. Campbell is accused of participating in three murders. Stinson, Terflinger, Chance and Burnett are charged with murders of white inmates who had conflicts with the gang. Sahakian, McIntosh and Knorr are accused of murdering a black inmate at Marion and faced federal capital charges at trial in Illinois at which the jury deadlocked. Sahakian faces three additional murder charges in the California indictment. Schwyhart and Hourston are accused of taking part in the murders of two black inmates. Slocum, Bridgewater, Campbell and Houston were also charged with two BOP prison murders of black men in Pennsylvania at Lewisburg's USP. Charges were dismissed in Pennsylvania. AB members/inmates selected to face the death penalty were: McIntosh, Knorr, Sahakian, McElhiney, Littrell, Bridgewater, Terflinger, Schwyhart, Houston, Griffin, Chance, Stinson, Mills and Bingham. Mills and Bingham were sentenced to life in prison in 2006, as were Bridgewater and Houston at a separate trial in 2007. The Notice of Intent to Seek the Death Penalty was withdrawn as to Griffin, Chance, Stinson and Schwyhart.

Authorized Federal Capital Prosecutions Resulting in a Life Sentence - 6/3/2015

Houston, Henry Michael

C.D. CA CR No. 02-00938-GHK

Life sentence from jury

Name of AG Gonzales

Race & gender of def W M

Victim R BM

Date of DP notice 11/14/2006

a RICO indictment of 40 reputed members and associates of the Aryan Brotherhood [AB] for a string of murders and violent attacks allegedly designed to expand the power of the white racist prison gang, which was founded at San Quentin state prison in 1964. Authorities say the gang has about 100 members. In 1980, the federal faction of the AB allegedly formed a three-man "Commission" to oversee AB members in federal prisons, and, in 1993, the Federal Commission allegedly formed a "Council" to oversee the day-to-day activities of the federal faction. 17 murders were alleged. At least six murders have occurred since 1996. Twenty-seven defendants initially were eligible for the death penalty. Mills and Bingham are alleged to have made all major decisions involving the criminal activities of the federal faction. Mills is also charged with personally committing one murder and involvement in numerous bad acts, as many as a dozen murders. Stinson, Terflinger, Griffin and Chance, allegedly made all major decisions involving the criminal activities of the California faction of the AB. Slocum, a member of both the Federal and California councils allegedly relayed information between the two and is alleged to have participated in actual murders. McElhiney and Sahakian are alleged to be responsible for running the day-to-day operations of the AB at USP Marion in Illinois. Littrell, Roy, West, Grizzle, Kennedy and Filkins are accused of allegedly murdering AB members who had run afoul of the organization or violated rules. Grizzle allegedly helped Litrell in one strangulation in the victim's cell. Bridgewater, a member of the Federal Council, is alleged to have murdered two black inmates. Campbell is accused of participating in three murders. Stinson, Terflinger, Chance and Burnett are charged with murders of white inmates who had conflicts with the gang. Sahakian, McIntosh and Knorr are accused of murdering a black inmate at Marion and faced federal capital charges at trial in Illinois at which the jury deadlocked. Sahakian faces three additional murder charges in the California indictment. Schwyhart and Hourston are accused of taking part in the murders of two black inmates. Slocum, Bridgewater, Campbell and Houston were also charged with two BOP prison murders of black men in Pennsylvania at Lewisburg's USP. Charges were dismissed in Pennsylvania. AB members/inmates selected to face the death penalty were: McIntosh, Knorr, Sahakian, McElhiney, Littrell, Bridgewater, Terflinger, Schwyhart, Houston, Griffin, Chance, Stinson, Mills and Bingham. Mills and Bingham were sentenced to life in prison in 2006, as were Bridgewater and Houston at a separate trial in 2007. The Notice of Intent to Seek the Death Penalty was withdrawn as to Griffin, Chance, Stinson and Schwyhart.

James, Richard

E.D. NY CR No. 02-778 (S-1) (SJ)

Life sentence from jury

Name of AG Ashcroft

Race & gender of def B M

Victim R BM

Date of DP notice 8/1/2003

two insurance fraud murders for hire involving defendants from Guyana. The victims are also from Guyana. One died there. Both died from alcohol and drug ingestion. James is an insurance broker. Mally and James are alleged to have arranged at least two other deaths in an insurance fraud scheme. Also charged in one murder is the son of one victim. He did not face the death penalty. James was acquitted of one murder. All involved are black.

Mally, Ronald

E.D. NY CR No. 02-778 (S-1) (SJ)

Life sentence from jury

Name of AG Ashcroft

Race & gender of def B M

Victim R BM

Date of DP notice 8/1/2003

two insurance fraud murders for hire involving defendants from Guyana. The victims are also from Guyana. One died there. Both died from alcohol and drug ingestion. James is an insurance broker. Mally and James are alleged to have arranged at least two other deaths in an insurance fraud scheme. Also charged in one murder is the son of one victim. He did not face the death penalty. James was acquitted of one murder. All involved are black.

Smith, Thomas | W.D. MO No. 3:02 CR 05025

Life sentence from jury | Name of AG Ashcroft

Race & gender of def B M | Victim R WF BM | Date of DP notice 8/7/2003

two gun murders during course of drug trafficking by black defendants from Tulsa selling crack in Tulsa. Smith is alleged to be a leader in the double murder. A black victim allegedly stole drugs and was shot to death along with a white female who was with him at the time. Attorney General Ashcroft required a capital prosecution as to Smith and Ward, and DOJ twice refused to withdrawn the Notice of Intent against Street. Attorney General Gonzales approved a plea agreement with Ward after Street was sentenced to life imprisonment by a jury.

Villegas, Hernardo Medina | D. PR No. 3:02-CR-117

Life sentence from jury | Name of AG Ashcroft

Race & gender of def H M | Victim R HM | Date of DP notice 7/31/2003

the Hobbs Act robbery of a local credit union, while an armored bank truck was making a deposit. A gunfight ensued and an armed guard was killed with a second head shot by Villegas after he was down. Lorenzo Catalan and Hernando Medina participated in the robbery, while Quester Sterling was the lookout. The 924(j) murder weapon was allegedly obtained in a carjacking. There are additional non-capital charges for a prior robbery of the same credit union by the same group. Only Villegas and Roman faced the death penalty. All involved are Hispanic.

Roman, Lorenzo Catalan | D. PR No. 3:02-CR-117

Life sentence from jury | Name of AG Ashcroft

Race & gender of def H M | Victim R HM | Date of DP notice 7/31/2003

the Hobbs Act robbery of a local credit union, while an armored bank truck was making a deposit. A gunfight ensued and an armed guard was killed with a second head shot by Villegas after he was down. Lorenzo Catalan and Hernando Medina participated in the robbery, while Quester Sterling was the lookout. The 924(j) murder weapon was allegedly obtained in a carjacking. There are additional non-capital charges for a prior robbery of the same credit union by the same group. Only Villegas and Roman faced the death penalty. All involved are Hispanic.

Breeden, Shawn | W.D. VA No. 03-CR-13

Life sentence from jury | Name of AG Ashcroft

Race & gender of def B M | Victim R BM | Date of DP notice 7/15/2003

involves four defendants from D.C. who drove to Virginia with the intent to commit robbery. Cassell was the driver. Breeden is alleged to be the organizer, having lost his girlfriend's car payment while gambling. Carpenter allegedly held the victim, a drug dealer, at gunpoint. Carpenter shot the victim in the knee with a shotgun. Then Breeden allegedly stabbed the victim 7 times in the chest and neck. Outterbridge then shot the victim in the head. All involved are African-American, except the victims of a violent, but non-fatal, robbery of a white couple using an ATM that resulted in serious injury. The group also committed another robbery. Attorney General Ashcroft required a capital prosecution against Breeden, Carpenter and Cassell. Outterbridge, 19 and the youngest, is a cooperator. Breeden has a prior stabbing conviction. The district court rejected a claim that the notice of intent to seek the death penalty was filed too late. 2003 WL 22019060.

Authorized Federal Capital Prosecutions Resulting in a Life Sentence - 6/3/2015

Carpenter, Michael Anthony | W.D. VA No. 03-CR-13

Life sentence from jury | Name of AG Ashcroft

Race & gender of def B M | Victim R BM | Date of DP notice 7/15/2003

involves four defendants from D.C. who drove to Virginia with the intent to commit robbery. Cassell was the driver. Breeden is alleged to be the organizer, having lost his girlfriend's car payment while gambling. Carpenter allegedly held the victim, a drug dealer, at gunpoint. Carpenter shot the victim in the knee with a shotgun. Then Breeden allegedly stabbed the victim 7 times in the chest and neck. Outterbridge then shot the victim in the head. All involved are African-American, except the victims of a violent, but non-fatal, robbery of a white couple using an ATM that resulted in serious injury. The group also committed another robbery. Attorney General Ashcroft required a capital prosecution against Breeden, Carpenter and Cassell. Outterbridge, 19 and the youngest, is a cooperator. Breeden has a prior stabbing conviction. The district court rejected a claim that the notice of intent to seek the death penalty was filed too late. 2003 WL 22019060.

Ayala-Lopez, Carlos L. | D. PR No. 03-CR-55

Life sentence from jury | Name of AG Ashcroft

Race & gender of def H M | Victim R HM | Date of DP notice 12/17/2003

robbery of a gun and murder of a Veteran's Administration Hospital guard. Attorney General Ashcroft rejected a plea agreement calling for a sentence of 35 years to life and required a capital prosecution. Ayala-Lopez was a leader of a gang that sold drugs. A juvenile co-defendant was the triggerman.

Williams, Jamain | E.D. PA No. 01-CR-512

Life sentence from jury | Name of AG Gonzales

Race & gender of def B M | Victim R BF BM | Date of DP notice 5/23/2005

a prosecution against a drug gang, the Boyle Street Boys, charging cocaine sales and four gun murders between 1996 and 2002, including the 2001 execution-style slaying of a witness who was killed before she could testify about an illegal gun ring. Brian Rogers, who shot the female victim to prevent her from testifying against Vincent Williams in a federal gun case, reached a plea agreement. Jamain Williams and Andre Cooper allegedly assisted Rogers in that shooting. Vincent Williams and Andre Cooper are charged with the 2000 murder of a teenage drug seller. Vincent Williams was allegedly the shooter. Jamain Williams was allegedly the triggerman in a second 2000 RICO murder. Both Williams and Cooper committed a third RICO murder in 1999. Cooper was allegedly the shooter. All involved are African American.

Mayhew, John Richard | S.D. OH CR No. 02 03-165

Life sentence from jury | Name of AG Ashcroft

Race & gender of def W M | Victim R WF | Date of DP notice 10/5/2004

domestic gun murders of Mayhew's ex-wife, her boyfriend and his 18 year old daughter, with whom Mayhew had an incestuous relationship. Mayhew is charged in federal court with interstate kidnapping. He shot a West Virginia state trooper in the chest and shot his daughter to death and then shot himself. The seats in the car were rigged with bombs. All involved are white.

Authorized Federal Capital Prosecutions Resulting in a Life Sentence - 6/3/2015

Cooper, Andre | E.D. PA No. 01-CR-512

Life sentence from jury | Name of AG Gonzales

Race & gender of def B M | Victim R BF BM | Date of DP notice 5/23/2005

a prosecution against a drug gang, the Boyle Street Boys, charging cocaine sales and four gun murders between 1996 and 2002, including the 2001 execution-style slaying of a witness who was killed before she could testify about an illegal gun ring. Brian Rogers, who shot the female victim to prevent her from testifying against Vincent Williams in a federal gun case, reached a plea agreement. Jamain Williams and Andre Cooper allegedly assisted Rogers in that shooting. Vincent Williams and Andre Cooper are charged with the 2000 murder of a teenage drug seller. Vincent Williams was allegedly the shooter. Jamain Williams was allegedly the triggerman in a second 2000 RICO murder. Both Williams and Cooper committed a third RICO murder in 1999. Cooper was allegedly the shooter. All involved are African American.

Simmons, Brent | W.D. VA No. 5:04-CR-30014-SGW

Life sentence from jury | Name of AG Ashcroft

Race & gender of def B M | Victim R WF WM | Date of DP notice 7/28/2004

a black state prisoner charged in this 1996 case with stalking his white ex-college girlfriend, 25, and killing her and her white boyfriend, 23, with two shots to the head each. The victims were James Madison University students. The state prosecution ended with a controversial 20 year plea agreement after a hung jury. The Virginia Supreme Court rejected an appeal in 2003. Simmons has no prior convictions, is college educated and has an excellent institutional record in state prison in Virginia. The new charges were based on the Violence Against Women Act (a gun murder) and on an interstate stalking law. A 9mm was eventually discovered near the defendant's home and was alleged to be the murder weapon. The male victim's father is a retired New York City police officer. Simmons was sentenced to life in prison after six hours of deliberations.

Pepin-Taveras, Humberto | E.D. NY CR No. 04-0156

Life sentence from jury | Name of AG Ashcroft

Race & gender of def H M | Victim R HM | Date of DP notice 3/3/2005

two drug related gun murders by a Dominican Republican. The capital murder charge alleged a 1995 homicide. 21 U.S.C. § 848. Pepin-Tavares was serving a sentence for a drug conspiracy when he called the police to "cooperate" and obtain a reduced sentence. He admitted two murders of drug dealers and the dismemberment and disposal of the corpses. A 1992 murder was being prosecuted in state court, but was transferred to federal court. Pepin shot the victims, cut up their bodies and dumped them by the roadside. All involved are Hispanic.

Jordan, Peter | E.D. VA No. 04-CR-58

Life sentence from jury | Name of AG Ashcroft

Race & gender of def B M | Victim R BM | Date of DP notice 9/30/2004

a drug conspiracy murder of a drug dealer who was burned to death. All involved are African-American. Jordan was previously charged with bank robbery, auto-theft and drug possession. Gordan faced drug and gun possession charges as a juvenile.

Authorized Federal Capital Prosecutions Resulting in a Life Sentence - 6/3/2015

Gordon, Lorenzo | E.D. VA No. 04-CR-58

Life sentence from jury | Name of AG Ashcroft

Race & gender of def B M | Victim R BM | Date of DP notice 9/30/2004

a drug conspiracy murder of a drug dealer who was burned to death. All involved are African-American. Jordan was previously charged with bank robbery, auto-theft and drug possession. Gordan faced drug and gun possession charges as a juvenile.

Grande, Oscar | E.D. VA No. 04-CR-283

Life sentence from jury | Name of AG Ashcroft

Race & gender of def H M | Victim R HF | Date of DP notice 10/1/2004

four members of the MS-13 street gang who murdered a pregnant teenager in 2003 who had joined the gang and later became a federal informant. The deceased government witness was a 17 year old minor. She had just left the witness protection program. She was stabbed many times in 2003. Rivera allegedly ordered the murder from prison, where he is serving a life sentence for a 2001 murder. Rivera and Garcia-Orellano were acquitted. Cisneros and Grande were sentenced to life. All involved are Hispanic.

Cisneros, Ismael | E.D. VA No. 04-CR-283

Life sentence from jury | Name of AG Ashcroft

Race & gender of def H M | Victim R HF | Date of DP notice 10/1/2004

four members of the MS-13 street gang who murdered a pregnant teenager in 2003 who had joined the gang and later became a federal informant. The deceased government witness was a 17 year old minor. She had just left the witness protection program. She was stabbed many times in 2003. Rivera allegedly ordered the murder from prison, where he is serving a life sentence for a 2001 murder. Rivera and Garcia-Orellano were acquitted. Cisneros and Grande were sentenced to life. All involved are Hispanic. Intellectual disability was raised and argued in the penalty phase.

Wilk, Kenneth | S.D. FL No. 04-CR-60216

Life sentence from jury | Name of AG Gonzales

Race & gender of def W M | Victim R HM | Date of DP notice 2/19/2005

law enforcement officer victim - the gun murder of a law enforcement officer, Todd Fatta, and the attempted murder of Sgt. Angelo Cedeno, deputy sheriffs who were trying to serve a federal warrant. Wilk was being investigated for child pornography. Wilk, a homosexual, apparently has AIDS and allegedly dementia. The government refused an offer to plead guilty in return for a life sentence, a resolution said to have been acceptable to the victim's family. Wilk is white and the deceased officer is Hispanic. Wilk's once allegedly listed "hunting cops" as a hobby on an internet profile. Trial proceedings were stayed in 2005 pending a speedy trial interlocutory appeal which was denied. It was claimed the "death notice" was filed too late.

Authorized Federal Capital Prosecutions Resulting in a Life Sentence - 6/3/2015

Clay, Vertis | E.D. AR No. 4:04-CR-00035 WRW

Life sentence from jury | Name of AG Gonzales

Race & gender of def B M | Victim R BM | Date of DP notice 10/21/2005

a murder-for-hire drug-related 2004 gun murder during the course of a burglary and robbery to steal drugs and money. Clay and Walker were sent to kill the victim by Stovall. The deceased had knowledge about Stovall's misdeeds unknown to his Mexican drug suppliers. Walker proffered repeatedly in an attempt to cooperate. Only Clay was authorized. The murder is alleged to be gruesome. All involved are black.

Barnes, Khalid | S.D. NY No. 7:04-CR-00186-SCR

Life sentence from jury | Name of AG Gonzales

Race & gender of def B M | Victim R BM HM | Date of DP notice 1/19/2006

two drug related murders, charged as §848 CCE and as §924 gun murders. Attorney General Gonzales required a capital prosecution. All involved are black.

Street, John P. | W.D. MO No. 4:04-CR-00298-GAF

Life sentence from jury | Name of AG Gonzales

Race & gender of def W M | Victim R WM | Date of DP notice 11/16/2005

a 1998 drug (methamphetamine) related gun murder of a potential government witness. Police recovered the male victim's body from the trunk of a car. He had been beaten, stabbed and shot in the back of the head. Street was already serving 15 years on drug and gun charges. All involved are white. The jury at the first trial deadlocked. The jury at the second trial convicted Street and sentenced him to life in prison. The 8th Circuit reversed and he was acquitted.

O'Reilly, Timothy | E.D. MI No. 05-80025

Life sentence from jury | Name of AG Gonzales

Race & gender of def W M | Victim R BM | Date of DP notice 11/1/2006

the 2001 gun, bank robbery murder of a Total Armed Services (TAS) armored truck which was delivering cash to the Dearborn Federal Credit Union (DFCU) in Dearborn, Michigan. There were six potential capital defendants. Three hooded subjects, armed with shotguns, opened fire, fatally wounding a black TAS guard/messenger, the father of five. The subjects grabbed bags containing \$204,000 in currency and a .38 caliber revolver owned by TAS (carried by the victim). O'Reilly, Duncan and Watson were allegedly directly responsible for the shooting and killing of the TAS messenger. They faced the death penalty. O'Reilly, Duncan and Broom also committed a 2003 robbery, where another guard was seriously wounded and \$170,000 was stolen. Six robbers participated in the DFCU robbery/murder. They were provided the vehicle by Archie Broom, who worked at a U-Haul facility. Cromer, Duncan, Broom and O'Reilly were members of the Blue Stone Motorcycle Club (BSMC), a defunct black motorcycle club. A conversation was recorded between O'Reilly and a confidential informant, wherein O'Reilly said that he and Watson were the subjects who shot the TAS guard and Johnson was the get-away driver. Duncan was armed and participated in the robberies. Broom helped get the weapons and supplied the U-Haul used at the DFCU robbery/murder. Broom obtained a cooperation agreement. Duncan is serving a 12-20 year sentence for an attempted robbery where an accomplice was killed. O'Reilly is white, the other defendants are black. O'Reilly was previously charged with murder but was acquitted. O'Reilly and Duncan were alleged to be the most culpable.

Gooch, Larry | D. DC CR No. 04-128

Life sentence from jury | Name of AG Gonzales

Race & gender of def B M | Victim R BF BM | Date of DP notice 10/19/2005

a drug (cocaine, PCP, MDA) gang accused of six murders, a double murder in 2000, one in 2002, three in 2003, including a double murder. Gooch is charged with five murders, Dorsey and Robinson in two and Bell, Franklin and Simmons in one. Attorney General Gonzales required a capital prosecution against Gooch only. He was acquitted of one of the five murders.

McGriff, Kenneth | E.D. NY CR No. 04-966 (ERK) (VVP)

Life sentence from jury | Name of AG Ashcroft

Race & gender of def B M | Victim R BM | Date of DP notice 3/22/2006

Kenneth "Supreme" McGriff was the leader of a notorious Queens-based drug gang, "The Supreme Team," that operated in the 1980's. He went to prison after pleading to a CCE and receiving a 12-year sentence. Upon his release he resumed drug trafficking. The case also features a Murder, Inc. connection involving a film McGriff was producing with the soundtrack provided by several well-know rap artists from the label. McGriff and co-defendants David Crosby and Emanuel Mosley were charged with two RICO murders that took place in 2001. The government alleged that the murders were committed in retaliation for a murder of a McGriff associate by one of the victims, Eric Smith (who was a rapper a/k/a "E Money Bags"). The second murder victim, Troy Singleton, was allegedly killed to prevent him from retaliating for the E Money Bags murder. Both victims had a reputation for street violence. Both were carrying loaded handguns at the time of their deaths. A third defendant, Nicole Brown, Crosby's girlfriend, was charged in the E Money Bags murder only and is alleged to have acted as a look-out, video-taping the victim, and/or to have directed the shooters to the victim's location. The government's theory was that McGriff hired Mosley to provide the actual shooters. It is not clear whether any of the defendants were on the scene. Victor Wright was charged with the double-murder of two men in a suburb of Baltimore, Owings Mills, Md. The motive alleged for one of the killings was that the victim was suspected of being a cooperating witness in a drug investigation. The second victim just happened to be there. The crime took place in the parking lot of an up-scale apartment complex where McGriff maintained a stash house. The Government filed "Protective" Notices of Intent to Seek the Death Penalty as to five defendants, but withdrew as to four. The Court declined to strike the notice as filed late. Only McGriff faced the death penalty. All involved are African-American.

Lujan, Larry | D. NM No. 05-924

Life sentence from jury | Name of AG Gonzales

Race & gender of def H M | Victim R WM | Date of DP notice 7/12/2007

2005 interstate (Texas to New Mexico) kidnapping murder of a 16 year old potential federal witness. The victim owed a drug debt, failing to pay Lujan a tax for selling drugs on Lujan's "turf." The boy was beaten, forced to perform oral sex and nearly decapitated with a meat cleaver. His body was found 3 weeks later. The defendant is Hispanic, the victim white. Mr. Lujan is also linked by DNA to a 1993 murder of a couple in the same area who were allegedly involved in drug trafficking. Only Lujan faced the death penalty. All of the co-defendants, including two juveniles, made statements implicating Lujan.

McTier, James | E.D. NY CR No. 05-401

Life sentence from jury | Name of AG Gonzales

Race & gender of def B M | Victim R BF BM | Date of DP notice 12/7/2006

five RICO murders in 2000 and 2001 by the drug gang "Folk Nation" of the nationwide "Gangster Disciples" gang, who sold cocaine and marijuana. McTier was charged with three murders, Stone in two murders and Nieves in one. An innocent bystander was killed in a drive-by shooting. Nieves is Hispanic. Everyone else is black. Only McTier faced the death penalty.

Casey, Lashaun | D. PR No. 3:05-CR-0277-JAG

Life sentence from jury | Name of AG Gonzales

Race & gender of def B M Victim R HM Date of DP notice 7/17/2007

murder of an Hispanic law enforcement officer. Casey, who is black, was born in America and sent to live in Puerto Rico, was accused of the carjacking murder of an Hispanic undercover cop who disappeared during a drug transaction. The victim's body was found by the side of the road. The officer's cellphone, marked bills from the drug buy with blood on them and a gun were discovered at the defendant's grandfather's home. The defendant was caught driving the police officer's car.

Lecco, George | S.D. WV CR No. 2:05-00107

Life sentence from jury | Name of AG Gonzales

Race & gender of def W M Victim R WF Date of DP notice 8/16/2006

a 2005 gun murder-for-hire of a cooperating witness/informant in a drug (cocaine) prosecution. Lecco asked Burton, who asked Friend to help kill the female victim who was shot and beaten to death and buried in a shallow grave. Attorney General Gonzales required a death penalty prosecution. Lecco and Friend were sentenced to death at a joint trial but a new trial was granted by the trial judge when the government revealed that a juror was under federal investigation for child pornography. 634 F.Supp.2d 633 (SD WV 2009). Friend entered into a plea agreement approved by Attorney General Holder and testified against Lecco, who was sentenced to life in prison. Friend was sentenced to 35 years, Burton to 30 years. All involved are white.

Williams, Naeem | D. HI No. 1:06-CR-00079-DAE

Life sentence from jury | Name of AG Gonzales

Race & gender of def B M Victim R BF Date of DP notice 9/8/2006

the murder of a five year old child, who was in Special Education, on federal land, the Schofield (US Army) Barracks. There were bruises on the child's arms, chest, knees and thighs, as well as a small laceration on her back. The father, Naeem Williams, confessed to hitting his daughter on numerous occasions. His wife, Delilah Williams (the victim's stepmother), 21, confessed to having knowledge of these beatings. The child's room had no mattress, no blankets and no furniture, as all had been removed by her parents as a form of punishment. Blood spatters could be seen throughout the residence from whipping with a belt. Naeem will face the death penalty. Attorney General Gonzales required a capital trial. Attorney General Holder rejected a plea agreement.

Argueta, Antonio | D. MD No. 8:05 CR 00393-DKC

Life sentence from jury | Name of AG Gonzales

Race & gender of def H M Victim R HF Date of DP notice 5/8/2007

five RICO gun murders by members of the Langley Park clique of MS-13 gang, including the 2004 murder of a female potential government witness by Argueta, Guillen and Palacios, a 2003 double murder, various attempted murders and a gang rape of two women. Bernal is charged in two murders and the others in one. Villatoro and Canales were not charged in federal court. Villatoro received a life sentence in state court. There are three additional uncharged related murders. All involved are Hispanic.

Hans, Eric Preston

D. SC No. 6:05 CR 01227-HMH

Life sentence from jury

Name of AG Gonzales

Race & gender of def W M Victim R WF BM Date of DP notice 8/1/2006

a 2004 arson of a Comfort Inn in Greenville, South Carolina, resulting in six deaths, one white male, two white females, two black males and one black female. Hans is white. He was allegedly obsessed with a woman who was reconciling with her boyfriend at the motel. At sentencing, the government abandoned a claim that Hans intended to kill.

Natson, Michael Antonio

M.D. GA No. 4:05-CR-00021-CDL-GMF

Life sentence from jury

Name of AG Gonzales

Race & gender of def B M Victim R BF Date of DP notice 12/8/2005

a 24 year old U.S. Air Force military police officer charged with the gun murder a pregnant 23 year old Georgia Southern University student in 2003. The victim's skeletal remains were found by hunters on a remote part of Fort Benning, Georgia. Evidence suggests the victim was romantically involved with the defendant. All involved are African-American.

Solomon, Jelani

W.D. PA No. 2:05-CR-00385-TFM

Life sentence from jury

Name of AG Gonzales

Race & gender of def B M Victim R WM Date of DP notice 12/29/2006

involves a contract gun murder of a 53-year-old father of a jailed witness who was cooperating (and due to testify the next day) against Soloman. Hanner rang the doorbell and shot the witness's father when he answered the door. Solomon hired Hanner who dropped his cellphone near the scene of the murder. Hanner pled guilty and testified against Solomon. The victim is white, with five children. Solomon and Hanner are African-American.

Cyrus, Dennis, Jr.

N.D. CA No. 05-00324-MMC

Life sentence from jury

Name of AG Gonzales

Race & gender of def B M Victim R BM Date of DP notice 11/1/2006

a San Francisco based drug conspiracy from 1994 to 2005 alleging three separate 2002 RICO murders including the killing of a government witness, 18 U.S.C. §1512. Cyrus faced three murder charges, Peterson faced one.

Eye, Gary

W.D. MO No. 4:05-CR-00344-ODS

Life sentence from jury

Name of AG Gonzales

Race & gender of def W M Victim R BM Date of DP notice 7/17/2006

a 2005 18 U.S.C. §924(c) gun, civil rights murder of a §1512 government witness. The indictment alleged the victim was killed by the white defendants because he is an African-American. State murder charges were dismissed. The United States Attorney announced that the death penalty would not be sought, but the Department of Justice required counsel to submit a mitigation letter. "Learned" counsel were not appointed until Attorney General Gonzales required a death penalty prosecution. Both defendants are young with juvenile records, stealing cars and use of meth.federal defendant who received a life sentence.

Sandstrom, Steven | W.D. MO No. 4:05-CR-00344-ODS

Life sentence from jury | Name of AG Gonzales

Race & gender of def W M | Victim R BM | Date of DP notice 7/17/2006

a 2005 18 U.S.C. §924(c) gun, civil rights murder of a §1512 government witness. The indictment alleged the victim was killed by the white defendants because he is an African-American. State murder charges were dismissed. The United States Attorney announced that the death penalty would not be sought, but the Department of Justice required counsel to submit a mitigation letter. "Learned" counsel were not appointed until Attorney General Gonzales required a death penalty prosecution. Both defendants are young with juvenile records, stealing cars and use of meth.

Henderson, Thomas | S.D. OH No. 2:06-CR-00039

Life sentence from jury | Name of AG Gonzales

Race & gender of def B M | Victim R BM | Date of DP notice 12/8/2006

the 1996 and 1998 18 U.S.C. § 1513 murders of witnesses who testified against Henderson in an earlier bank robbery prosecution and the witness' boyfriend. In addition, three additional murders were alleged in aggravation. All involved are African-American.

Basciano, Vincent | E.D. NY No. 05-CR-0060 (S-3) (NGG)

Life sentence from jury | Name of AG Gonzales

Race & gender of def W M | Victim R WM | Date of DP notice 4/2/2007

two mob RICO murders by the Acting Boss of the Bonanno crime family in 2001, involving Indelicato and Donato, and in 2004, involving Basciano, Cicale, Aiello and Mancuso. Joe Massino, the Boss of the Family, avoided a death penalty trial by secretly taping Basciano. Subsequently, Cicale began cooperating. Basciano was convicted of the 2001 murder and sentenced to life in prison. He was separately tried and convicted of the 2004 murder case and Massino testified against him. Attorney General Holder rejected the judge's request to withdraw the Notice of Intent to seek the death penalty. The jury unanimously voted to reject the death penalty. All involved are white.

Galan, Thomas A. | N.D. OH No. 3:06-CR-00730-JGC-1

Life sentence from jury | Name of AG Gonzales

Race & gender of def H M | Victim R HM | Date of DP notice 11/14/2006

drug related double gun murder of two brothers in 2006. They were found in a crushed van. The defendant is white, the victims Hispanic. Galan distributed cocaine and marijuana in Northwest Ohio.

Green, Steven | W.D. KY No. 5:06-CR-00019-TBR

Life sentence from jury | Name of AG Gonzales

Race & gender of def W M | Victim R ARF | Date of DP notice 7/3/2007

the 2006 murders of an Iraqi family of four, including two children, and the rape murder of their daughter by three United States soldiers. Four of Green's fellow soldiers, including three squad leaders, were murdered in 12 days. Green, 20, told counselors and commanding officers that he wanted to kill Iraqis. Green was discharged before his arrest and indicted in United States District Court.

Baskerville, William | D. NJ CR No. 03-836 (JAP)

Life sentence from jury | Name of AG Gonzales

Race & gender of def B M Victim R BM Date of DP notice 6/16/2006

Baskerville is a "career offender" in his early thirties who was the target of a federal narcotics investigation. The victim was a government informant who made a series of taped drug buys from Baskerville (as well as others). Four months after Baskerville was arrested, the government witness was killed. Baskerville ordered the hit from his jail cell. The shooter, Anthony Young, cooperated and did not face the death penalty.

Moonda, Donna | N.D. OH No. 1:06-CR-00395-DDD

Life sentence from jury | Name of AG Gonzales

Race & gender of def W F Victim R IM Date of DP notice 9/6/2006

a 2005 "interstate stalking," 18 U.S.C. §2261A, §924 domestic gun murder of a millionaire urologist while he was driving on the Ohio Turnpike. Co-defendant Bradford, a black male, allegedly traveled from Pennsylvania to Ohio to kill Dr. Gulam Moonda. Bradford struck a deal for 17 years in return for testimony that Mrs. Moonda offered him money to kill her husband. He was having an affair with the doctor's wife. The deceased was 69 and of Indian descent. Mrs. Moonda, 47, faced the death penalty for charges of murder for hire.

Burgos-Montes, Edison | D. PR No. 06-009 JAG

Life sentence from jury | Name of AG Gonzales

Race & gender of def H M Victim R HF Date of DP notice 6/27/2007

a carjacking murder of a government witness who was Burgos' girlfriend, an informant for the DEA, investigating Burgos as the alleged leader of a drug conspiracy. Burgos allegedly found out and threatened to kill her. She disappeared shortly thereafter and her body has never been found. All involved are Hispanic.

Julian, Jermaine Michael | M.D. FL No. 8:07-CR-9-T-27TGW

Life sentence from jury | Name of AG Keisler, AAG

Race & gender of def B M Victim R BM Date of DP notice 10/15/2007

a robbery of a drug house and an execution style gun murder and two attempted murders. The gunmen forced their way into the house. Only Julian faced the death penalty. He shot the deceased victim Potts but the gun jammed when he tried to shoot two associates. All involved are black.

Dinkins, James | D. MD No. 1:06-CR-00309-JFM

Life sentence from jury | Name of AG Mukasey

Race & gender of def B M Victim R BM Date of DP notice 1/25/2008

three drug-related gun murders. Dinkins was charged in two in 2005, the others in one. 18 U.S.C. §§846 and 924.

Gilbert, Melvin | D. MD No. 1:06-CR-00309-JFM

Life sentence from jury | Name of AG Mukasey

Race & gender of def B M | Victim R BM | Date of DP notice 1/25/2008

three drug-related gun murders. Dinkins was charged in two in 2005, the others in one. 18 U.S.C. §§846 and 924.

Phillips, Maurice | E.D. PA No. 2:07-CR-00549-JCJ

Life sentence from jury | Name of AG Holder

Race & gender of def B M | Victim R BF BM | Date of DP notice 5/4/2009

murder for hire witness killings of a female informant and her godson who was at the residence at the time of the shooting. Phillips ordered the killing. Bryant Phillips was the shooter and testified at trial. All involved are black.

Byers, Patrick Albert, Jr. | D. MD No. 08-056

Life sentence from jury | Name of AG Mukasey

Race & gender of def B M | Victim R WM | Date of DP notice 8/5/2008

2007 contract, gun murder for hire by a 15 year old member of the Bloods gang on the order of Byers, who was facing a state murder trial in eight days. The gunman was paid \$2,500. The victim, who is a white male, was an eyewitness to a murder committed by Byers. He was shot to death in front of his children. The hit was arranged from jail by a cellphone. Prior to trial, Byers was caught with another cellphone in jail, trying to influence a witness. Attorney General Holder rejected an offer to plead to a life sentence. The jury deliberated eight hours before announcing they were not unanimous. All the defendants are black.

Holley, Marvin Lee | N.D. AL CR No. 96-B-0208-NE

Life sentence from jury | Name of AG Reno

Race & gender of def W M | Victim R WM | Date of DP notice 11/14/1997

the 1991 killing of an informant in a drug conspiracy prosecution who had been given a new identity and sent out of state. However, the government witness returned and was spotted at a flea market in Ft. Payne. The drug ring boss, Mr. Holley, and co-defendant Charles Holland are alleged to have kidnaped the victim (intrastate) and killed him with a hammer. Holley is also alleged to have attempted to arrange the killing of government witnesses from prison. Holley was sentenced to life in prison and is also serving several consecutive life sentences in state prison for drug trafficking. All involved are white.

Richardson, Brian | N.D. GA No. 1:08CR139

Life sentence from jury | Name of AG Mukasey

Race & gender of def W M | Victim R WM | Date of DP notice 12/2/2008

inmate killing involving a stabbing and strangulation at USP Atlanta. All involved are white.

Authorized Federal Capital Prosecutions Resulting in a Life Sentence - 6/3/2015

Northington, Steven | E.D. PA No. 2:07-CR-00550-RBS

Life sentence from jury | Name of AG Holder

Race & gender of def | B M | Victim R | BM | Date of DP notice 3/14/2011

involves murders allegedly orchestrated by Philadelphia drug kingpin Kaboni Savage, already serving 30 years for drug trafficking. Thirteen murders are charged, including a 2004 arson fire that killed six people, including four children - ages 15, 12, 10 and 1. The fire was set to retaliate against a federal informant who was testifying against Savage. Lewis was tried for a 2001 Philadelphia murder and was acquitted. Kaboni Savage is charged in twelve murders, Merritt in six, Kidada Savage in six involving the arson and Northington in two. All involved are black, except one victim, who is an Hispanic male. The trial court rejected a claim that Northington is intellectually disabled.

McCluskey, John Charles | D. NM No. 1:10-CR-02734

Life sentence from jury | Name of AG Holder

Race & gender of def | W M | Victim R | WF WM | Date of DP notice 1/26/2012

two carjacking gun murders of a just retired married couple by escaped convicts. All involved are white.

Salad, Ahmed Muse | E.D. VA No. 2:11CR34

Life sentence from jury | Name of AG Holder

Race & gender of def | B M | Victim R | WF WM | Date of DP notice 4/17/2012

four 2011 terrorism murders by Somali pirates, charged with murder and kidnapping. The boat's owners and another white couple who were guests were shot to death before troops could board the boat.

Beyle, Abukar Osman | E.D. VA No. 2:11CR34

Life sentence from jury | Name of AG Holder

Race & gender of def | B M | Victim R | WF WM | Date of DP notice 4/17/2012

four 2011 terrorism murders by Somali pirates, charged with murder and kidnapping. The boat's owners and another white couple who were guests were shot to death before troops could board the boat.

Abrar, Shani Nurani Shiekh | E.D. VA No. 2:11CR34

Life sentence from jury | Name of AG Holder

Race & gender of def | B M | Victim R | WF WM | Date of DP notice 4/17/2012

four 2011 terrorism murders by Somali pirates, charged with murder and kidnapping. The boat's owners and another white couple who were guests were shot to death before troops could board the boat.

Candelario-Santana, Alexis | D. PR No. 3:09-CR-00427-JAF

Life sentence from jury | Name of AG Holder

Race & gender of def H M Victim R HF HM Date of DP notice 7/8/2012

twenty RICO, gun murders, including the October 17, 2009 "Tombola Massacre" where eight people were killed and twenty wounded in a shooting at a bar, including an unborn child. Candelario-Santana has 13 prior murder convictions. All involved are Hispanic. The trial court rejected a claim that Alexis Candelario-Santana is intellectually disabled.

Briseno, Juan | N.D. IN No. 2:11CR077

Life sentence from jury | Name of AG Holder

Race & gender of def H M Victim R BM HM Date of DP notice 3/6/2013

six RICO gun murders by the gang "Imperial Gangsters," three in 2008 and three in 2010. Briseno was charged in six murders, Feliciano in two and Torres in one. Briseno was convicted of five murders. Briseno is Hispanic. The victims were black and Hispanic.

Jimenez-Bencevi, Xavier | D. PR No. 3:12-CR-00221-JAF

Life sentence from jury | Name of AG Holder

Race & gender of def H M Victim R HF Date of DP notice 12/7/2012

a 2010 gun murder of a female witness, allegedly arranged by a mother and son. The triggerman, Jiminez-Bencevi, was authorized for a capital prosecution. He committed a prior murder. All involved are Hispanic.

Authorized Federal Capital Prosecutions Which Resulted in an Original Sentence of Death - 6/23/15

Chandler, David Ronald

N.D. AL No. 90-CR-H-266-E

Clemency

Name of AG Barr

Race & gender of def W M Victim R WM Date of DP notice 1/29/1991

a white Alabama marijuana grower was sentenced to death for the murder for hire of a subordinate in his drug ring. The triggerman in the killing was granted immunity in exchange for his testimony, later recanted, that Chandler offered him \$500 for the murder. Insisting on his innocence, Chandler refused a pretrial plea offer of life imprisonment. Chandler's convictions and death sentence were affirmed by a panel of the Eleventh Circuit in mid-1993. 996 F.2d 1073 (11th Cir. 1993), cert. denied, 114 S.Ct. 2724 (1994). He filed a motion to vacate his convictions under 28 U.S.C. § 2255, and an execution date originally set for March 31, 1995, was stayed by the District Court. After several evidentiary hearings, 950 F.Supp. 1545 (N.D.AL1996), the District Court denied relief. 957 F.Supp. 1505 (N.D. AL 1997). A panel reversed, 193 F.3d 1297 (11th Cir. 1999) but the en banc court decided that Chandler received effective assistance of counsel in a 6-5 vote. 218 F.3d 1305. On January 20, 2001, President Clinton granted clemency.

Johnson, Corey

E.D. VA No. 3-92-CR-68

Death row - 2255

Name of AG Barr

Race & gender of def B M Victim R BF BM Date of DP notice 5/1/1992

three of four young black inner-city gang members in Richmond, Virginia, who were sentenced to death in 1993, for their roles in eleven crack-related murders. The trial of a fourth defendant, Vernon Thomas, was severed. After the completion of all legal appeals, a May 2006 execution date was stayed pending the outcome of lethal injection litigation in the DC Circuit Court. There is substantial evidence of intellectual disability but all such claims to date have been rejected.

McCullah, John Javilo

E.D. OK CR No. 1:92-032-S

Death Sentence Vacated and Authorization Withdrawn and Authorization Not

Name of AG Barr and Holder

Race & gender of def W M Victim R WM Date of DP notice 9/11/1992

two white and one Hispanic defendants were tried jointly in connection with the drug-related intrastate kidnap/murder of a Muskogee, Oklahoma auto dealership employee. The two capitally-charged "managers" of the drug enterprise, co-defendants Hutching and Molina, received life sentences from the jury, while the third defendant, McCullah (who, unlike the bosses, had been present at the killing) was sentenced to death in 1993. United States v. McCullah, 76 F.3d 1087 (10th Cir. 1996) ordered a new penalty hearing due to introduction of an involuntary statement and double counting of aggravating circumstances. Rehearing en banc was denied by a 6 to 6 vote, 87 F.3d 1136 (6/26/96), and the government declined to seek review in the Supreme Court. The government finally withdrew its request for the death penalty while McCullah's resentencing was pending. The victim was white.

In 2007, McCullah allegedly killed his cellmate in Florida, USP Coleman, after the assault/murder was arranged by two guards. Both McCullah and his deceased cellmate are white. One guard was convicted of murder and sentenced to life in prison.

Roane, James

E.D. VA No. 3-92-CR-68

Death row - 2255

Name of AG Barr

Race & gender of def B M Victim R BF BM Date of DP notice 5/1/1992

three of four young black inner-city gang members in Richmond, Virginia, who were sentenced to death in 1993, for their roles in eleven crack-related murders. The trial of a fourth defendant, Vernon Thomas, was severed. A May 2006 execution date was stayed pending the outcome of lethal injection litigation in the DC Circuit Court.

Authorized Federal Capital Prosecutions Which Resulted in an Original Sentence of Death - 6/23/15

Tipton, Richard

E.D. VA No. 3-92-CR-68

Death row - 2255

Name of AG Barr

Race & gender of def B M Victim R BF BM Date of DP notice 5/1/1992

three of four young black inner-city gang members in Richmond, Virginia, who were sentenced to death in 1993, for their roles in eleven crack-related murders. The trial of a fourth defendant, Vernon Thomas, was severed. A May 2006 execution date was stayed pending the outcome of lethal injection litigation in the DC Circuit Court.

Garza, Juan Raul

S.D. TX CR No. 93-009

Executed

Name of AG Barr

Race & gender of def H M Victim R HF HM Date of DP notice 1/7/1993

an Hispanic marijuana distributor was sentenced to death by a jury in 1993 in Brownsville, Texas, in connection with the murders of three other drug traffickers in the Brownsville area, two Hispanic and one Anglo. Garza ordered two murders and killed a third person himself. The government introduced 5 unadjudicated murders in aggravation, 4 were in Mexico. All but one victim were males. Murder for hire was an aggravating circumstance. Attorney General Barr authorized the prosecution to seek the death penalty in December, 1992. Mr. Garza's death sentence was affirmed. *United States v. Flores*, 63 F.3d 1342 (5th Cir. 1995), and a petition for writ of certiorari was denied by the Supreme Court in 1996. Habeas relief was denied in 1998-1999. Garza's first two execution dates in 2000 were postponed by President Clinton pending a Department of Justice study of racial and geographic disparities in the federal death penalty, the second time on December 7, 2000 for 6 months, until June 2001. He was executed on June 19, 2001.

Chanthadara, Bountaem

D. KS CR No. 94-10129-01

Death Sentence Vacated and Authorization Withdrawn

Name of AG Reno

Race & gender of def A M Victim R AF Date of DP notice 6/2/1995

a "Hobbs Act" case, in which five defendants of Asian descent (Laotian and Vietnamese) were charged with the armed-robbery of a Chinese restaurant and killing co-proprietor Barbara Sun, in Wichita, Kansas in 1994. Federal jurisdiction was based on the Hobbs Act, 18 U.S.C. § 1951, prohibiting obstruction of inter-state commerce. The Attorney General's approval of this capital prosecution for Chanthadara and Phouc Nguyen was announced in 1995. It marked the first time that the Hobbs Act was used to federalize as a capital case a prosecution for murder committed during a commercial robbery. Chanthadara beat and shot the victim in an attempt to get her to open a safe the female proprietor could not. Nguyen was present. Chanthadara's jury recommended the death penalty in 1996. After a separate trial, Phouc Nguyen's jury sentenced him to life imprisonment. The Eighth Circuit reversed Chanthadara's death sentence on November 1, 2000. 230 F.3d 1237. He was sentenced to life in prison in 2002.

Davis, Len

E.D. LA CR No. 94-381

Death row - 2255

Name of AG Reno

Race & gender of def B M Victim R BF Date of DP notice 10/6/1995

civil rights - an African-American New Orleans police officer, Len Davis, who was being investigated (and tape recorded) in a drug conspiracy case. Davis ordered the murder of a 32 year old mother of three, Kim Groves, who witnessed his beating of a witness in an unrelated incident. Groves had filed a brutality complaint against Davis. Paul Hardy, 27, carried out the killing. Murder for hire is alleged as an aggravating circumstance. Davis, then Hardy, were sentenced to death by a jury in 1996, which heard sequential penalty phase presentations. Davis did not attend his. The Fifth Circuit reversed one of the convictions and ordered a new sentencing trial on the remaining convictions in 1999. 185 F.3d 407. On remand the District Court dismissed the Notice of Intent to Seek the Death Penalty based on *Ring v. Arizona*. This ruling was reversed by the Fifth Circuit. 380 F.3d 821. Davis was convicted and resented to death in 2005. A 28 USC §2255 motion is pending.

Authorized Federal Capital Prosecutions Which Resulted in an Original Sentence of Death - 6/23/15

Hall, Orlando C.

N.D. TX No. 4:94-CR-121-Y

Death row - 2255

Name of AG Reno

Race & gender of def B M Victim R BF Date of DP notice 2/23/1995

the first approval of a death penalty prosecution under the 1994 Federal Death Penalty Act. Hall, and his co-defendant, Webster, both African-American, were charged in Fort Worth, Texas, with the abduction, sexual assault and beating murder of a 16-year-old black female whose older brother had allegedly stolen marijuana. In 1995, Hall was sentenced to death after the jury heard testimony from co-defendants who pled guilty and testified in return for leniency. Expert testimony suggested the victim was still alive when buried. After a separate trial, Bruce Webster was sentenced to death by a jury in 1996. After the completion of all legal appeals, Hall joined the lethal injection litigation in the DC Circuit Court.

Hardy, Paul

E.D. LA CR No. 94-381

Dismissal after notice by Judge

Name of AG Reno

Race & gender of def B M Victim R BF Date of DP notice 10/6/1995

civil rights - an African- American New Orleans police officer, Len Davis, who was being investigated (and tape recorded) in a drug conspiracy case. Davis ordered the murder of a 32 year old mother of three, Kim Groves, who witnessed his beating of a witness in an unrelated incident. Groves had filed a brutality complaint against Davis. Paul Hardy, 27, carried out the killing. Murder for hire is alleged as an aggravating circumstance. Davis, then Hardy, were sentenced to death by a jury in 1996, which heard sequential penalty phase presentations. Davis did not attend his. The Fifth Circuit reversed one of the convictions and ordered a new sentencing trial on the remaining convictions in 1999. 185 F.3d 407. On remand, the District Court dismissed the Notice of Intent to Seek the Death Penalty based on Ring v. Arizona. This ruling was reversed by the Fifth Circuit. Davis was resentenced to death in 2005 at a separate trial. The trial court found Hardy to be intellectually disabled. 762 F.Supp.2d 849 (ED LA 2010).

Webster, Bruce

N.D. TX No. 4:94-CR-121-Y

Death row - 2255

Name of AG Reno

Race & gender of def B M Victim R BF Date of DP notice 2/23/1995

the first approval of a death penalty prosecution under the 1994 Federal Death Penalty Act. Orlando Hall, and his co-defendant, Webster, both African-American, were charged in Fort Worth, Texas, with the abduction, sexual assault and beating murder of a 16-year-old black female whose older brother had allegedly stolen marijuana. In 1995, Hall was sentenced to death after the jury heard testimony from co-defendants who pled guilty and testified in return for leniency. Expert testimony suggested the victim was still alive when buried. After a separate trial, Bruce Webster was sentenced to death by a jury in 1996. Webster is the first case in which a federal defendant has been sentenced to death after attempting to establish his ineligibility for the death penalty by reason of intellectual disability. After completion of all legal appeals, an April 2007 execution date was stayed pending the outcome of lethal injection litigation in the D.C. Circuit Court. The Seventh Circuit, after the Fifth Circuit denied a similar request, is allowing the presentation of newly discovered evidence of Webster's intellectual disability.

Battle, Anthony

N.D. GA No. 1:95 CR 528

Death row - 2255

Name of AG Reno

Race & gender of def B M Victim R BM Date of DP notice 7/26/1996

law enforcement officer victim - a black inmate with a history of psychiatric problems who was sentenced to death for the hammer-murder of an African-American guard in the Atlanta federal penitentiary. Mr. Battle was serving a life sentence for the prior murder of his wife when the killing occurred. In 1997 a federal jury rejected Mr. Battle's insanity defense and returned a death sentence after three hours' deliberation. After the completion of all legal appeals, 173 F.3d 1343 (1999), 419 F.3d 1292 (2005), Battle joined the lethal injection litigation in the D.C. Circuit Court.

Authorized Federal Capital Prosecutions Which Resulted in an Original Sentence of Death - 6/23/15

Jones, Louis

N.D. TX No. 6-95-CR-0015-C

Executed

Name of AG Reno

Race & gender of def B M Victim R WF Date of DP notice 9/13/1995

a 46 year old African-American -- a retired 22-year decorated Persian Gulf veteran--was convicted of the abduction murder of a young white female soldier. The victim's family traveled to Washington to seek DOJ approval of the death request. The trial occurred in Lubbock on change of venue, after thousands of San Angelo residents signed petitions calling for the death penalty. The defendant was sentenced to death in 1995, the Fifth Circuit affirmed in 1998, but the United States Supreme Court granted review to consider issues relating to the jury's sentencing instructions in this first case conducted under the 1994 Federal Death Penalty Act. The Supreme Court affirmed the Fifth Circuit's decision in 1999. 527 U.S. 373. A post-conviction action was denied, as was a successor petition raising a Ring issue. President Bush denied clemency the same evening as announcing the second Gulf War. Jones was executed the next morning, March 18, 2003.

McVeigh, Timothy James

D. CO No. 96-CR-68-M

Executed

Name of AG Reno

Race & gender of def W M Victim R WF + Date of DP notice 10/20/1995

the 1995 Oklahoma City bombing in which 160 lost their lives, including 19 children. The President and Attorney General immediately announced that the death penalty would be sought, even before any suspects were identified. After a change of venue, a Denver jury convicted McVeigh and voted to sentence him to death in 1997. Appeal to the United States Court of Appeals for the Tenth Circuit was quickly denied in 1998, 153 F.3d 1166, as was a post-conviction petition. 118 F.Supp.2d 1137 (D. CO 2000). Thereafter, Mr. McVeigh decided to abandon further appeal. His execution was scheduled for May 16, 2001, was delayed by the Attorney General upon the discovery of over 6,000 pages of FBI reports not disclosed to the defense. He was executed on June 11, 2001.

Hammer, David Paul

M.D. PA No. 4-96-CR-239

Life Sentence from Judge

Name of AG Reno

Race & gender of def W M Victim R WM Date of DP notice 4/9/1997

a strangulation murder of a federal prison inmate by his cellmate. The defendant and the victim are white. Hammer was serving a 1200+ year Oklahoma state sentence at the time of the homicide, but had been incarcerated in the federal penitentiary at Allenwood, Pennsylvania. Mr. Hammer abandoned his direct appeal. 226 F.3d 229 (3d Cir. 2000). An execution date was set for November 15, 2000, but was vacated when Mr. Hammer decided (and was allowed) to file a post-conviction action. Penalty phase relief was granted in December 2005, and upheld on appeal. 404 F.Supp.2d 676 (MD PA 2005). A life sentence was imposed at his resentencing bench trial.

Johnson, Darryl Alamont

N.D. IL No. 96 CR 379

Death Sentence Vacated and Authorization Withdrawn

Name of AG Reno

Race & gender of def B M Victim R BM Date of DP notice 10/1/1996

a "Gangster Disciple" drug conspiracy/racketeering murder case. Two homicides were charged, one of a government confidential informant. Co-defendant Quan Ray committed two murders on orders of Mr. Johnson. Four additional homicides were alleged in aggravation. Murder for hire is alleged as an aggravating circumstance. Ray was sentenced to life in prison at a separate trial. Johnson's jury recommended a sentence of death in 1997. Following a 2010 grant of sentencing relief, the government withdrew the notice of intent to seek the death penalty in 2012.

Authorized Federal Capital Prosecutions Which Resulted in an Original Sentence of Death - 6/23/15

Paul, Jeffrey Williams

W.D. AR No. 6:96CR60022

Death row - 2255

Name of AG Reno

Race & gender of def W M Victim R WM **Date of DP notice** 1/23/1997

Paul is one of two white teenagers charged with the robbery-murder of an elderly white National Parks employee in Hot Springs National Park (USPS), federal land within the city of Hot Springs, Arkansas. A Hot Springs federal jury unanimously imposed a life sentence on co-defendant Trinity Ingle on June 6, 1997. Paul's separate trial began on June 17, 1997, and ended with a death sentence on June 25, 1997. All involved are white. A 28 USC §2255 motion was denied without an evidentiary hearing, a ruling affirmed by the Eighth Circuit. After his initial request to join the lethal injection litigation in the DC District was denied, Paul successfully appealed to the DC Circuit Court.

Allen, Billie Jerome

E.D. MO No. 4:97 CR 0141 ERW (TCM)

Death row - 2255

Name of AG Reno

Race & gender of def B M Victim R WM **Date of DP notice** 8/1/1997

two black defendants charged with the fatal shooting of a white bank guard during a robbery. Attorney General Reno authorized the government to seek the death penalty on August 1, 1997. After separate trials, death sentences were returned on March 10, 1998 for Allen and April 3, 1998 for Holder. An appeal was rejected by a divided panel of the Eighth Circuit. 247 F.3d 741 (2001). The Supreme Court remanded in light of *Ring v. Arizona*, 536 U.S. 953. An en banc Eighth Circuit reversed the three-judge panel's grant of penalty phase relief. 357 F.3d 745, 406 F.3d 940 (2005). A 28 U.S.C. §2255 motion was denied. An appeal is pending.

Barnette, Aquila Marcivicci

W.D. NC No. 3:97CR23-P

Death row - 2255

Name of AG Reno

Race & gender of def B M Victim R BF WM **Date of DP notice** 7/15/1997

a domestic killing. Barnette confessed to murdering a motorist during a Charlotte, North Carolina carjacking. He drove the victim's car to Roanoke, Virginia, where he killed his former girlfriend. Barnette has a long history of domestic abuse of the second victim. The defendant and the female victim are black; the carjacking victim was white. A Charlotte, North Carolina jury imposed the death penalty in 1998. Two years later the appeals court ordered a new sentencing trial. 211 F.3d 803 (4th Cir. 2000). Barnette was again sentenced to death in 2002. The United States Supreme Court, in October 2005, remanded the case to the Fourth Circuit for consideration of a Batson claim, which was ultimately denied and affirmed on appeal. A 28 USC §2255 motion is pending.

Holder, Norris G.

E.D. MO CR No. 4:97 0141 ERW (TCM)

Death row - 2255

Name of AG Reno

Race & gender of def B M Victim R WM **Date of DP notice** 8/1/1997

two black defendants charged with the fatal shooting of a white bank guard during a robbery. Attorney General Reno authorized the government to seek the death penalty on August 1, 1997. After separate trials, death sentences were returned on March 10, 1998 for Allen and April 3, 1998 for Holder. An appeal was denied. 247 F.3d 741 (2001). A 2255 motion for post-conviction relief was denied, 2008 WL 2909648, 2009 WL 5030785, and an appeal is pending.

Authorized Federal Capital Prosecutions Which Resulted in an Original Sentence of Death - 6/23/15

Gabrion, Marvin

W.D. MI No. 1:99-CR-76

Death row - 2255

Name of AG Ashcroft

Race & gender of def W M Victim R WF Date of DP notice 2/26/2001

the disappearance of an alleged rape victim before Gabrion's trial, as well as the disappearance of her 3 year old child and three men. The bound victim was found in a lake, part of federal land, the Manistee National Forest (USFS). Attorney General Ashcroft required a capital prosecution in this 18 U.S.C. §1111 case. All involved are white. After a remand to the district court for the presentation of additional evidence on the issue of subject matter jurisdiction, the Sixth Circuit found subject matter jurisdiction. After a grant of sentencing phase relief, the government sought rehearing en banc, which resulted in reversal of sentencing relief. A 28 USC §2255 motion is pending.

Lee, Daniel Louis

E.D. AR No. LR-CR-97-243

Death row - 2255

Name of AG Reno

Race & gender of def W M Victim R WF WM Date of DP notice 3/20/1998

a RICO prosecution of an organization supposedly intent upon starting a revolution. The capital crime was the murder of a family of three (an Arkansas gun dealer, his wife and their 8 year old child) in the Fall of 1996. The defendants may have believed the gun dealer was an ATF informant. The victims were killed by duct-taping plastic bags over their heads, handcuffing the three and throwing them in a river. The defendants and the victims are white. Co-defendant Chevie Kehoe was charged in two additional murders as well. The defendants were also charged with bombing the Spokane, WA city hall. Kehoe, older, whom some considered more culpable, was first sentenced to life by the jury at a 1999 separate penalty hearing. At that point the United States Attorney attempted to withdraw the request for the death penalty. The Attorney General was unavailable, so the Deputy Attorney General declined the request. Lee was then sentenced to death. The next year the District Court ordered a new sentencing hearing for Lee. 89 F.Supp.2d 1017 (E.D. AR). That decision was reversed by the Eighth Circuit. 274 F.3d 485 (2001), which later affirmed the convictions and death sentences. A 28 U.S.C. 2255 motion and appeal were denied. Lee is currently litigating the denial of a Rule 60(b) motion.

Stitt, Richard Thomas

E.D. VA No. 2:98CR47

Authorization withdrawn

Name of AG Reno

Race & gender of def B M Victim R BM Date of DP notice 6/23/1998

three homicides and other attempted homicides committed by co-defendants on Stitt's urging. Authorization to seek the death penalty was granted by Attorney General Reno only for Stitt. Four co-defendants did not face the death penalty. Stitt received a sentence of death in 1998 after a joint trial with three of the non-capital codefendants. He has a lengthy record of assaultive conduct. An appeal was rejected by the Fourth Circuit. 250 F.3d 878 (5/25/01). Penalty phase relief was granted in 2255 review on a claim of ineffective assistance of counsel. 369 F.Supp.2d 679 (ED VA 2005). The government withdrew the notice of intent to seek the death penalty in 2010.

Ortiz, Arboleda

W.D. MO No. 98- 00311-01/05-CR-W-2

Death row - 2255

Name of AG Reno

Race & gender of def B M Victim R HM Date of DP notice 5/19/1999

four Colombians charged in a drug related murder. The alleged ringleader, Hinestroza, was a fugitive who was eventually arrested and received a life sentence at a separate trial. The victim and his nephew (who sold cocaine for the gang) stole \$240,000 from them. The defendants tied up, interrogated, duct taped and shot both victims. The nephew lived, escaped and identified the defendants. Sinisterra shot and killed one victim. Ortiz or Tello shot the surviving victim. Sinisterra and Ortiz were sentenced to death. The jury deadlocked on punishment for Tello, and he was sentenced to life in prison. Although not litigated at trial, Ortiz has a full scale I.Q. of 54. A 2255 motion for post-conviction relief was denied, after an evidentiary hearing. An appeal is pending.

Authorized Federal Capital Prosecutions Which Resulted in an Original Sentence of Death - 6/23/15

Sinisterra, German

W.D. MO No. 98- 00311-01/05-CR-W-2

Died Before Execution

Name of AG Reno

Race & gender of def B M Victim R HM Date of DP notice 4/28/1999

four Colombians charged in a drug related murder. The alleged ringleader, Hinestroza, was a fugitive who was eventually arrested and received a life sentence at a separate trial. Hinestroza and his gang sold cocaine in the Kansas City area. The victim and his nephew (who sold cocaine for the gang) stole \$240,000 from them. The defendants tied up, interrogated, duck taped and shot both victims. The nephew lived, escaped and identified the defendants. Sinisterra shot and killed one victim. Ortiz or Tello shot the surviving victim. Sinisterra and Ortiz were sentenced to death. The jury deadlocked on punishment for Tello, and he was sentenced to life in prison. A 2255 motion for post-conviction relief was denied without a hearing. This ruling was reversed on appeal and remanded for an evidentiary hearing. While the case was pending 2255 proceedings, Sinisterra died.

Higgs, Dustin

D. MD CR No. PJM-98- 0502

Death row - 2255

Name of AG Reno

Race & gender of def B M Victim R BF Date of DP notice 10/22/1999

the January 1996 triple intrastate kidnapping/murder of three black females from D.C. Patuxent Wildlife Research Center (USFW), federal property. Haynes, 20, confessed that he fired the shots. He said Higgs, 26, gave him the gun and told him to do it after an argument with the women. The defendants are African-American and were involved in another shooting six weeks before. Haynes' jury deadlocked and he was sentenced to life in prison. Higgs was sentenced to death by an all male jury at a separate, subsequent trial. The government suggested a witness killing motive at this trial and alleged Higgs plotter to kill a government witness and/or his family. He was already serving a 17 year sentence on a drug conviction. All involved are African-American. All post-conviction appeals have been denied.

Vialva, Christopher Andre

W.D. TX No. W99CR070

Death row - 2255

Name of AG Reno

Race & gender of def B M Victim R WF WM Date of DP notice 2/29/2000

gun murders by Vialva, 19, Bernard, 18, and two juveniles, all with alleged gang affiliations. These African-Americans were convicted of a 1999 18 U.S.C. § 1111 carjacking/double homicide and robbery of a young white "church" couple. The bodies of the victims were found in the trunk of their car just inside the Fort Hood boundary, with gunshot wounds to the face and head. The vehicle had been set on fire. Authorities believe Vialva shot the victims. A 2255 motion for post-conviction relief was denied. An appeal is pending.

Bernard, Brandon

W.D. TX No. W99CR070

Death row - 2255

Name of AG Reno

Race & gender of def B M Victim R WF WM Date of DP notice 2/29/2000

gun murders by Vialva, 19, Bernard, 18, and two juveniles, all with alleged gang affiliations. These African-Americans were convicted of a 1999 18 U.S.C. § 1111 carjacking/double homicide and robbery of a young white "church" couple. The bodies of the victims were found in the trunk of their car just inside the Fort Hood boundary, with gunshot wounds to the face and head. The vehicle had been set on fire. Authorities believe Vialva shot the victims. A 2255 motion for post-conviction relief was denied. An appeal is pending.

Authorized Federal Capital Prosecutions Which Resulted in an Original Sentence of Death - 6/23/15

Nelson, Keith D.

W.D. MO No. 99-CR-303-1

Death row - 2255

Name of AG Reno

Race & gender of def W M Victim R WF WM Date of DP notice 3/20/2000

the interstate 1999 kidnapping and murder of a ten year old girl, in violation of 18 U.S.C. §1201. Both the defendant and the victim are white. A 28 U.S.C. §2255 motion was denied without an evidentiary hearing or the grant of a Certificate of Appealability. The Eighth Circuit reversed the district court and remanded the case for an evidentiary hearing, after which the §2255 motion was again denied. An appeal is pending.

Johnson, Angela

N.D. IA No. 3:01-CR-03046-MWB

Authorization withdrawn

Name of AG Ashcroft

Race & gender of def W F Victim R WF WM Date of DP notice 4/25/2002

five murders in 1993 of a potential witness, his girlfriend (both meth dealers) and two daughters, in a drug conspiracy case. The fifth victim is Angela Johnson's former boyfriend, another dealer turned informant, who disappeared in November of 1993. Johnson attempted suicide in jail after she was tricked by a jailhouse informant into revealing the location of the bodies. Attorney General Ashcroft rejected Honken's attempt to enter a plea to a life sentence. Attorney General Gonzales rejected Johnson's attempt to enter a plea to a life sentence. Finding ineffective assistance of counsel, the district court in 2012, reversed Johnson's death sentence. 860 F.Supp.2d 663 (ND IA 2012). A resentencing trial was scheduled for 2015 but Attorney General Holder withdrew the Notice of Intent to seek the death penalty. All involved are white.

Honken, Dustin

N.D. IA No.3:01-CR-03047-MWB

Death row - 2255

Name of AG Ashcroft

Race & gender of def W M Victim R WF WM Date of DP notice 6/10/2003

five murders in 1993 of a potential witness, his girlfriend and two daughters, in a drug conspiracy case. The fifth victim is Angela Johnson's former boyfriend, who disappeared in November of 1993. Johnson attempted suicide in jail after she was tricked by a jailhouse informant into revealing the location of the bodies. Attorney General Gonzales rejected Johnson's attempt to enter a plea to a life sentence. All involved are white. A 28 U.S.C. 2255 motion was denied. An appeal is pending.

Jackson, Richard

W.D. NC No. 00-CR-74

Death row - 2255

Name of AG Reno

Race & gender of def W M Victim R WF WM Date of DP notice 12/4/2000

a capital defendant in state court who pled guilty to second degree murder, intrastate kidnaping and rape of a 22 year old woman jogging Halloween morning in the Pisgah National Forest (USFS). Jackson received a 25 - 31 years sentence in state court. He was charged in federal court in another case after the North Carolina Supreme Court reversed his original death sentence and conviction, and suppressed his confession on Edwards grounds. Jackson was 31 years old. The victim was tied with duct tape to a tree on federal land in the Bent Creek Recreation Area in the Pisgah National Forest off Blue Ridge Parkway, on federal land, raped and shot one time. All involved are white. All post-conviction motions have been denied.

Authorized Federal Capital Prosecutions Which Resulted in an Original Sentence of Death - 6/23/15

Fell, Donald

D. VT 2:01-CR-12-01

Awaiting resentencing or retrial

Name of AG Ashcroft

Race & gender of def W MVictim R WF WM

Date of DP notice 1/30/2002

three murders, a carjacking and an interstate kidnapping. The defendants were high on crack when an argument erupted with Fell's mother and a male friend. The male friend's throat was slashed by Fell and Fell's mother stabbed to death by Lee, the co-defendant. The two then carjacked a 53 year old grandmother at a supermarket. Crossing into New York, they told her to get out and she attempted to run into the woods. They followed her and allegedly killed her by kicking her. The defendants both made incriminating statements. They were arrested three days later in Arkansas. All involved are Caucasian. Lee committed suicide in 2001 by hanging himself in jail. Authorities said it was an accident. Attorney General Ashcroft rejected a plea agreement stipulating life in prison, and required a capital prosecution. The Attorney General also rejected a bench trial. The court declared the FDPA unconstitutional. 217 F.Supp.2d 469 (2002). This ruling was reversed by the Second Circuit. 360 F.3d 135 (2004). The direct appeal was denied. 531 F.3d 197 (2008). A 28 USC 2255 motion was granted on July 24, 2014. The retrial is scheduled for 7/1/2016.

Robinson, Julias Omar

N.D. TX No. 00-CR-260

Death row - 2255

Name of AG Ashcroft

Race & gender of def B MVictim R HM BM

Date of DP notice 10/19/2001

a Fort Worth drug trafficking prosecution of the leaders of an Arlington-based drug ring responsible for three murders. The first killing involved a 1998 shooting of an African-American, mistaken for the intended victim, in a car traveling on Cential Expressway. A second 1999 killing was of an Hispanic person, mistaken for the intended victim, his brother, who allegedly sold a fake kilo of cocaine to Robinson. Britt was the triggerman in the third 1999 killing of another drug dealer, a Mexican national, who had stolen 20 kilos from a Laredo drug kingpin. Robinson was following in another car. Britt and Robinson, African-American, both allegedly fired weapons in the first and second incidents. Attorney General Ashcroft rejected a plea agreement involving a life sentence. Co-defendant Britt was sentenced to life in prison at a separate trial. Robinson has filed a lethal injection lawsuit in the DC Circuit Court. All post-conviction motions have been denied.

Agofsky, Shannon Wayne

E.D. TX 1:03-CR 173

Death row - 2255

Name of AG Ashcroft

Race & gender of def W MVictim R WM

Date of DP notice 1/30/2004

Agofsky, along with his brother, was serving a life sentence for the 1992 abduction and murder of a president of a financial institution. Agofsky took him to the institution and forced him to open the vault and then killed him. In 2004, Agofsky was convicted of beating, kicking and stomping to death a fellow inmate at a federal prison in Beaumont, Texas. The victim was serving a term for arson and firearms. The government alleged this was a premeditated prison "gang" hit. All involved are white. This was the fourth murder at Beaumont FCI since March of 1997. The Fifth Circuit affirmed. 458 F.3d 369. A 28 U.S.C. §2255 motion is pending.

Authorized Federal Capital Prosecutions Which Resulted in an Original Sentence of Death - 6/23/15

Sampson, Gary

D. MA No. 01-CR-10384

Awaiting resentencing or retrial

Name of AG Ashcroft

Race & gender of def W MVictim R WM

Date of DP notice 11/19/2002

Sampson plead guilty to two separate car-jacking murders in Massachusetts that took place three days apart in the summer of 2001. The victims were a 69-year old grandfather and a 19-year old college student. Sampson confessed to those crimes as well as to a strangulation murder in New Hampshire that he committed three days after the second carjacking murder, and to a subsequent unsuccessful attempted carjacking in Vermont. The crimes all occurred within an 8-day period. He confessed, as well, to having committed a series of 5 bank robberies in North Carolina prior to coming to New England. The day before he committed the first murder, Sampson had called the FBI in Boston in an effort to surrender on the bank robberies. The FBI accidentally or deliberately disconnected the call or chose not to follow up. A 28 U.S.C. §2255 motion was granted. A government interlocutory appeal was denied. 2013 WL 3828663 (1st Cir. 2013). All involved are white. The resentencing trial is scheduled for September 2015.

Purkey, Wesley Ira

W.D. MO No. 01-CR-308

Death row - 2255

Name of AG Ashcroft

Race & gender of def W MVictim R WF

Date of DP notice 11/25/2002

the 1998 interstate kidnapping (from Missouri to Kansas), rape and murder of a 17 year old high school girl, whose body was then dismembered and burned. Purkey is serving a prison sentence for another killing. Previously, Purkey was paroled after 17 years for shooting a man. Both victim and defendant are white. All post-conviction motions have been denied.

Fields, Sherman Lamont

W.D. TX No. 01-CR-164

Death row - 2255

Name of AG Ashcroft

Race & gender of def B MVictim R BF

Date of DP notice 5/23/2003

a jail escape and a domestic murder. The 2001 domestic killing/gun murder in Waco of a former girlfriend and mother of three young children, by a twice convicted felon who escaped from jail. Initially, the jury was deadlocked on punishment. Fields was a federal prisoner who bribed a jail guard to leave a door unlocked. Fields represented himself during the guilt phase. All involved are black. An appeal was denied. 549 F.3d 963 (2007). All post-conviction motions have been denied.

Mitchell, Lezmond

D. AZ No. 01-CR-1062

Death row - 2255

Name of AG Ashcroft

Race & gender of def NA MVictim R NAF

Date of DP notice 9/13/2002

murder on Navajo tribal land. All involved are Native American. The defendant and a juvenile got a ride from a woman and her 9 year old granddaughter, killed both and stole the car supposedly for use in an armed robbery. Each victim was stabbed at a separate location. In an attempt to hide the victim's identity, the hands and heads of the victims were removed. Attorney General Ashcroft required a capital prosecution against Mitchell under a carjacking theory -- although the Navajo tribe has not "opted in" to the federal death penalty. A 28 U.S.C. §2255 motion was denied. An appeal is pending.

Authorized Federal Capital Prosecutions Which Resulted in an Original Sentence of Death - 6/23/15

Mikos, Ronald

N.D. IL No. 02-CR 137

Death row - 2255

Name of AG Ashcroft

Race & gender of def W M Victim R WF **Date of DP notice** 12/16/2002

involves the § 1512 murder on January 27, 2002, of a government witness to prevent her testimony before the grand jury. Mikos, a podiatrist, and another are accused in many counts of defrauding Medicare, HCFA and HHS. When the victim was served with a federal grand jury subpoena for her testimony regarding treatment/non-treatment by Mikos, he allegedly tried to persuade the victim to lie to the grand jury either by claiming lack of memory or stating that the surgery had been performed. When she refused he allegedly shot her. All involved are white. Direct appeal was denied. A 28 USC 2255 motion is pending.

Fulks, Chadrick

D. SC No. 02-CR-992

Death row - 2255

Name of AG Ashcroft

Race & gender of def W M Victim R WF **Date of DP notice** 9/12/2003

carjacking and interstate kidnapping from a WalMart parking lot of a woman whose body was never recovered. A video camera captured part of the abduction. Witnesses saw her with the defendants later that day in North Carolina. The defendants had escaped 10 days earlier from a Kentucky jail. Basham was arrested three days later after allegedly trying to hijack a car at an Ashland, Kentucky mall. He has been charged with attempted murder and robbery. Fulks was arrested six days later, in Goshen, Indiana. The defendants are also accused of kidnapping a Kentucky man and leaving him tied to a tree in Evansville, Indiana. Basham has told the FBI that he and Fulks abducted another victim, a 19-year-old West Virginia college student, three days before the South Carolina abduction. Her car was found burned in West Virginia. A separate federal capital indictment was filed in that state and both defendants pled guilty and were sentenced to life in prison. All involved are white. All post-conviction motions have been denied.

Basham, Branden

D. SC No. 02-CR-992

Death row - 2255

Name of AG Ashcroft

Race & gender of def W M Victim R WF **Date of DP notice** 9/12/2003

carjacking and interstate kidnapping from a WalMart parking lot of a woman whose body was never recovered. A video camera captured part of the abduction. Witnesses saw her with the defendants later that day in North Carolina. The defendants had escaped 10 days earlier from a Kentucky jail. Basham was arrested three days later after allegedly trying to hijack a car at an Ashland, Kentucky mall. He has been charged with attempted murder and robbery. Fulks was arrested six days later, in Goshen, Indiana. The defendants are also accused of kidnapping a Kentucky man and leaving him tied to a tree in Evansville, Indiana. Basham has told the FBI that he and Fulks abducted another victim, a 19-year-old West Virginia college student, three days before the South Carolina abduction. Her car was found burned in West Virginia. A separate federal capital indictment was filed in that state and both defendants pled guilty and were sentenced to life in prison. All involved are white. A direct appeal was denied. 561 F.3d 302 (4th Cir. 2009). A 28 USC 2255 motion was denied. An appeal is pending.

LeCroy, William Emmett

N.D. GA No. 02-CR-38

Death Row - 2255

Name of AG Ashcroft

Race & gender of def W M Victim R WF **Date of DP notice** 12/20/2002

a carjacking murder. The victim, a nurse practitioner, came home, was surprised inside her home, bound, raped, stabbed to death in her bedroom. LeCroy took car keys from her purse and then stole her Ford Explorer. He was arrested two days later in Minnesota trying to enter Canada with the victim's SUV. All involved are white. His direct appeal was denied. 441 F.3d 914 (11th Cir. 2006). All post-conviction motions have been denied.

Authorized Federal Capital Prosecutions Which Resulted in an Original Sentence of Death - 6/23/15

Mikhel, Iouri

C.D. CA CR No. 02-220 (A)-NM

Death row - 2255

Name of AG Ashcroft

Race & gender of def W M Victim R WF WM Date of DP notice 8/3/2004

five kidnapping ransom murders by the Russian mob. Wealthy Russian immigrants were kidnapped, held for ransom, murdered and their bodies dumped in a reservoir. 1.2 million was collected in ransom. All involved are Caucasian. Mikhel and Kadamovas are charged in four, the others in two, except Krylov, who is charged in three murders. The indictment charged hostage taking resulting in death. 18 U.S.C. §1203. Mikhel, Kadamovas and Krylov faced the death penalty. Mikhel and Kadamovas were sentenced to death. At a separate trial, Krylov was sentenced to life imprisonment after Attorney General Gonzales rejected an offer to plead guilty. A direct appeal is pending.

Kadamovas, Jurijus

C.D. CA CR No. 02-220 (A)-NM

Death row - Appeal

Name of AG Ashcroft

Race & gender of def W M Victim R WF WM Date of DP notice 8/3/2004

five kidnapping ransom murders by the Russian mob. Wealthy Russian immigrants were kidnapped, held for ransom, murdered and their bodies dumped in a reservoir. 1.2 million was collected in ransom. All involved are Caucasian. Mikhel and Kadamovas are charged in four, the others in two, except Krylov, who is charged in three murders. The indictment charged hostage taking resulting in death. 18 U.S.C. §1203. Mikhel, Kadamovas and Krylov faced the death penalty. Mikhel and Kadamovas were sentenced to death. At a separate trial, Krylov was sentenced to life imprisonment after Attorney General Gonzales rejected an offer to plead guilty. A direct appeal is pending.

Corley, Odell

N.D. IN No. 02-CR-116

Death row - 2255

Name of AG Ashcroft

Race & gender of def B M Victim R WF WM Date of DP notice 8/14/2003

bank robbery and gun murders. Five people, three African-American males, one African-American female and one white woman (the pregnant girlfriend of Johnson), robbed a bank and shot to death a white female teller, while wounding another white male teller who died ten weeks after the shooting. A white male security guard was also wounded, leaving him a paraplegic. Corley, who has taken the name Nasih Khalil Ra'id, was the ring leader who burst into the bank shooting. Johnson was also a gunman. McGregor was a driver. Gay and Ramsey were some distance away. The robbery was videotaped although the gunman was in disguise. Corley's palm print was found inside the bank. Corley committed a prior murder in 1998. An appeal was denied. 519 F.3d 716 (7th Cir. 2008). A 28 USC 2255 motion is pending.

Taylor, Rejon

E.D. TN No. 1:04-CR-00160-1

Death row - Appeal

Name of AG Gonzales

Race & gender of def B M Victim R WM Date of DP notice 6/1/2006

a cross-racial interstate kidnapping, carjacking, gun murder of an Atlanta restaurant owner who was a potential witness against Taylor in an identity theft scheme. The victim was abducted in Atlanta and killed in Tennessee. Fearing prosecution, the defendants robbed, kidnapped and threatened the deceased who was shot and killed while trying to escape. Matthews fired also and was himself accidentally shot by Taylor. Taylor fired the fatal shots. Attorney General Gonzales required a capital prosecution after Taylor attempted to escape from jail. The defendants are black, the victim white. A direct appeal is pending.

Authorized Federal Capital Prosecutions Which Resulted in an Original Sentence of Death - 6/23/15

Barrett, Kenneth Eugene

E.D. OK CR No. 04-100-M-S

Death row - 2255

Name of AG Gonzales

Race & gender of def W M Victim R WM Date of DP notice 2/15/2005

law enforcement officer victim. Barrett lived in a small, rural, self-built cabin without electricity and running water. A "no-knock" warrant was issued based on allegations that he was a drug manufacturer/dealer, a gun owner and had previously made statements about killing law enforcement officers. During a late night raid, Barrett grabbed a gun and started shooting at an unmarked Ford Bronco approaching the cabin. The police shot back and Barrett was wounded. A state law enforcement officer was killed. There are numerous drug-related charges in the complaint. Barrett was tried twice in state court - the first trial resulting in a hung jury and the second resulting in manslaughter and assault with intent to kill convictions. All involved are white. His conviction and death sentence were affirmed on direct appeal. 496 F.3d 1079 (10th Cir. 2007). A 28 U.S.C. §2255 motion was denied. An appeal is pending.

Bolden, Robert, Sr.

E.D. MO No. 4:02-CR 0557 CEF (AGF)

Death row - 2255

Name of AG Ashcroft

Race & gender of def B M Victim R WM Date of DP notice 10/7/2003

2002 bank robbery murder. 18 U.S.C. §§924(c), 1111 and 2113. The victim was a white security guard, the son of a police officer, who encountered three robbers in the parking lot of the Bank of America. The defendants are African-American. Only Bolden faced the death penalty. Bolden's conviction and death sentence were affirmed on appeal. 545 F.3d 609 (8th Cir. 2008). A 28 USC §2255 motion is pending.

Brown, Meier Jason

S.D. GA CR No. 403-01

Death row - 2255

Name of AG Ashcroft

Race & gender of def B M Victim R WF Date of DP notice 5/5/2003

the stabbing murder of a United States Postal Service employee during a robbery at a United States Post Office. Brown confessed and blood was found on his jacket and bike. The victim is white and the defendant is black. She was stabbed 10 times. There was a conditional plea agreement specifying a life sentence but Attorney General Ashcroft rejected it and required a capital trial. All post-conviction motions have been denied.

Bourgeois, Alfred

S.D. TX CR No. 02-216

Death row - 2255

Name of AG Ashcroft

Race & gender of def B M Victim R BF Date of DP notice 7/23/2003

killing on federal land - a two year old child who died from "shaken baby syndrome". The baby was found unresponsive beside her father's tractor-trailer. Bourgeois and his wife told authorities the toddler had fallen out of the cab while they were making a delivery at Naval Air Station Corpus Christi. The toddler had seven major hemorrhages - two behind her right ear, two above her right eye and three in the back of her skull. The pathologist who examined the toddler's body called it "one of the worst cases of child abuse she'd ever seen." Bourgeois's wife and his 7-year-old daughter alleged Bourgeois had abused the toddler before. "(Bourgeois) hit her as hard as he would hit another man," the wife told the FBI, according to an affidavit. All involved are African-American. The death sentence was affirmed on appeal. 423 F.3d 501 (5th Cir. 2005). A 28 USC §2255 motion was rejected. All post-conviction motions have been denied.

Authorized Federal Capital Prosecutions Which Resulted in an Original Sentence of Death - 6/23/15

Fields, Edward

E.D. OK No. 6:03-CR-00073

Death row - 2255

Name of AG Ashcroft

Race & gender of def W M Victim R WF WM Date of DP notice 3/15/2004

a robbery and gun murder of a married couple on federal land in the Winding Stair Campgrounds in the Quachita National Forest (USFS). All involved are white. Fields has no prior criminal record, a good military record and a history of intellectual disability. Fields had been living in the forest. The murders occurred around July 10, 2004. Fields, a former prison guard, went on a shopping spree with the victim's credit cards. He confessed expressing remorse. Fields pled guilty and was sentenced to death by jury. A direct appeal was denied. A 28 USC 2255 motion is pending.

Lighty, Kenneth Jamal

D. MD No. 8:03-CR-00457-PJM

Death row - 2255

Name of AG Ashcroft

Race & gender of def B M Victim R BM Date of DP notice 12/28/2004

three defendants, and possibly another, kidnapped the teenage victim in D.C., transported him to Maryland, where he was shot to death. The victim was the son of a Washington police officer. Lighty is charged as the shooter, and the other two with assisting him. All involved are African-American. Co-defendant Wilson was convicted of conspiracy to kidnap but acquitted of kidnapping and weapons charges. A direct appeal was denied. A 28 USC 2255 motion is pending.

Johnson, John

E.D. LA No. 2:04-CR-00017-HGB-SS

Authorization withdrawn

Name of AG Ashcroft

Race & gender of def B M Victim R WM Date of DP notice 2/1/2005

bank robbery gun murder of an off-duty police officer security guard by convicted felons. Jones, Johnson and Smith entered the Iberia Bank and Smith disarmed the security guard. Another guard, hidden from view, opened fire, wounding Smith and Johnson, who was unable to flee the bank. Johnson returned fire, killing one guard and wounding another. Jones fled the bank but all three defendants were arrested within moments. The defendants are black and were over 50 years old. They each have criminal records including bank robbery. The deceased guard is white, the wounded guard is black. While pending retrial, the government withdrew authorization.

Rodriguez, Alfonso, Jr.

D. ND No. 04-CR-55

Death row - 2255

Name of AG Ashcroft

Race & gender of def H M Victim R WF Date of DP notice 10/28/2004

the interstate kidnapping murder of a 22 year old white female victim who disappeared from a Grand Forks shopping mall parking lot on November 22, 2003. Her body was found April 17, 2004. Rodriguez, 53, is a convicted sex offender, who had been released from prison in May of 2003 after serving a 23 year sentence for attempted kidnapping, assault and other convictions for attempted rape and aggravated rape. Before he was released, Rodriguez requested help from a Minnesota prison psychologist. The Hispanic defendant allegedly crossed state lines while committing the crime. This was the first death sentence in North Dakota in 100 years. A direct appeal was denied. A 28 USC 2255 motion is pending.

Authorized Federal Capital Prosecutions Which Resulted in an Original Sentence of Death - 6/23/15

Wilson, Ronell

E.D. NY No. 1:04-CR-01016-NGG

Death row - Appeal

Name of AG Gonzales

Race & gender of def B M Victim R BM Date of DP notice 8/2/2005

the execution style RICO murders of two undercover NYPD detectives during a gun sting operation. The case was charged as a racketeering conspiracy. The Staten Island District Attorney asked the United States Attorney to charge Wilson after the New York State Court of Appeals ruled in June 2004, that the state's death-penalty law was unconstitutional. All involved are African-American. The death sentence was reversed on appeal. 610 F.3d 168 (2d Cir. 2009). The trial court subsequently ruled that Wilson is not intellectually disabled. He was resentenced to death, but a panel of the Second Circuit Court of Appeals remanded the case to the district court for consideration of the Supreme Court's decision in *Hall v. Florida* on the intellectual disability determination.

Lawrence, Daryl

S.D. OH No. 2:05-CR-00011-GLF-1

Death row - 2255

Name of AG Gonzales

Race & gender of def B M Victim R WM Date of DP notice 9/26/2005

law enforcement officer victim - a January 2004 gun murder of a law enforcement officer during a bank robbery. Lawrence committed other bank robberies in August and September of 2004. The Columbus, Ohio police officer and bank security guard victim is white and the defendant is black. A new trial motion was granted in October 2006, but the Sixth Circuit reversed. 555F.3d 254 (2009). 28 USC 2255 proceedings are pending.

Caro, Carlos David

W.D. VA No. 06 CR 00001

Death row - 2255

Name of AG Gonzales

Race & gender of def H M Victim R HM Date of DP notice 1/11/2006

a 2003 BOP prison inmate strangulation murder of a cellmate at USP Lee by an alleged member of the Texas Syndicate prison gang. Caro was serving a 71 month sentence, had supervised release revoked and then received 327 months (27 years) in 2003 for conspiracy to murder involving a prison gang related stabbing. The murder was triggered by a dispute over a food tray. All involved are Hispanic. A direct appeal was denied. 597 F.3d 608, reh'ing den., 614 F.3d 101 (4th Cir. 2010). A 28 USC 2255 motion was denied. An appeal is pending.

Montgomery, Lisa

W.D. MO No. 5:05-CR-06002-GAF

Death Row - 2255

Name of AG Gonzales

Race & gender of def W F Victim R WF Date of DP notice 11/16/2005

a baby girl was cut of her murdered mother's womb and taken across state lines. She was found alive in the possession of a Kansas woman, who police charged with interstate kidnapping resulting in death. Kevin and Lisa Montgomery have two older children, but she had recently lost a baby. The victim was eight months pregnant and strangled with a rope. Montgomery confessed. All involved are white. A 28 USC §2255 motion is pending.

Authorized Federal Capital Prosecutions Which Resulted in an Original Sentence of Death - 6/23/15

Lecco, George

S.D. WV CR No. 2:05-00107

Life sentence from jury

Name of AG Gonzales

Race & gender of def W M Victim R WF Date of DP notice 8/16/2006

a 2005 gun murder-for-hire of a cooperating witness/informant in a drug (cocaine) prosecution. Lecco asked Burton, who asked Friend to help kill the female victim who was shot and beaten to death and buried in a shallow grave. Attorney General Gonzales required a death penalty prosecution. Lecco and Friend were sentenced to death at a joint trial but a new trial was granted by the trial judge when the government revealed that a juror was under federal investigation for child pornography. 634 F.Supp.2d 633 (SD WV 2009). Friend entered into a plea agreement approved by Attorney General Holder and testified against Lecco, who was sentenced to life in prison. Friend was sentenced to 35 years, Burton to 30 years. All involved are white.

Friend, Valeri

S.D. WV CR No. 2:05-00107

Guilty plea

Name of AG Gonzales

Race & gender of def W F Victim R WF Date of DP notice 8/16/2006

a 2005 gun murder-for-hire of a cooperating witness/informant in a drug (cocaine) prosecution. Lecco asked Burton, who asked Friend to help kill the female victim who was shot and beaten to death and buried in a shallow grave. Attorney General Gonzales required a death penalty prosecution. Lecco and Friend were sentenced to death at a joint trial but a new trial was granted by the trial judge when the government revealed that a juror was under federal investigation for child pornography. 634 F.Supp.2d 633 (SD WV 2009). Friend entered into a plea agreement approved by Attorney General Holder and testified against Lecco, who was sentenced to life in prison at a retrial. Friend received 35 years. All involved are white.

Duncan, Joseph

D. ID CR No. 07-23-N-EJL

Death row - Appeal

Name of AG Gonzales

Race & gender of def W M Victim R WM Date of DP notice 1/23/2007

interstate kidnapping and four murders, including sexual abuse, torture and murder of innocent children. Two adults and a 13 year old boy were beaten to death in North Idaho. Two young children, a girl 8 years old and a boy 9, were kidnapped. Duncan is a registered sex offender, having been released in 2000 after many years in a Washington state prison. Both children were tortured and sexually abused and the 8 year old girl watched her 9 year old brother die. Duncan videotaped the abuse and torture. The 8-year old girl was seen with Duncan and was rescued. Duncan confessed to a double child kidnapping murder in Seattle, Washington and a child murder in Riverside, California. Duncan pled guilty to other murders in Idaho. Duncan pled guilty, was found competent and represented himself, putting up no defense at the penalty trial. All involved are white. Duncan was found competent after the Ninth Circuit remanded the case for a retrospective competency determination. An appeal is pending.

Jackson, David Lee

E.D. TX No. 1:06-CR-51

Death Sentence Vacated and Authorization Withdrawn

Name of AG Gonzales

Race & gender of def B M Victim R BM Date of DP notice 1/4/2006

a 1999 BOP inmate stabbing murder at the USP in Beaumont, Texas. Jackson was incarcerated for a bank robbery. Co-defendant Gully was in prison for drug trafficking. Both were sent to ADX in Florence, Colorado after the homicide. Gully did not face the death penalty. All involved are black. A direct appeal was denied. 549 F.3d 963 (5th Cir. 2008). A 28 USC 2255 motion was granted when the government conceded a Brady error. He was resentenced to life when the Department of Justice agreed.

Authorized Federal Capital Prosecutions Which Resulted in an Original Sentence of Death - 6/23/15

Hager, Thomas Morocco

E.D. VA No. 1:05-CR-00264-TSE

Death row - 2255

Name of AG Gonzales

Race & gender of def B M Victim R WF Date of DP notice 5/30/2006

the 1993 stabbing death of a white Fairfax County woman by a black convict who is also serving a life sentence. Since 1992, Hager allegedly killed five other people and ordered the slaying of a seventh person. Co-defendants Barnett and Johnson, juveniles, pled guilty and received life sentences for the 1993 murder of Barbara White, a 19-year-old single mother. They stabbed the victim 82 times in her bathtub while her 13 month old daughter was elsewhere in the apartment. Hager, a crack cocaine dealer, was involved in the stabbing. Hager is also serving a minimum 87 year sentence for killing another man in March of 1995. He broke into that victim's apartment and shot him. In 1999 he was convicted of manslaughter in an October 1996 shooting. Hager was involved in crime dating to a conviction for dealing cocaine as a 16-year-old. He was involved in robbing people, including rival drug dealers, of drugs, money and other valuables. Hager is suspected in, but has not been charged in several other killings. He was also involved in other murders in 1992, two in 1996 and 1997. He attempted murder in 1993 by shooting two rival drug dealers. Since being jailed in 1999 he was armed and involved in four assaults. Hager bragged that he trained his juvenile accomplices to be killers. A 28 USC 2255 motion is pending.

Ebron, Joseph

E.D. TX No. 1:07-CR-142 (1:08-CR-00036)

Death row - 2255

Name of AG Keisler

Race & gender of def B M Victim R BM Date of DP notice 9/11/2007

a USP Beaumont BOP inmate murder. All involved are blacks from Washington DC (the "DC Crew") who were in USP Atlanta, then USP Beaumont, together. The deceased was a government witness against two of Ebron's associates in an aggravated robbery in 1997. Ebron held the deceased while Mosely stabbed him 100 times. Mosely died before he could be charged. Ebron was previously convicted in 1999 of murder. A 28 USC 2255 motion is pending.

Sanchez, Ricardo

S.D. FL 06-80171-CR-HURLEY/VITUNAC(s)(s)

Death Row - 2255

Name of AG Mukasey

Race & gender of def H M Victim R HF HM Date of DP notice 2/20/2008

gun carjacking murders of a man allegedly involved in cocaine trafficking and his wife and two children, ages 4 and 3 on the Florida Turnpike. All involved are Hispanic. 28 USC 2255 proceedings are pending.

Troya, Danny

S.D. FL 06-80171-CR-HURLEY/VITUNAC(s)(s)

Death Row - 2255

Name of AG Mukasey

Race & gender of def H M Victim R HF HM Date of DP notice 2/20/2008

gun carjacking murders of a man allegedly involved in cocaine trafficking and his wife and two children, ages 4 and 3. All involved are Hispanic. 28 USC 2255 proceedings are pending.

Authorized Federal Capital Prosecutions Which Resulted in an Original Sentence of Death - 6/23/15

Aquart, Azibo

D. CT 3:06CR160 (PCD)

Death Row - Appeal

Name of AG Mukasey

Race & gender of def B M Victim R BF BM Date of DP notice 1/29/2009

a triple murder of a rival in the drug business, his girlfriend and a visitor, who were bound and gagged and bludgeoned to death with a baseball bat by leaders of a Jamaican drug gang. All the defendants and victims are black. The Aquart brothers faced the death penalty. Johnson, who cooperated, did not. After Azibo's trial, his brother, Azikiwe, entered into a plea agreement and was sentenced to life in prison. A direct appeal is pending.

Snarr, Mark

E.D. TX 1:09-CR-00015-MAC-KFG All

Death Row - 2255

Name of AG Filip

Race & gender of def W M Victim R BM Date of DP notice 2/13/2009

BOP inmate murder at FCC Beaumont by the alleged founder of the white supremacist group Soldiers of the Aryan Culture, which was formed in the Utah state prison system. Two BOP guards were stabbed before the murder, but survived after long hospital stays. Snarr took the keys from a guard and opened the victim's cell door. Snarr is white, Garcia is Hispanic and the victim is black. A direct appeal was denied. A 28 USC 2255 motion is pending.

Runyon, David

E.D. VA CR No. 4:08-CR-16

Death row - 2255

Name of AG Mukasey

Race & gender of def A M Victim R WM Date of DP notice 7/17/2008

a gun murder for hire in Newport News of a husband. Catherina Voss was married to the victim and she and her boyfriend Draven contracted with Runyon to kill Voss' husband. The alleged motive was to obtain the victim's military benefits. Voss was sentenced to life in return for her testimony. 28 USC 2255 proceedings are pending.

Garcia, Edgar B.

E.D. TX 1:09-CR-00015-MAC-KFG All

Death Row - 2255

Name of AG Filip

Race & gender of def H M Victim R BM Date of DP notice 2/13/2009

BOP inmate murder at FCC Beaumont by the alleged founder of the white supremacist group Soldiers of the Aryan Culture, which was formed in the Utah state prison system. Two BOP guards were stabbed before the murder, but survived after long hospital stays. Snarr allegedly took the keys from a guard and opened the victim's cell door. Snarr is white, Garcia is Hispanic and the victim is black. A direct appeal was denied. A 28 USC 2255 motion is pending.

Umana, Alejandro Enrique

W.D. NC No. 3:08-CR-134-RJC

Death row - 2255

Name of AG Mukasey

Race & gender of def H M Victim R HM Date of DP notice 9/23/2008

four murders by members of the MS-13 gang. Alleged are double murders in 2005 and 2007 and a single murder in 2008. Umana received the death penalty for a 2007 double murder. He also allegedly committed two additional uncharged murders. Fernandez-Gradis was charged in two murders, Gonzalez in one, but they did not face the death penalty. The district court rejected a claim of intellectual disability. All involved are Hispanic. 28 USC 2255 proceedings are pending.

Authorized Federal Capital Prosecutions Which Resulted in an Original Sentence of Death - 6/23/15

Savage, Kaboni

E.D. PA No. 2:07-CR-00550-RBS

Death row - Appeal

Name of AG Holder

Race & gender of def B M Victim R BF BM Date of DP notice 3/14/2011

involves murders allegedly orchestrated by Philadelphia drug kingpin Kaboni Savage, already serving 30 years for drug trafficking. Thirteen murders are charged, including a 2004 arson fire that killed six people, including four children - ages 15, 12, 10 and 1. The fire was set to retaliate against a federal informant who was testifying against Savage. Lewis was tried for a 2001 Philadelphia murder and was acquitted. Kaboni Savage is charged in twelve murders, Merritt in six, Kidada Savage in six involving the arson and Northington in two. All involved are black, except one victim, who is an Hispanic male. A direct appeal is pending.

Coonce, Wesley Paul Jr.

W.D. MO 10-03029-01/02-CR-S-GAF

Death row - Appeal

Name of AG Holder

Race & gender of def W M Victim R HM Date of DP notice 7/22/2011

a BOP murder at the Medical Center in Springfield, Missouri, by two inmates. Coonce is already serving a life sentence. The defendants are white, the victim Hispanic. A direct appeal is pending.

Hall, Charles Michael

W.D. MO 10-03029-01/02-CR-S-GAF

Death row - Appeal

Name of AG Holder

Race & gender of def W M Victim R HM Date of DP notice 7/22/2011

a BOP murder at the Medical Center in Springfield, Missouri, by two inmates. Hall was serving a sentence of 43 months, which began in 2009. The defendants are white, the victim Hispanic. A direct appeal is pending.

Sanders, Thomas Steven

W.D. LA No. 1:10CR00351

Death row - Appeal

Name of AG Holder

Race & gender of def W M Victim R WF Date of DP notice 8/1/2012

interstate kidnapping from Las Vegas, Nevada, to Arizona to Louisiana and murder of a mother, whose remains were located in Arizona, and a child, a daughter (age 12), whose remains were found in Louisiana. Attorney General Holder rejected a plea agreement. All involved are white. A direct appeal is pending.

Torrez, Jorge Avila

E.D. VA No. 1:11-CR-115

Death Row - Appeal

Name of AG Holder

Race & gender of def H M Victim R WF Date of DP notice 2/9/2012

rape murders by an Hispanic ex-marine already serving life sentences in Virginia for an abduction and rape of a Maryland graduate student. In 2009, a 20 year old Navy petty officer was raped and murdered on a military base in Arlington. Previously, two young girls were murdered in Illinois, stabbed in the eye. The government alleges a DNA link to all. The victims are all white. Torrez waived the presentation of mitigating evidence. A direct appeal is pending.

Authorized Federal Capital Prosecutions Which Resulted in an Original Sentence of Death - 6/23/15

Tsarnaev, Dzhokhar

D. MA No. 1:13-CR-10200-GAO

Death row - Appeal

Name of AG Holder

Race & gender of def W M Victim R WF WM Date of DP notice 1/30/2014

involves one of the two Boston Marathon terrorist bombers, who killed four, including two women, an eight year old boy, and a police officer, and wounded 170, resulting in at least 15 amputations of limbs. He also is alleged to have attempted to kill another police officer. The defendant is white, of Chechen and Avar descent. The deceased victims are white and Asian.

Johnson, Corey

E.D. VA No. 3-92-CR-68

Death row - 2255

Name of AG Barr

Race & gender of def B M Victim R BF BM Date of DP notice 5/1/1992

three of four young black inner-city gang members in Richmond, Virginia, who were sentenced to death in 1993, for their roles in eleven crack-related murders. The trial of a fourth defendant, Vernon Thomas, was severed. After the completion of all legal appeals, a May 2006 execution date was stayed pending the outcome of lethal injection litigation in the DC Circuit Court. There is substantial evidence of intellectual disability but all such claims to date have been rejected.

Roane, James

E.D. VA No. 3-92-CR-68

Death row - 2255

Name of AG Barr

Race & gender of def B M Victim R BF BM Date of DP notice 5/1/1992

three of four young black inner-city gang members in Richmond, Virginia, who were sentenced to death in 1993, for their roles in eleven crack-related murders. The trial of a fourth defendant, Vernon Thomas, was severed. A May 2006 execution date was stayed pending the outcome of lethal injection litigation in the DC Circuit Court.

Tipton, Richard

E.D. VA No. 3-92-CR-68

Death row - 2255

Name of AG Barr

Race & gender of def B M Victim R BF BM Date of DP notice 5/1/1992

three of four young black inner-city gang members in Richmond, Virginia, who were sentenced to death in 1993, for their roles in eleven crack-related murders. The trial of a fourth defendant, Vernon Thomas, was severed. A May 2006 execution date was stayed pending the outcome of lethal injection litigation in the DC Circuit Court.

Davis, Len

E.D. LA CR No. 94-381

Death row - 2255

Name of AG Reno

Race & gender of def B M Victim R BF Date of DP notice 10/6/1995

civil rights - an African- American New Orleans police officer, Len Davis, who was being investigated (and tape recorded) in a drug conspiracy case. Davis ordered the murder of a 32 year old mother of three, Kim Groves, who witnessed his beating of a witness in an unrelated incident. Groves had filed a brutality complaint against Davis. Paul Hardy, 27, carried out the killing. Murder for hire is alleged as an aggravating circumstance. Davis, then Hardy, were sentenced to death by a jury in 1996, which heard sequential penalty phase presentations. Davis did not attend his. The Fifth Circuit reversed one of the convictions and ordered a new sentencing trial on the remaining convictions in 1999. 185 F.3d 407. On remand the District Court dismissed the Notice of Intent to Seek the Death Penalty based on *Ring v. Arizona*. This ruling was reversed by the Fifth Circuit. 380 F. 3rd 821. Davis was convicted and resentenced to death in 2005. A 28 USC §2255 motion is pending.

Hall, Orlando C.

N.D. TX No. 4:94-CR-121-Y

Death row - 2255

Name of AG Reno

Race & gender of def B M Victim R BF Date of DP notice 2/23/1995

the first approval of a death penalty prosecution under the 1994 Federal Death Penalty Act. Hall, and his co-defendant, Webster, both African-American, were charged in Fort Worth, Texas, with the abduction, sexual assault and beating murder of a 16-year-old black female whose older brother had allegedly stolen marijuana. In 1995, Hall was sentenced to death after the jury heard testimony from co-defendants who pled guilty and testified in return for leniency. Expert testimony suggested the victim was still alive when buried. After a separate trial, Bruce Webster was sentenced to death by a jury in 1996. After the completion of all legal appeals, Hall joined the lethal injection litigation in the DC Circuit Court.

Webster, Bruce

N.D. TX No. 4:94-CR-121-Y

Death row - 2255

Name of AG Reno

Race & gender of def B M Victim R BF Date of DP notice 2/23/1995

the first approval of a death penalty prosecution under the 1994 Federal Death Penalty Act. Orlando Hall, and his co-defendant, Webster, both African-American, were charged in Fort Worth, Texas, with the abduction, sexual assault and beating murder of a 16-year-old black female whose older brother had allegedly stolen marijuana. In 1995, Hall was sentenced to death after the jury heard testimony from co-defendants who pled guilty and testified in return for leniency. Expert testimony suggested the victim was still alive when buried. After a separate trial, Bruce Webster was sentenced to death by a jury in 1996. Webster is the first case in which a federal defendant has been sentenced to death after attempting to establish his ineligibility for the death penalty by reason of intellectual disability. After completion of all legal appeals, an April 2007 execution date was stayed pending the outcome of lethal injection litigation in the D.C. Circuit Court. The Seventh Circuit, after the Fifth Circuit denied a similar request, is allowing the presentation of newly discovered evidence of Webster's intellectual disability.

Battle, Anthony

N.D. GA No. 1:95 CR 528

Death row - 2255

Name of AG Reno

Race & gender of def B M Victim R BM Date of DP notice 7/26/1996

law enforcement officer victim - a black inmate with a history of psychiatric problems who was sentenced to death for the hammer-murder of an African-American guard in the Atlanta federal penitentiary. Mr. Battle was serving a life sentence for the prior murder of his wife when the killing occurred. In 1997 a federal jury rejected Mr. Battle's insanity defense and returned a death sentence after three hours' deliberation. After the completion of all legal appeals, 173 F.3d 1343 (1999), 419 F.3d 1292 (2005), Battle joined the lethal injection litigation in the D.C. Circuit Court.

Paul, Jeffrey Williams

W.D. AR No. 6:96CR60022

Death row - 2255

Name of AG Reno

Race & gender of def W M Victim R WM Date of DP notice 1/23/1997

Paul is one of two white teenagers charged with the robbery-murder of an elderly white National Parks employee in Hot Springs National Park (USPS), federal land within the city of Hot Springs, Arkansas. A Hot Springs federal jury unanimously imposed a life sentence on co-defendant Trinity Ingle on June 6, 1997. Paul's separate trial began on June 17, 1997, and ended with a death sentence on June 25, 1997. All involved are white. A 28 USC §2255 motion was denied without an evidentiary hearing, a ruling affirmed by the Eighth Circuit. After his initial request to join the lethal injection litigation in the DC District was denied, Paul successfully appealed to the DC Circuit Court.

Allen, Billie Jerome

E.D. MO No. 4:97 CR 0141 ERW (TCM)

Death row - 2255

Name of AG Reno

Race & gender of def B M Victim R WM Date of DP notice 8/1/1997

two black defendants charged with the fatal shooting of a white bank guard during a robbery. Attorney General Reno authorized the government to seek the death penalty on August 1, 1997. After separate trials, death sentences were returned on March 10, 1998 for Allen and April 3, 1998 for Holder. An appeal was rejected by a divided panel of the Eighth Circuit. 247 F.3d 741 (2001). The Supreme Court remanded in light of *Ring v. Arizona*, 536 U.S. 953. An en banc Eighth Circuit reversed the three-judge panel's grant of penalty phase relief. 357 F.3d 745, 406 F.3d 940 (2005). A 28 U.S.C. §2255 motion was denied. An appeal is pending.

Barnette, Aquila Marcivicci

W.D. NC No. 3:97CR23-P

Death row - 2255

Name of AG Reno

Race & gender of def B M Victim R BF WM Date of DP notice 7/15/1997

a domestic killing. Barnette confessed to murdering a motorist during a Charlotte, North Carolina carjacking. He drove the victim's car to Roanoke, Virginia, where he killed his former girlfriend. Barnette has a long history of domestic abuse of the second victim. The defendant and the female victim are black; the carjacking victim was white. A Charlotte, North Carolina jury imposed the death penalty in 1998. Two years later the appeals court ordered a new sentencing trial. 211 F.3d 803 (4th Cir. 2000). Barnette was again sentenced to death in 2002. The United States Supreme Court, in October 2005, remanded the case to the Fourth Circuit for consideration of a Batson claim, which was ultimately denied and affirmed on appeal. A 28 USC §2255 motion is pending.

Holder, Norris G.

E.D. MO CR No. 4:97 0141 ERW (TCM)

Death row - 2255

Name of AG Reno

Race & gender of def B M Victim R WM Date of DP notice 8/1/1997

two black defendants charged with the fatal shooting of a white bank guard during a robbery. Attorney General Reno authorized the government to seek the death penalty on August 1, 1997. After separate trials, death sentences were returned on March 10, 1998 for Allen and April 3, 1998 for Holder. An appeal was denied. 247 F.3d 741 (2001). A 2255 motion for post-conviction relief was denied, 2008 WL 2909648, 2009 WL 5030785, and an appeal is pending.

Gabrion, Marvin

W.D. MI No. 1:99-CR-76

Death row - 2255

Name of AG Ashcroft

Race & gender of def W M Victim R WF Date of DP notice 2/26/2001

the disappearance of an alleged rape victim before Gabrion's trial, as well as the disappearance of her 3 year old child and three men. The bound victim was found in a lake, part of federal land, the Manistee National Forest (USFS). Attorney General Ashcroft required a capital prosecution in this 18 U.S.C. §1111 case. All involved are white. After a remand to the district court for the presentation of additional evidence on the issue of subject matter jurisdiction, the Sixth Circuit found subject matter jurisdiction. After a grant of sentencing phase relief, the government sought rehearing en banc, which resulted in reversal of sentencing relief. A 28 USC §2255 motion is pending.

Lee, Daniel Louis

E.D. AR No. LR-CR-97-243

Death row - 2255

Name of AG Reno

Race & gender of def W M Victim R WF WM Date of DP notice 3/20/1998

a RICO prosecution of an organization supposedly intent upon starting a revolution. The capital crime was the murder of a family of three (an Arkansas gun dealer, his wife and their 8 year old child) in the Fall of 1996. The defendants may have believed the gun dealer was an ATF informant. The victims were killed by duct-taping plastic bags over their heads, handcuffing the three and throwing them in a river. The defendants and the victims are white. Co-defendant Chevie Kehoe was charged in two additional murders as well. The defendants were also charged with bombing the Spokane, WA city hall. Kehoe, older, whom some considered more culpable, was first sentenced to life by the jury at a 1999 separate penalty hearing. At that point the United States Attorney attempted to withdraw the request for the death penalty. The Attorney General was unavailable, so the Deputy Attorney General declined the request. Lee was then sentenced to death. The next year the District Court ordered a new sentencing hearing for Lee. 89 F.Supp.2d 1017 (E.D. AR). That decision was reversed by the Eighth Circuit. 274 F.3d 485 (2001), which later affirmed the convictions and death sentences. A 28 U.S.C. 2255 motion and appeal were denied. Lee is currently litigating the denial of a Rule 60(b) motion.

Ortiz, Arboleda

W.D. MO No. 98- 00311-01/05-CR-W-2

Death row - 2255

Name of AG Reno

Race & gender of def B M Victim R HM Date of DP notice 5/19/1999

four Colombians charged in a drug related murder. The alleged ringleader, Hinestroza, was a fugitive who was eventually arrested and received a life sentence at a separate trial. The victim and his nephew (who sold cocaine for the gang) stole \$240,000 from them. The defendants tied up, interrogated, duct taped and shot both victims. The nephew lived, escaped and identified the defendants. Sinisterra shot and killed one victim. Ortiz or Tello shot the surviving victim. Sinisterra and Ortiz were sentenced to death. The jury deadlocked on punishment for Tello, and he was sentenced to life in prison. Although not litigated at trial, Ortiz has a full scale I.Q. of 54. A 2255 motion for post-conviction relief was denied, after an evidentiary hearing. An appeal is pending.

Higgs, Dustin

D. MD CR No. PJM-98- 0502

Death row - 2255

Name of AG Reno

Race & gender of def B M Victim R BF Date of DP notice 10/22/1999

the January 1996 triple intrastate kidnapping/murder of three black females from D.C. Patuxent Wildlife Research Center (USFW), federal property. Haynes, 20, confessed that he fired the shots. He said Higgs, 26, gave him the gun and told him to do it after an argument with the women. The defendants are African-American and were involved in another shooting six weeks before. Haynes' jury deadlocked and he was sentenced to life in prison. Higgs was sentenced to death by an all male jury at a separate, subsequent trial. The government suggested a witness killing motive at this trial and alleged Higgs plotter to kill a government witness and/or his family. He was already serving a 17 year sentence on a drug conviction. All involved are African-American. All post-conviction appeals have been denied.

Vialva, Christopher Andre

W.D. TX No. W99CR070

Death row - 2255

Name of AG Reno

Race & gender of def B M Victim R WF WM Date of DP notice 2/29/2000

gun murders by Vialva, 19, Bernard, 18, and two juveniles, all with alleged gang affiliations. These African-Americans were convicted of a 1999 18 U.S.C. § 1111 carjacking/double homicide and robbery of a young white "church" couple. The bodies of the victims were found in the trunk of their car just inside the Fort Hood boundary, with gunshot wounds to the face and head. The vehicle had been set on fire. Authorities believe Vialva shot the victims. A 2255 motion for post-conviction relief was denied. An appeal is pending.

Bernard, Brandon

W.D. TX No. W99CR070

Death row - 2255

Name of AG Reno

Race & gender of def B M Victim R WF WM Date of DP notice 2/29/2000

gun murders by Vialva, 19, Bernard, 18, and two juveniles, all with alleged gang affiliations. These African-Americans were convicted of a 1999 18 U.S.C. § 1111 carjacking/double homicide and robbery of a young white "church" couple. The bodies of the victims were found in the trunk of their car just inside the Fort Hood boundary, with gunshot wounds to the face and head. The vehicle had been set on fire. Authorities believe Vialva shot the victims. A 2255 motion for post-conviction relief was denied. An appeal is pending.

Nelson, Keith D.

W.D. MO No. 99-CR-303-1

Death row - 2255

Name of AG Reno

Race & gender of def W M Victim R WF WM Date of DP notice 3/20/2000

the interstate 1999 kidnapping and murder of a ten year old girl, in violation of 18 U.S.C. §1201. Both the defendant and the victim are white. A 28 U.S.C. §2255 motion was denied without an evidentiary hearing or the grant of a Certificate of Appealability. The Eighth Circuit reversed the district court and remanded the case for an evidentiary hearing, after which the §2255 motion was again denied. An appeal is pending.

Honken, Dustin

N.D. IA No.3:01-CR-03047-MWB

Death row - 2255

Name of AG Ashcroft

Race & gender of def W M Victim R WF WM Date of DP notice 6/10/2003

five murders in 1993 of a potential witness, his girlfriend and two daughters, in a drug conspiracy case. The fifth victim is Angela Johnson's former boyfriend, who disappeared in November of 1993. Johnson attempted suicide in jail after she was tricked by a jailhouse informant into revealing the location of the bodies. Attorney General Gonzales rejected Johnson's attempt to enter a plea to a life sentence. All involved are white. A 28 U.S.C. 2255 motion was denied. An appeal is pending.

Jackson, Richard

W.D. NC No. 00-CR-74

Death row - 2255

Name of AG Reno

Race & gender of def W M Victim R WF WM Date of DP notice 12/4/2000

a capital defendant in state court who pled guilty to second degree murder, intrastate kidnaping and rape of a 22 year old woman jogging Halloween morning in the Pisgah National Forest (USFS). Jackson received a 25 - 31 years sentence in state court. He was charged in federal court in another case after the North Carolina Supreme Court reversed his original death sentence and conviction, and suppressed his confession on Edwards grounds. Jackson was 31 years old. The victim was tied with duct tape to a tree on federal land in the Bent Creek Recreation Area in the Pisgah National Forest off Blue Ridge Parkway, on federal land, raped and shot one time. All involved are white. All post-conviction motions have been denied.

Robinson, Julias Omar

N.D. TX No. 00-CR-260

Death row - 2255

Name of AG Ashcroft

Race & gender of def B M Victim R HM BM Date of DP notice 10/19/2001

a Fort Worth drug trafficking prosecution of the leaders of an Arlington-based drug ring responsible for three murders. The first killing involved a 1998 shooting of an African-American, mistaken for the intended victim, in a car traveling on Cential Expressway. A second 1999 killing was of an Hispanic person, mistaken for the intended victim, his brother, who allegedly sold a fake kilo of cocaine to Robinson. Britt was the triggerman in the third 1999 killing of another drug dealer, a Mexican national, who had stolen 20 kilos from a Laredo drug kingpin. Robinson was following in another car. Britt and Robinson, African-American, both allegedly fired weapons in the first and second incidents. Attorney General Ashcroft rejected a plea agreement involving a life sentence. Co-defendant Britt was sentenced to life in prison at a separate trial. Robinson has filed a lethal injection lawsuit in the DC Circuit Court. All post-conviction motions have been denied.

Agofsky, Shannon Wayne

E.D. TX 1:03-CR 173

Death row - 2255

Name of AG Ashcroft

Race & gender of def W M Victim R WM Date of DP notice 1/30/2004

Agofsky, along with his brother, was serving a life sentence for the 1992 abduction and murder of a president of a financial institution. Agofsky took him to the institution and forced him to open the vault and then killed him. In 2004, Agofsky was convicted of beating, kicking and stomping to death a fellow inmate at a federal prison in Beaumont, Texas. The victim was serving a term for arson and firearms. The government alleged this was a premeditated prison "gang" hit. All involved are white. This was the fourth murder at Beaumont FCI since March of 1997. The Fifth Circuit affirmed. 458 F.3d 369. A 28 U.S.C. §2255 motion is pending.

Purkey, Wesley Ira

W.D. MO No. 01-CR-308

Death row - 2255

Name of AG Ashcroft

Race & gender of def W M Victim R WF Date of DP notice 11/25/2002

the 1998 interstate kidnapping (from Missouri to Kansas), rape and murder of a 17 year old high school girl, whose body was then dismembered and burned. Purkey is serving a prison sentence for another killing. Previously, Purkey was paroled after 17 years for shooting a man. Both victim and defendant are white. All post-conviction motions have been denied.

Fields, Sherman Lamont

W.D. TX No. 01-CR-164

Death row - 2255

Name of AG Ashcroft

Race & gender of def B M Victim R BF Date of DP notice 5/23/2003

a jail escape and a domestic murder. The 2001 domestic killing/gun murder in Waco of a former girlfriend and mother of three young children, by a twice convicted felon who escaped from jail. Initially, the jury was deadlocked on punishment. Fields was a federal prisoner who bribed a jail guard to leave a door unlocked. Fields represented himself during the guilt phase. All involved are black. An appeal was denied. 549 F.3d 963 (2007). All post-conviction motions have been denied.

Mitchell, Lezmond

D. AZ No. 01-CR-1062

Death row - 2255

Name of AG Ashcroft

Race & gender of def NA M Victim R NAF Date of DP notice 9/13/2002

murder on Navajo tribal land. All involved are Native American. The defendant and a juvenile got a ride from a woman and her 9 year old granddaughter, killed both and stole the car supposedly for use in an armed robbery. Each victim was stabbed at a separate location. In an attempt to hide the victim's identity, the hands and heads of the victims were removed. Attorney General Ashcroft required a capital prosecution against Mitchell under a carjacking theory -- although the Navajo tribe has not "opted in" to the federal death penalty. A 28 U.S.C. §2255 motion was denied. An appeal is pending.

Mikos, Ronald

N.D. IL No. 02-CR 137

Death row - 2255

Name of AG Ashcroft

Race & gender of def W M Victim R WF Date of DP notice 12/16/2002

involves the § 1512 murder on January 27, 2002, of a government witness to prevent her testimony before the grand jury. Mikos, a podiatrist, and another are accused in many counts of defrauding Medicare, HCFA and HHS. When the victim was served with a federal grand jury subpoena for her testimony regarding treatment/non-treatment by Mikos, he allegedly tried to persuade the victim to lie to the grand jury either by claiming lack of memory or stating that the surgery had been performed. When she refused he allegedly shot her. All involved are white. Direct appeal was denied. A 28 USC 2255 motion is pending.

Fulks, Chadrick

D. SC No. 02-CR-992

Death row - 2255

Name of AG Ashcroft

Race & gender of def W M Victim R WF Date of DP notice 9/12/2003

carjacking and interstate kidnapping from a WalMart parking lot of a woman whose body was never recovered. A video camera captured part of the abduction. Witnesses saw her with the defendants later that day in North Carolina. The defendants had escaped 10 days earlier from a Kentucky jail. Basham was arrested three days later after allegedly trying to hijack a car at an Ashland, Kentucky mall. He has been charged with attempted murder and robbery. Fulks was arrested six days later, in Goshen, Indiana. The defendants are also accused of kidnapping a Kentucky man and leaving him tied to a tree in Evansville, Indiana. Basham has told the FBI that he and Fulks abducted another victim, a 19-year-old West Virginia college student, three days before the South Carolina abduction. Her car was found burned in West Virginia. A separate federal capital indictment was filed in that state and both defendants pled guilty and were sentenced to life in prison. All involved are white. All post-conviction motions have been denied.

Basham, Branden

D. SC No. 02-CR-992

Death row - 2255

Name of AG Ashcroft

Race & gender of def W M Victim R WF Date of DP notice 9/12/2003

carjacking and interstate kidnapping from a WalMart parking lot of a woman whose body was never recovered. A video camera captured part of the abduction. Witnesses saw her with the defendants later that day in North Carolina. The defendants had escaped 10 days earlier from a Kentucky jail. Basham was arrested three days later after allegedly trying to hijack a car at an Ashland, Kentucky mall. He has been charged with attempted murder and robbery. Fulks was arrested six days later, in Goshen, Indiana. The defendants are also accused of kidnapping a Kentucky man and leaving him tied to a tree in Evansville, Indiana. Basham has told the FBI that he and Fulks abducted another victim, a 19-year-old West Virginia college student, three days before the South Carolina abduction. Her car was found burned in West Virginia. A separate federal capital indictment was filed in that state and both defendants pled guilty and were sentenced to life in prison. All involved are white. A direct appeal was denied. 561 F.3d 302 (4th Cir. 2009). A 28 USC 2255 motion was denied. An appeal is pending.

LeCroy, William Emmett

N.D. GA No. 02-CR-38

Death Row - 2255

Name of AG Ashcroft

Race & gender of def W M Victim R WF WM Date of DP notice 12/20/2002

a carjacking murder. The victim, a nurse practitioner, came home, was surprised inside her home, bound, raped, stabbed to death in her bedroom. LeCroy took car keys from her purse and then stole her Ford Explorer. He was arrested two days later in Minnesota trying to enter Canada with the victim's SUV. All involved are white. His direct appeal was denied. 441 F.3d 914 (11th Cir. 2006). All post-conviction motions have been denied.

Mikhel, Iouri

C.D. CA CR No. 02-220 (A)-NM

Death row - 2255

Name of AG Ashcroft

Race & gender of def W M Victim R WF WM Date of DP notice 8/3/2004

five kidnapping ransom murders by the Russian mob. Wealthy Russian immigrants were kidnapped, held for ransom, murdered and their bodies dumped in a reservoir. 1.2 million was collected in ransom. All involved are Caucasian. Mikhel and Kadamovas are charged in four, the others in two, except Krylov, who is charged in three murders. The indictment charged hostage taking resulting in death. 18 U.S.C. §1203. Mikhel, Kadamovas and Krylov faced the death penalty. Mikhel and Kadamovas were sentenced to death. At a separate trial, Krylov was sentenced to life imprisonment after Attorney General Gonzales rejected an offer to plead guilty. A direct appeal is pending.

Kadamovas, Jurijus

C.D. CA CR No. 02-220 (A)-NM

Death row - Appeal

Name of AG Ashcroft

Race & gender of def W M Victim R WF WM Date of DP notice 8/3/2004

five kidnapping ransom murders by the Russian mob. Wealthy Russian immigrants were kidnapped, held for ransom, murdered and their bodies dumped in a reservoir. 1.2 million was collected in ransom. All involved are Caucasian. Mikhel and Kadamovas are charged in four, the others in two, except Krylov, who is charged in three murders. The indictment charged hostage taking resulting in death. 18 U.S.C. §1203. Mikhel, Kadamovas and Krylov faced the death penalty. Mikhel and Kadamovas were sentenced to death. At a separate trial, Krylov was sentenced to life imprisonment after Attorney General Gonzales rejected an offer to plead guilty. A direct appeal is pending.

Corley, Odell

N.D. IN No. 02-CR-116

Death row - 2255

Name of AG Ashcroft

Race & gender of def B M Victim R WF WM Date of DP notice 8/14/2003

bank robbery and gun murders. Five people, three African-American males, one African-American female and one white woman (the pregnant girlfriend of Johnson), robbed a bank and shot to death a white female teller, while wounding another white male teller who died ten weeks after the shooting. A white male security guard was also wounded, leaving him a paraplegic. Corley, who has taken the name Nasih Khalil Ra'id, was the ring leader who burst into the bank shooting. Johnson was also a gunman. McGregor was a driver. Gay and Ramsey were some distance away. The robbery was videotaped although the gunman was in disguise. Corley's palm print was found inside the bank. Corley committed a prior murder in 1998. An appeal was denied. 519 F.3d 716 (7th Cir. 2008). A 28 USC 2255 motion is pending.

Taylor, Rejon

E.D. TN No. 1:04-CR-00160-1

Death row - Appeal

Name of AG Gonzales

Race & gender of def B M Victim R WM **Date of DP notice** 6/1/2006

a cross-racial interstate kidnapping, carjacking, gun murder of an Atlanta restaurant owner who was a potential witness against Taylor in an identity theft scheme. The victim was abducted in Atlanta and killed in Tennessee. Fearing prosecution, the defendants robbed, kidnapped and threatened the deceased who was shot and killed while trying to escape. Matthews fired also and was himself accidentally shot by Taylor. Taylor fired the fatal shots. Attorney General Gonzales required a capital prosecution after Taylor attempted to escape from jail. The defendants are black, the victim white. A direct appeal is pending.

Barrett, Kenneth Eugene

E.D. OK CR No. 04-100-M-S

Death row - 2255

Name of AG Gonzales

Race & gender of def W M Victim R WM **Date of DP notice** 2/15/2005

law enforcement officer victim. Barrett lived in a small, rural, self-built cabin without electricity and running water. A "no-knock" warrant was issued based on allegations that he was a drug manufacturer/dealer, a gun owner and had previously made statements about killing law enforcement officers. During a late night raid, Barrett grabbed a gun and started shooting at an unmarked Ford Bronco approaching the cabin. The police shot back and Barrett was wounded. A state law enforcement officer was killed. There are numerous drug-related charges in the complaint. Barrett was tried twice in state court - the first trial resulting in a hung jury and the second resulting in manslaughter and assault with intent to kill convictions. All involved are white. His conviction and death sentence were affirmed on direct appeal. 496 F.3d 1079 (10th Cir. 2007). A 28 U.S.C. §2255 motion was denied. An appeal is pending.

Bolden, Robert, Sr.

E.D. MO No. 4:02-CR 0557 CEF (AGF)

Death row - 2255

Name of AG Ashcroft

Race & gender of def B M Victim R WM **Date of DP notice** 10/7/2003

2002 bank robbery murder. 18 U.S.C. §§924(c), 1111 and 2113. The victim was a white security guard, the son of a police officer, who encountered three robbers in the parking lot of the Bank of America. The defendants are African-American. Only Bolden faced the death penalty. Bolden's conviction and death sentence were affirmed on appeal. 545 F.3d 609 (8th Cir. 2008). A 28 USC §2255 motion is pending.

Brown, Meier Jason

S.D. GA CR No. 403-01

Death row - 2255

Name of AG Ashcroft

Race & gender of def B M Victim R WF **Date of DP notice** 5/5/2003

the stabbing murder of a United States Postal Service employee during a robbery at a United States Post Office. Brown confessed and blood was found on his jacket and bike. The victim is white and the defendant is black. She was stabbed 10 times. There was a conditional plea agreement specifying a life sentence but Attorney General Ashcroft rejected it and required a capital trial. All post-conviction motions have been denied.

Bourgeois, Alfred

S.D. TX CR No. 02-216

Death row - 2255

Name of AG Ashcroft

Race & gender of def B M Victim R BF Date of DP notice 7/23/2003

killing on federal land - a two year old child who died from "shaken baby syndrome". The baby was found unresponsive beside her father's tractor-trailer. Bourgeois and his wife told authorities the toddler had fallen out of the cab while they were making a delivery at Naval Air Station Corpus Christi. The toddler had seven major hemorrhages - two behind her right ear, two above her right eye and three in the back of her skull. The pathologist who examined the toddler's body called it "one of the worst cases of child abuse she'd ever seen." Bourgeois's wife and his 7-year-old daughter alleged Bourgeois had abused the toddler before. "(Bourgeois) hit her as hard as he would hit another man," the wife told the FBI, according to an affidavit. All involved are African-American. The death sentence was affirmed on appeal. 423 F.3d 501 (5th Cir. 2005). A 28 USC §2255 motion was rejected. All post-conviction motions have been denied.

Fields, Edward

E.D. OK No. 6:03-CR-00073

Death row - 2255

Name of AG Ashcroft

Race & gender of def W M Victim R WF WM Date of DP notice 3/15/2004

a robbery and gun murder of a married couple on federal land in the Winding Stair Campgrounds in the Quachita National Forest (USFS). All involved are white. Fields has no prior criminal record, a good military record and a history of intellectual disability. Fields had been living in the forest. The murders occurred around July 10, 2004. Fields, a former prison guard, went on a shopping spree with the victim's credit cards. He confessed expressing remorse. Fields pled guilty and was sentenced to death by jury. A direct appeal was denied. A 28 USC 2255 motion is pending.

Lighty, Kenneth Jamal

D. MD No. 8:03-CR-00457-PJM

Death row - 2255

Name of AG Ashcroft

Race & gender of def B M Victim R BM Date of DP notice 12/28/2004

three defendants, and possibly another, kidnapped the teenage victim in D.C., transported him to Maryland, where he was shot to death. The victim was the son of a Washington police officer. Lighty is charged as the shooter, and the other two with assisting him. All involved are African-American. Co-defendant Wilson was convicted of conspiracy to kidnap but acquitted of kidnapping and weapons charges. A direct appeal was denied. A 28 USC 2255 motion is pending.

Rodriguez, Alfonso, Jr.

D. ND No. 04-CR-55

Death row - 2255

Name of AG Ashcroft

Race & gender of def H M Victim R WF Date of DP notice 10/28/2004

the interstate kidnapping murder of a 22 year old white female victim who disappeared from a Grand Forks shopping mall parking lot on November 22, 2003. Her body was found April 17, 2004. Rodriguez, 53, is a convicted sex offender, who had been released from prison in May of 2003 after serving a 23 year sentence for attempted kidnapping, assault and other convictions for attempted rape and aggravated rape. Before he was released, Rodriguez requested help from a Minnesota prison psychologist. The Hispanic defendant allegedly crossed state lines while committing the crime. This was the first death sentence in North Dakota in 100 years. A direct appeal was denied. A 28 USC 2255 motion is pending.

Wilson, Ronell

E.D. NY No. 1:04-CR-01016-NGG

Death row - Appeal

Name of AG Gonzales

Race & gender of def B M Victim R BM Date of DP notice 8/2/2005

the execution style RICO murders of two undercover NYPD detectives during a gun sting operation. The case was charged as a racketeering conspiracy. The Staten Island District Attorney asked the United States Attorney to charge Wilson after the New York State Court of Appeals ruled in June 2004, that the state's death-penalty law was unconstitutional. All involved are African-American. The death sentence was reversed on appeal. 610 F.3d 168 (2d Cir. 2009). The trial court subsequently ruled that Wilson is not intellectually disabled. He was resentenced to death, but a panel of the Second Circuit Court of Appeals remanded the case to the district court for consideration of the Supreme Court's decision in *Hall v. Florida* on the intellectual disability determination.

Lawrence, Daryl

S.D. OH No. 2:05-CR-00011-GLF-1

Death row - 2255

Name of AG Gonzales

Race & gender of def B M Victim R WM Date of DP notice 9/26/2005

law enforcement officer victim - a January 2004 gun murder of a law enforcement officer during a bank robbery. Lawrence committed other bank robberies in August and September of 2004. The Columbus, Ohio police officer and bank security guard victim is white and the defendant is black. A new trial motion was granted in October 2006, but the Sixth Circuit reversed. 555F.3d 254 (2009). 28 USC 2255 proceedings are pending.

Caro, Carlos David

W.D. VA No. 06 CR 00001

Death row - 2255

Name of AG Gonzales

Race & gender of def H M Victim R HM Date of DP notice 1/11/2006

a 2003 BOP prison inmate strangulation murder of a cellmate at USP Lee by an alleged member of the Texas Syndicate prison gang. Caro was serving a 71 month sentence, had supervised release revoked and then received 327 months (27 years) in 2003 for conspiracy to murder involving a prison gang related stabbing. The murder was triggered by a dispute over a food tray. All involved are Hispanic. A direct appeal was denied. 597 F.3d 608, reh'ing den., 614 F.3d 101 (4th Cir. 2010). A 28 USC 2255 motion was denied. An appeal is pending.

Montgomery, Lisa

W.D. MO No. 5:05-CR-06002-GAF

Death Row - 2255

Name of AG Gonzales

Race & gender of def W F Victim R WF Date of DP notice 11/16/2005

a baby girl was cut of her murdered mother's womb and taken across state lines. She was found alive in the possession of a Kansas woman, who police charged with interstate kidnapping resulting in death. Kevin and Lisa Montgomery have two older children, but she had recently lost a baby. The victim was eight months pregnant and strangled with a rope. Montgomery confessed. All involved are white. A 28 USC §2255 motion is pending.

Duncan, Joseph

D. ID CR No. 07-23-N-EJL

Death row - Appeal

Name of AG Gonzales

Race & gender of def W M Victim R WM Date of DP notice 1/23/2007

interstate kidnapping and four murders, including sexual abuse, torture and murder of innocent children. Two adults and a 13 year old boy were beaten to death in North Idaho. Two young children, a girl 8 years old and a boy 9, were kidnapped. Duncan is a registered sex offender, having been released in 2000 after many years in a Washington state prison. Both children were tortured and sexually abused and the 8 year old girl watched her 9 year old brother die. Duncan videotaped the abuse and torture. The 8-year old girl was seen with Duncan and was rescued. Duncan confessed to a double child kidnapping murder in Seattle, Washington and a child murder in Riverside, California. Duncan pled guilty to other murders in Idaho. Duncan pled guilty, was found competent and represented himself, putting up no defense at the penalty trial. All involved are white. Duncan was found competent after the Ninth Circuit remanded the case for a retrospective competency determination. An appeal is pending.

Hager, Thomas Morocco

E.D. VA No. 1:05-CR-00264-TSE

Death row - 2255

Name of AG Gonzales

Race & gender of def B M Victim R WF Date of DP notice 5/30/2006

the 1993 stabbing death of a white Fairfax County woman by a black convict who is also serving a life sentence. Since 1992, Hager allegedly killed five other people and ordered the slaying of a seventh person. Co-defendants Barnett and Johnson, juveniles, pled guilty and received life sentences for the 1993 murder of Barbara White, a 19-year-old single mother. They stabbed the victim 82 times in her bathtub while her 13 month old daughter was elsewhere in the apartment. Hager, a crack cocaine dealer, was involved in the stabbing. Hager is also serving a minimum 87 year sentence for killing another man in March of 1995. He broke into that victim's apartment and shot him. In 1999 he was convicted of manslaughter in an October 1996 shooting. Hager was involved in crime dating to a conviction for dealing cocaine as a 16-year-old. He was involved in robbing people, including rival drug dealers, of drugs, money and other valuables. Hager is suspected in, but has not been charged in several other killings. He was also involved in other murders in 1992, two in 1996 and 1997. He attempted murder in 1993 by shooting two rival drug dealers. Since being jailed in 1999 he was armed and involved in four assaults. Hager bragged that he trained his juvenile accomplices to be killers. A 28 USC 2255 motion is pending.

Ebron, Joseph

E.D. TX No. 1:07-CR-142 (1:08-CR-00036)

Death row - 2255

Name of AG Keisler

Race & gender of def B M Victim R BM Date of DP notice 9/11/2007

a USP Beaumont BOP inmate murder. All involved are blacks from Washington DC (the "DC Crew") who were in USP Atlanta, then USP Beaumont, together. The deceased was a government witness against two of Ebron's associates in an aggravated robbery in 1997. Ebron held the deceased while Mosely stabbed him 100 times. Mosely died before he could be charged. Ebron was previously convicted in 1999 of murder. A 28 USC 2255 motion is pending.

Sanchez, Ricardo

S.D. FL 06-80171-CR-HURLEY/VITUNAC(s)(s)

Death Row - 2255

Name of AG Mukasey

Race & gender of def H M Victim R HF HM Date of DP notice 2/20/2008

gun carjacking murders of a man allegedly involved in cocaine trafficking and his wife and two children, ages 4 and 3 on the Florida Turnpike. All involved are Hispanic. 28 USC 2255 proceedings are pending.

Troya, Danny

S.D. FL 06-80171-CR-HURLEY/VITUNAC(s)(s)

Death Row - 2255

Name of AG Mukasey

Race & gender of def H M **Victim R** HF HM **Date of DP notice** 2/20/2008

gun carjacking murders of a man allegedly involved in cocaine trafficking and his wife and two children, ages 4 and 3. All involved are Hispanic. 28 USC 2255 proceedings are pending.

Aquart, Azibo

D. CT 3:06CR160 (PCD)

Death Row - Appeal

Name of AG Mukasey

Race & gender of def B M **Victim R** BF BM **Date of DP notice** 1/29/2009

a triple murder of a rival in the drug business, his girlfriend and a visitor, who were bound and gagged and bludgeoned to death with a baseball bat by leaders of a Jamaican drug gang. All the defendants and victims are black. The Aquart brothers faced the death penalty. Johnson, who cooperated, did not. After Azibo's trial, his brother, Azikiwe, entered into a plea agreement and was sentenced to life in prison. A direct appeal is pending.

Snarr, Mark

E.D. TX 1:09-CR-00015-MAC-KFG All

Death Row - 2255

Name of AG Filip

Race & gender of def W M **Victim R** BM **Date of DP notice** 2/13/2009

BOP inmate murder at FCC Beaumont by the alleged founder of the white supremacist group Soldiers of the Aryan Culture, which was formed in the Utah state prison system. Two BOP guards were stabbed before the murder, but survived after long hospital stays. Snarr took the keys from a guard and opened the victim's cell door. Snarr is white, Garcia is Hispanic and the victim is black. A direct appeal was denied. A 28 USC 2255 motion is pending.

Runyon, David

E.D. VA CR No. 4:08-CR-16

Death row - 2255

Name of AG Mukasey

Race & gender of def A M **Victim R** WM **Date of DP notice** 7/17/2008

a gun murder for hire in Newport News of a husband. Catherina Voss was married to the victim and she and her boyfriend Draven contracted with Runyon to kill Voss' husband. The alleged motive was to obtain the victim's military benefits. Voss was sentenced to life in return for her testimony. 28 USC 2255 proceedings are pending.

Garcia, Edgar B.

E.D. TX 1:09-CR-00015-MAC-KFG All

Death Row - 2255

Name of AG Filip

Race & gender of def H M **Victim R** BM **Date of DP notice** 2/13/2009

BOP inmate murder at FCC Beaumont by the alleged founder of the white supremacist group Soldiers of the Aryan Culture, which was formed in the Utah state prison system. Two BOP guards were stabbed before the murder, but survived after long hospital stays. Snarr allegedly took the keys from a guard and opened the victim's cell door. Snarr is white, Garcia is Hispanic and the victim is black. A direct appeal was denied. A 28 USC 2255 motion is pending.

Umana, Alejandro Enrique

W.D. NC No. 3:08-CR-134-RJC

Death row - 2255

Name of AG Mukasey

Race & gender of def H M Victim R HM Date of DP notice 9/23/2008

four murders by members of the MS-13 gang. Alleged are double murders in 2005 and 2007 and a single murder in 2008. Umana received the death penalty for a 2007 double murder. He also allegedly committed two additional uncharged murders. Fernandez-Gradis was charged in two murders, Gonzalez in one, but they did not face the death penalty. The district court rejected a claim of intellectual disability. All involved are Hispanic. 28 USC 2255 proceedings are pending.

Savage, Kaboni

E.D. PA No. 2:07-CR-00550-RBS

Death row - Appeal

Name of AG Holder

Race & gender of def B M Victim R BF BM Date of DP notice 3/14/2011

involves murders allegedly orchestrated by Philadelphia drug kingpin Kaboni Savage, already serving 30 years for drug trafficking. Thirteen murders are charged, including a 2004 arson fire that killed six people, including four children - ages 15, 12, 10 and 1. The fire was set to retaliate against a federal informant who was testifying against Savage. Lewis was tried for a 2001 Philadelphia murder and was acquitted. Kaboni Savage is charged in twelve murders, Merritt in six, Kidada Savage in six involving the arson and Northington in two. All involved are black, except one victim, who is an Hispanic male. A direct appeal is pending.

Coonce, Wesley Paul Jr.

W.D. MO 10-03029-01/02-CR-S-GAF

Death row - Appeal

Name of AG Holder

Race & gender of def W M Victim R HM Date of DP notice 7/22/2011

a BOP murder at the Medical Center in Springfield, Missouri, by two inmates. Coonce is already serving a life sentence. The defendants are white, the victim Hispanic. A direct appeal is pending.

Hall, Charles Michael

W.D. MO 10-03029-01/02-CR-S-GAF

Death row - Appeal

Name of AG Holder

Race & gender of def W M Victim R HM Date of DP notice 7/22/2011

a BOP murder at the Medical Center in Springfield, Missouri, by two inmates. Hall was serving a sentence of 43 months, which began in 2009. The defendants are white, the victim Hispanic. A direct appeal is pending.

Sanders, Thomas Steven

W.D. LA No. 1:10CR00351

Death row - Appeal

Name of AG Holder

Race & gender of def W M Victim R WF Date of DP notice 8/1/2012

interstate kidnapping from Las Vegas, Nevada, to Arizona to Louisiana and murder of a mother, whose remains were located in Arizona, and a child, a daughter (age 12), whose remains were found in Louisiana. Attorney General Holder rejected a plea agreement. All involved are white. A direct appeal is pending.

Torrez, Jorge Avila

E.D. VA No. 1:11-CR-115

Death Row - Appeal

Name of AG Holder

Race & gender of def H M Victim R WF WM Date of DP notice 2/9/2012

rape murders by an Hispanic ex-marine already serving life sentences in Virginia for an abduction and rape of a Maryland graduate student. In 2009, a 20 year old Navy petty officer was raped and murdered on a military base in Arlington. Previously, two young girls were murdered in Illinois, stabbed in the eye. The government alleges a DNA link to all. The victims are all white. Torrez waived the presentation of mitigating evidence. A direct appeal is pending.

Tsarnaev, Dzhokhar

D. MA No. 1:13-CR-10200-GAO

Death row - Appeal

Name of AG Holder

Race & gender of def W M Victim R WF WM Date of DP notice 1/30/2014

involves one of the two Boston Marathon terrorist bombers, who killed four, including two women, an eight year old boy, and a police officer, and wounded 170, resulting in at least 15 amputations of limbs. He also is alleged to have attempted to kill another police officer. The defendant is white, of Chechen and Avar descent. The deceased victims are white and Asian.

**Authorized Federal Capital Prosecutions Which Resulted in
Defendant Being Found Not Guilty or Innocent - 6/3/2015**

Brown, Reginald

E.D. MI CR No. 92-81127

Innocent

Name of AG Barr

Race & gender of def B M Victim R BF BM Date of DP notice 8/11/1993

involves eight drug-related gun murders by an innocent gang member. After insisting for nearly two years he had murdered four people, including a child, the government dismissed capital murder charges against a Detroit man and began prosecuting a co-defendant for the same killings. All involved are African-American.

McKelton, Antonio

E.D. MI CR No. 98-80348

Innocent

Name of AG Reno

Race & gender of def B M Victim R BF BM Date of DP notice 8/31/1998

a bank robbery in which an employee was killed while servicing an ATM machine. McKelton was serving a state sentence for the armed robbery of a jewelry store and was suspected in six other robberies at jewelry stores. McKelton's fingerprint was on the clip inside the gun. The black victim had fired one shot off as he dove to the ground. McKelton, also a black man, suffers from Hodgkin's disease. The defense and the prosecutor jointly petitioned the Attorney General's Committee to withdraw the death penalty request. The request was first denied but was eventually granted. The indictment was later dismissed when additional evidence was uncovered. Two others were subsequently charged.

Rice, Darrell David

W.D. VA CR No. 02-CR-26

Innocent

Name of AG Ashcroft

Race & gender of def W M Victim R BF WF Date of DP notice 1/31/2003

the 1996 murders of two young female hikers in Virginia's Shenandoah National Park by cutting their throats. The victims were found bound and gagged. According to Attorney General Ashcroft, who announced pursuit of the death penalty himself, Rice has said he hates women and enjoys assaulting the vulnerable and that the two women deserved to die because they were lesbians. Review of tape recordings indicate Rice said only that the government was portraying him that way. Rice is currently serving a 135 month sentence in federal prison for the 1997 attempted abduction of a female bicyclist in the park. Attorney General Ashcroft stated at a news conference: "We're inclined to prosecute hate crimes like this one, prosecute them to the fullest." All involved are white. Days before the October 2003 trial date the trial was postponed when the FBI "found a new hair" and also re-examined a hair linking Rice to the women and admitted there was no connection. The new hair did not come from Rice or the women. There is male DNA on both ligatures that did not come from Rice. Eventually, the prosecution was dismissed.

Authorized Federal Capital Prosecutions Which Resulted in a Conviction of a Lesser Offense - 6/3/2015

Smith, Howard L.

E.D. VA CR No. 97-341-A

Lesser included conviction

Name of AG Reno

Race & gender of def B M Victim R BM Date of DP notice 10/3/1997

the stabbing death of a Lorton Correctional Center inmate. The defendant was serving a 20-to-life sentence for a murder he committed ten years previously, at age 17. Lorton is the District of Columbia prison complex, but is located in suburban Virginia. After a one-week 1998 trial, a jury in Alexandria, Virginia, rejected first-degree murder charges and convicted Smith of second-degree murder, which is not a death-eligible offense. Although a number of Lorton murders have been prosecuted in federal court since passage of the 1994 Crime Bill, the Smith case was the first approved for capital prosecution. Smith was sentenced as a "career offender" to life without release.

Thomas, Christopher

E.D. VA CR No. 99-477-A

Lesser included conviction

Name of AG Reno

Race & gender of def B M Victim R BM Date of DP notice 2/6/2000

another murder at the District of Columbia Department of Corrections facility in Lorton. The victim allegedly brought a shank to the fight and the defendant wrestled it from him and stabbed him three times. Thomas was convicted of second degree murder. All involved are African-American. This was Thomas' third murder conviction.

Irby, James Allen

D. MD No. 8:03-CR-00490-RDB

Lesser included conviction

Name of AG Ashcroft

Race & gender of def B M Victim R BM Date of DP notice 8/2/2004

the victim was an informant who provided information to the ATF in a DC firearms investigation, which resulted in a search warrant. Shortly after, the victim, a potential government witness, was found in a burning apartment, shot three times and with 184 stab wounds. A wired informant obtained an admission from the defendant. Attorney General Ashcroft rejected an offer to plead guilty to a life sentence. All involved are black.

Authorized Federal Capital Prosecutions Where Authorization was Withdrawn - 6/3/2015

Mathis, Ronald Eugene

M.D. FL CR No. 91-301-CR-T (18) (A)

Authorization withdrawn

Name of AG Barr

Race & gender of def B M Victim R BM Date of DP notice 4/22/1992

a black Tampa, Florida drug distributor, for having allegedly ordered a murder in retaliation for the theft of drugs. Murder for hire is alleged as an aggravating circumstance. In 1994, the government withdrew its notice of intention to seek the death penalty, and subsequently withdrew the 21 U.S.C. §848(e) homicide count as well. Trial began on the remaining (noncapital) counts and Mathis was convicted. This case had been authorized as a capital prosecution by Attorney General Barr in early 1992. prosecution by Attorney General Barr in early 1992.

Brown, Oliver

E.D. LA CR No. 92-468

Authorization withdrawn

Name of AG Barr

Race & gender of def B M Victim R BM Date of DP notice

two black New Orleans inner-city gang members, in connection with an allegedly drug-related murder. In 1992, the Government dropped its request for the death penalty in this case. The defendants subsequently entered pleas to conspiracy to murder and a weapons offense in January, 1993. Brown received a 10-year sentence; Green received 15 years.

Carrington, Arleigh

M.D. GA CR No. 92-82MAC-WDO

Authorization withdrawn

Name of AG Barr

Race & gender of def B M Victim R BM Date of DP notice 1/20/1993

two black crack cocaine dealers in Macon, Georgia, in connection with the murders of two other crack dealers. Attorney General Barr authorized this death prosecution in his last week in office. In 1993, the government dropped its request for the death penalty against these two defendants. Both 848(e) murder charges were also later withdrawn, and the defendants subsequently pleaded guilty to various narcotics-related charges.

Chatfield, Tony

M.D. GA CR No. 92-82MAC-WDO

Authorization withdrawn

Name of AG Barr

Race & gender of def B M Victim R BM Date of DP notice 1/20/1993

two black crack cocaine dealers in Macon, Georgia, in connection with the murders of two other crack dealers. Attorney General Barr authorized this death prosecution in his last week in office. In 1993, the government dropped its request for the death penalty against these two defendants. Both 848(e) murder charges were also later withdrawn, and the defendants subsequently pleaded guilty to various narcotics-related charges.

Authorized Federal Capital Prosecutions Where Authorization was Withdrawn - 6/3/2015

Goldston, Anthony

D. DC CR No. 92-CR-284-01

Authorization withdrawn

Name of AG Reno

Race & gender of def B M Victim R BM Date of DP notice

involves eight killings. Four African-American D.C. residents who were charged with a total of eight murders as leaders of a District of Columbia drug gang known as the Newton Street Crew. This case involved a triple slaying in which the killers wrapped the victims' heads in duct tape before shooting them at close range. Despite authorization to seek the death penalty by Attorney General Barr in 1992, the government did not ultimately request the death penalty at trial. McCollough participated in five murders. Goldston founded the gang. Hoyle ran the gang. The defendants and victims were all African- Americans.

Green, William

E.D. LA CR No. 92-468

Authorization withdrawn

Name of AG Reno

Race & gender of def B M Victim R BM Date of DP notice

two black New Orleans inner-city gang members, in connection with an allegedly drug- related murder. In 1992, the Government dropped its request for the death penalty in this case. The defendants subsequently entered pleas to conspiracy to murder and a weapons offense in January, 1993. Brown received a 10-year sentence; Green received 15 years.

Harris, Mario

D. DC CR No. 92-CR-284-01

Authorization withdrawn

Name of AG Reno

Race & gender of def B M Victim R BM Date of DP notice

four African-American D.C. residents who were charged with a total of eight murders as leaders of a District of Columbia drug gang known as the Newton Street Crew. This case involved a triple slaying in which the killers wrapped the victims' heads in duct tape before shooting them at close range. Despite authorization to seek the death penalty by Attorney General Barr in 1992, the government did not ultimately request the death penalty at trial. McCollough participated in five murders. Goldston founded the gang. Hoyle ran the gang. The defendants and victims were all African- Americans.

Hoyle, Mark

D. DC CR No. 92-CR-284-01

Authorization withdrawn

Name of AG Reno

Race & gender of def B M Victim R BM Date of DP notice

involves eight killings. Four African-American D.C. residents who were charged with a total of eight murders as leaders of a District of Columbia drug gang known as the Newton Street Crew. This case involved a triple slaying in which the killers wrapped the victims' heads in duct tape before shooting them at close range. Despite authorization to seek the death penalty by Attorney General Barr in 1992, the government did not ultimately request the death penalty at trial. McCollough participated in five murders. Goldston founded the gang. Hoyle ran the gang. The defendants and victims were all African- Americans.

Authorized Federal Capital Prosecutions Where Authorization was Withdrawn - 6/3/2015

McCullough, John

D. DC CR No. 92-CR-284-01

Authorization withdrawn

Name of AG Reno

Race & gender of def B M Victim R BM Date of DP notice

involves eight killings. Four African-American D.C. residents who were charged with a total of eight murders as leaders of a District of Columbia drug gang known as the Newton Street Crew. This case involved a triple slaying in which the killers wrapped the victims' heads in duct tape before shooting them at close range. Despite authorization to seek the death penalty by Attorney General Barr in 1992, the government did not ultimately request the death penalty at trial. McCullough participated in five murders. Goldston founded the gang. Hoyle ran the gang. The defendants and victims were all African- Americans.

McCullah, John Javilo

E.D. OK CR No. 1:92-032-S

Death Sentence Vacated and Authorization Withdrawn and Authorization Not

Name of AG Barr and Holder

Race & gender of def W M Victim R WM Date of DP notice 9/11/1992

two white and one Hispanic defendants were tried jointly in connection with the drug- related intrastate kidnap/murder of a Muskogee, Oklahoma auto dealership employee. The two capitally-charged "managers" of the drug enterprise, co-defendants Hutching and Molina, received life sentences from the jury, while the third defendant, McCullah (who, unlike the bosses, had been present at the killing) was sentenced to death in 1993. United States v. McCullah, 76 F.3d 1087 (10th Cir. 1996) ordered a new penalty hearing due to introduction of an involuntary statement and double counting of aggravating circumstances. Rehearing en banc was denied by a 6 to 6 vote, 87 F.3d 1136 (6/26/96), and the government declined to seek review in the Supreme Court. The government finally withdrew its request for the death penalty while McCullah's resentencing was pending. The victim was white.

In 2007, McCullah allegedly killed his cellmate in Florida, USP Coleman, after the assault/murder was arranged by two guards. Both McCullah and his deceased cellmate are white. One guard was convicted of murder and sentenced to life in prison.

Murray, Michael

M.D. PA CR No. 92-200

Authorization withdrawn at trial

Name of AG Reno

Race & gender of def B M Victim R BM Date of DP notice 8/27/1993

a member of an African-American gang headed by one Jonathan Bradley, which involved the killing of a black Harrisburg drug dealer. DOJ declined to approve the U.S. Attorney's request to authorize the death penalty against Bradley, who allegedly ordered the killing, and against another participant in the shooting, Emmanuel S. Harrison. In 1994, after jury selection had already begun, Murray was permitted to plead guilty to a term of years, and the government withdrew its request for the death penalty. Judge Sylvia Rambo rejected the recommended less-than-life sentence and the case was reset for trial. In 1995, the Attorney General instructed the United States Attorney not to seek the death penalty on the eve of a capital trial scheduled to begin on the following Monday.

Thomas, Vernon

E.D. VA CR No. 3-92-CR- 68

Authorization withdrawn

Name of AG Barr

Race & gender of def B M Victim R BF BM Date of DP notice 10/28/1992

the last of the four Richmond, Virginia defendants in the "Newtown gang case." The government dropped its request for the death penalty, on the eve of Thomas' separate trial from the other three capital defendants, just before an evidentiary hearing to determine whether the death penalty should be barred because Thomas is intellectually disabled.

Authorized Federal Capital Prosecutions Where Authorization was Withdrawn - 6/3/2015

Chanthadara, Bountaem

D. KS CR No. 94-10129-01

Death Sentence Vacated and Authorization Withdrawn

Name of AG Reno

Race & gender of def A M Victim R AF **Date of DP notice** 6/2/1995

a "Hobbs Act" case, in which five defendants of Asian descent (Laotian and Vietnamese) were charged with the armed-robbery of a Chinese restaurant and killing co-proprietor Barbara Sun, in Wichita, Kansas in 1994. Federal jurisdiction was based on the Hobbs Act, 18 U.S.C. § 1951, prohibiting obstruction of inter-state commerce. The Attorney General's approval of this capital prosecution for Chanthadara and Phouc Nguyen was announced in 1995. It marked the first time that the Hobbs Act was used to federalize as a capital case a prosecution for murder committed during a commercial robbery. Chanthadara beat and shot the victim in an attempt to get her to open a safe the female proprietor could not. Nguyen was present. Chanthadara's jury recommended the death penalty in 1996. After a separate trial, Phouc Nguyen's jury sentenced him to life imprisonment. The Eighth Circuit reversed Chanthadara's death sentence on November 1, 2000. 230 F.3d 1237. He was sentenced to life in prison in 2002.

Tidwell, Tyrone

E.D. PA CR No. 94-353

Authorization withdrawn

Name of AG Reno

Race & gender of def B M Victim R BM **Date of DP notice** 2/5/1996

a 35 year old African-American beauty salon owner who allegedly was a middle man between crack cocaine organizations in New York and Philadelphia. Tidwell solicited the killing of two black men in 1989 and 1991, one for selling crack on "his corner" and a second suspected of stealing drugs. Murder for hire is alleged as an aggravating circumstance. In 1996, the Attorney General authorized the death penalty for the 1989 homicide. However, shortly before the defendant's trial, the U.S. Attorney requested that the death penalty be withdrawn, and the Attorney General approved the request.

Wyrick, Kevin

W.D. MO CR No. 94-00194-01

Authorization withdrawn at trial

Name of AG Reno

Race & gender of def W M Victim R WM **Date of DP notice** 8/22/1995

when the jury deadlocked on the punishment for the "boss" of a drug ring, Damon Moore, the government announced that it was withdrawing its request for the death penalty for Wyrick, the triggerman.

Acosta, John Lefty

D. NM CR No. 95-538-MV

Authorization withdrawn

Name of AG Reno

Race & gender of def H M Victim R BM HM **Date of DP notice** 6/21/1996

murder in the aid of racketeering. The charges involve an L.A. gang, Sureno 13, moving crack and PCP from L.A. to Albuquerque. Among the seven murders connected to the gang one was of a high school student and another was a triple homicide. Five attempted murders were alleged, as well as a conspiracy to kill rival black drug dealers. Authorization was requested and granted by the Attorney General in 1996, for four of six defendants, but the government later withdrew its request for the death penalty as to one, after he was shown to be uninvolved in one of the two homicides originally charged against him. The remaining three entered guilty pleas: Mazzini received 25 years; Najjar received 30 years; and De LaTorre received 22 years.

Authorized Federal Capital Prosecutions Where Authorization was Withdrawn - 6/3/2015

DesAnge, Omar

W.D. VA CR No. 95-00046RH

Authorization withdrawn

Name of AG Reno

Race & gender of def B M Victim R BM Date of DP notice 10/2/1995

the killing of an African-American, apparently a crack addict, who was a state's witness. The government withdrew its intention to seek the death penalty shortly before the scheduled April 1996 trial after the Attorney General declined to authorize the death penalty in an unrelated case in the Western District of Virginia, being prosecuted by the same Assistant United States Attorney. So the United States reached agreement with the defense on the drug distribution charges and agreed the homicide count would be tried as a non-capital case.

Martin, Roy Ray

N.D. TX CR No. 5-95-CR- 0017-C (Cummings)

Authorization withdrawn

Name of AG Reno

Race & gender of def W M Victim R BM Date of DP notice 10/6/1995

a civil rights murder in the fall of 1994. Three (one white, two Hispanic) young men randomly attacked blacks, killing one and seriously wounding two, in a racially motivated spree in Lubbock, Texas. Authorization to seek the death penalty was granted by Attorney General Reno in early October, 1995. The district court granted severance and the first defendant was scheduled for trial but the government withdrew the death penalty notice as to all three defendants who were then joined for trial and convicted.

Mungia, Eli Trevino

N.D. TX CR No. 5-95-CR-0017-C

Authorization withdrawn

Name of AG Reno

Race & gender of def H M Victim R BM Date of DP notice 10/6/1995

a civil rights murder in the fall of 1994. Three (one white, two Hispanic) young men randomly attacked blacks, killing one and seriously wounding two, in a racially motivated spree in Lubbock, Texas. Authorization to seek the death penalty was granted by Attorney General Reno in early October, 1995. The district court granted severance and the first defendant was scheduled for trial but the government withdrew the death penalty notice as to all three defendants who were then joined for trial and convicted.

Mungia, Ricky Rivera

N.D. TX CR No. 5-95-CR-0017-C

Authorization withdrawn

Name of AG Reno

Race & gender of def H M Victim R BM Date of DP notice 10/6/1995

a civil rights murder in the fall of 1994. Three (one white, two Hispanic) young men randomly attacked blacks, killing one and seriously wounding two, in a racially motivated spree in Lubbock, Texas. Authorization to seek the death penalty was granted by Attorney General Reno in early October, 1995. The district court granted severance and the first defendant was scheduled for trial but the government withdrew the death penalty notice as to all three defendants who were then joined for trial and convicted.

Peng, You Zhong

E.D. NY CR No. 95 0870

Authorization withdrawn

Name of AG Reno

Race & gender of def A M Victim R AF Date of DP notice 7/19/1996

two Chinese gang members who kidnaped intrastate Chinese nationals living in the U.S. for ransom to be paid by relatives in China. One victim was raped and severely abused before being strangled after her family failed to pay the ransom demanded. Jia Wu and Fu Xin Chen pled guilty and received life sentences in 1996. Capital authorization against a third defendant, You Zhong Peng, was withdrawn by the Department of Justice just three days before his scheduled 1997 trial.

Authorized Federal Capital Prosecutions Where Authorization was Withdrawn - 6/3/2015

Johnson, Darryl Alamont

N.D. IL No. 96 CR 379

Death Sentence Vacated and Authorization Withdrawn

Name of AG Reno

Race & gender of def B M Victim R BM Date of DP notice 10/1/1996

a "Gangster Disciple" drug conspiracy/racketeering murder case. Two homicides were charged, one of a government confidential informant. Co-defendant Quan Ray committed two murders on orders of Mr. Johnson. Four additional homicides were alleged in aggravation. Murder for hire is alleged as an aggravating circumstance. Ray was sentenced to life in prison at a separate trial. Johnson's jury recommended a sentence of death in 1997. Following a 2010 grant of sentencing relief, the government withdrew the notice of intent to seek the death penalty in 2012.

Williams, Jerry

D. MD CR No. WMN 97-0355

Authorization withdrawn

Name of AG Reno

Race & gender of def B M Victim R BF BM Date of DP notice 3/21/1997

Williams' co-defendant Anthony Jones faced death penalty for three murders, including an allegation that he ordered his step-brother killed from jail because he feared he was about to become a government witness. Williams was charged as the triggerman in a single homicide. Numerous other homicides were alleged in aggravation as to Jones. The cases were severed. Jones was convicted in 1998, and the jury recommended a life sentence. Thereafter, the government withdrew the request for the death penalty as to Williams, who was convicted and is serving a life sentence.

Westmoreland, Guy

S.D. IL CR No. 98-30022- WDS

Authorization withdrawn

Name of AG Reno

Race & gender of def W M Victim R WF Date of DP notice 12/14/1999

the murder of Debra Abeln in East St. Louis, Illinois, in front of her 12 year old son. Co-defendant Richard Abeln confessed to hiring Deandre Lewis, 23, through Westmoreland, to kill his wife. Murder for hire is alleged as an aggravating circumstance. Abeln faced the death penalty but pled guilty and received a life sentence. All involved are white, except Lewis, who is African-American.

Lewis, Deandre

S.D. IL CR No. 98 30022 WDS

Authorization withdrawn

Name of AG Reno

Race & gender of def B M Victim R WF Date of DP notice 12/14/1999

the murder of Debra Abeln in East St. Louis, Illinois, in front of her 12 year old son. Co-defendant Richard Abeln confessed to hiring Deandre Lewis, 23, through Westmoreland, to kill his wife. Abeln faced the death penalty but pled guilty and received a life sentence. Murder for hire is alleged as an aggravating circumstance. All involved are white, except Lewis, who is African-American.

Authorized Federal Capital Prosecutions Where Authorization was Withdrawn - 6/3/2015

Stitt, Richard Thomas

E.D. VA No. 2:98CR47

Authorization withdrawn

Name of AG Reno

Race & gender of def B M Victim R BM Date of DP notice 6/23/1998

three homicides and other attempted homicides committed by co-defendants on Stitt's urging. Authorization to seek the death penalty was granted by Attorney General Reno only for Stitt. Four co-defendants did not face the death penalty. Stitt received a sentence of death in 1998 after a joint trial with three of the non-capital codefendants. He has a lengthy record of assaultive conduct. An appeal was rejected by the Fourth Circuit. 250 F.3d 878 (5/25/01). Penalty phase relief was granted in 2255 review on a claim of ineffective assistance of counsel. 369 F.Supp.2d 679 (ED VA 2005). The government withdrew the notice of intent to seek the death penalty in 2010.

Marrero, Jose Rodriguez

D. PR CR No. 97-284 (JAF)

Authorization withdrawn

Name of AG Reno

Race & gender of def H M Victim R HM Date of DP notice 12/4/1998

a large scale drug conspiracy and two 1996 killings by Valle-Lassalle and one by the others in 1996. The second was a witness elimination -- the government witness was cut up with a machete. The United States Attorney requested permission to seek the death penalty only against Valle-Lassalle and Rodriguez-Marrero, but the Attorney General required that the USAO also seek the execution of Nieves-Alonso and Pena-Gonzales. Murder for hire is alleged as an aggravating circumstance. All involved are Hispanic. Rodriguez-Marrero is intellectually disabled and authorization to seek the death penalty was withdrawn.

Locust, Jeremiah

W.D. NC No. 2:98CR185

Authorization withdrawn at trial

Name of AG Reno

Race & gender of def NA M Victim R WM Date of DP notice 1/14/1999

the killing of 36 year old, white, National Park Service ranger for the Great Smoky Mountains National Park in 1998 by a Native American who was intoxicated. Locust was threatening visitors to the park with a rifle. Kolodski and other park rangers responded. (Locust fired at another ranger's car smashing the windshield.) Kolodski was wearing a bullet proof vest but the single shot grazed his vest before entering his chest and wounding him fatally. The jury rejected a premeditation theory and the government withdrew its request for the death penalty.

Pena-Gonzalez, Nicholas

D. PR CR No. 97-284 (JAF)

Authorization withdrawn

Name of AG Reno

Race & gender of def H M Victim R HM Date of DP notice 12/17/1998

a large scale drug conspiracy and two 1996 killings by Valle-Lassalle and one by the others in 1996. The second was a witness elimination -- the government witness was cut up with a machete. The United States Attorney requested permission to seek the death penalty only against Valle-Lassalle and Rodriguez-Marrero, and the Attorney General required that they also seek the execution of Nieves-Alonso and Pena-Gonzales. Murder for hire is alleged as an aggravating circumstance. All involved are Hispanic. After reviewing evidence that Pena-Gonzales is intellectually disabled, the government withdrew the death notice against him.

Authorized Federal Capital Prosecutions Where Authorization was Withdrawn - 6/3/2015

Perez, Luis Gines

D. PR CR No. 98-164 (DRD)

Authorization withdrawn

Name of AG Reno

Race & gender of def H M Victim R HM Date of DP notice 4/1/1999

drug smuggling and a single homicide of a co-conspirator. The defendants are Hispanic, college educated businessmen. There was a joint plan to kill and Gines was alleged to have shot the victim on Melendez's boat and together they dumped the body. Authorization was withdrawn when a key government witness flunked a polygraph on whether he was the actual killer.

Perez, Ricardo Melendez

D. PR CR No. 98-164 (DRD)

Authorization withdrawn

Name of AG Reno

Race & gender of def H M Victim R HM Date of DP notice 4/1/1999

drug smuggling and a single homicide of a co-conspirator. The defendants are Hispanic, college educated businessmen. There was a joint plan to kill and Gines was alleged to have shot the victim on Melendez's boat and together they dumped the body. Authorization was withdrawn when a key government witness flunked a polygraph on whether he was the actual killer.

McIntosh, Richard

S.D. IL CR No. 99-40044 and C.D. CA CR No. 02-00938-

Authorization withdrawn

Name of AG Ashcroft

Race & gender of def W M Victim R BM Date of DP notice 10/30/2001

three white inmates at USP Marion alleged to be members of the Aryan Brotherhood (AB) who allegedly killed a black BOP inmate. Allegedly, Knorr held the victim while McIntosh stabbed him, on Sahakian's orders. Sahakian is allegedly one of three Aryan Brotherhood commissioners, the leader of the Aryan Brotherhood at Marion. The government claimed the stabbing stems from an Aryan Brotherhood "war" with blacks from the District of Columbia transferred throughout the BOP from the District of Columbia facility at Lorton, Virginia. The defendants were also indicted in the Central District of California in a 2002 RICO indictment of 40 reputed members and associates of the Aryan Brotherhood for a string of murders and violent attacks allegedly designed to expand the power of the white racist prison gang. The Illinois jury could not reach a verdict. All charges were dismissed without prejudice in July 2005 pending the outcome of the Central District of California Aryan Brotherhood prosecution. In December of 2007, after four life sentences at two trials, Attorney General Mukasey authorized prosecutors to abandon pursuit of the death penalty against Aryan Brotherhood members.

Knorr, Carl

S.D. IL CR No. 99-40044 and C.D. CA CR No. 02-00938-

Authorization withdrawn

Name of AG Ashcroft

Race & gender of def W M Victim R BM Date of DP notice 10/30/2001

three white inmates at USP Marion alleged to be members of the Aryan Brotherhood (AB) who allegedly killed a black BOP inmate. Allegedly, Knorr held the victim while McIntosh stabbed him, on Sahakian's orders. Sahakian is allegedly one of three Aryan Brotherhood commissioners, the leader of the Aryan Brotherhood at Marion. The government claimed the stabbing stems from an Aryan Brotherhood "war" with blacks from the District of Columbia transferred throughout the BOP from the District of Columbia facility at Lorton, Virginia. The defendants were also indicted in the Central District of California in a 2002 RICO indictment of 40 reputed members and associates of the Aryan Brotherhood for a string of murders and violent attacks allegedly designed to expand the power of the white racist prison gang. The Illinois jury could not reach a verdict. All charges were dismissed without prejudice in July 2005 pending the outcome of the Central District of California Aryan Brotherhood prosecution. In December of 2007, after four life sentences at two trials, Attorney General Mukasey authorized prosecutors to abandon pursuit of the death penalty against Aryan Brotherhood members. Knorr eventually pled guilty to one count of manslaughter and was sentenced to 138 months.

Authorized Federal Capital Prosecutions Where Authorization was Withdrawn - 6/3/2015

Johnson, Angela

N.D. IA No. 3:01-CR-03046-MWB

Authorization withdrawn

Name of AG Ashcroft

Race & gender of def W FVictim R WF WM

Date of DP notice 4/25/2002

five murders in 1993 of a potential witness, his girlfriend (both meth dealers) and two daughters, in a drug conspiracy case. The fifth victim is Angela Johnson's former boyfriend, another dealer turned informant, who disappeared in November of 1993. Johnson attempted suicide in jail after she was tricked by a jailhouse informant into revealing the location of the bodies. Attorney General Ashcroft rejected Honken's attempt to enter a plea to a life sentence. Attorney General Gonzales rejected Johnson's attempt to enter a plea to a life sentence. Finding ineffective assistance of counsel, the district court in 2012, reversed Johnson's death sentence. 860 F.Supp.2d 663 (ND IA 2012). A resentencing trial was scheduled for 2015 but Attorney General Holder withdrew the Notice of Intent to seek the death penalty. All involved are white.

Williams, Xavier

S.D. NY CR No. 00-CR-1008

Authorization withdrawn

Name of AG Ashcroft

Race & gender of def B MVictim R BM

Date of DP notice 2/4/2003

involves murder during a narcotics conspiracy. Three black men were killed in 1996. The defendants, two brothers and their father, are also black. Attorney General Ashcroft required a capital prosecution. Shortly before trial, Attorney General Gonzales withdrew the notice of intent to seek the death penalty. Xavier was acquitted of the murders.

Best, Jason

N.D. IN CR No. 2:00CR171RL

Authorization withdrawn

Name of AG Ashcroft

Race & gender of def B MVictim R BM

Date of DP notice 10/10/2001

a 1999 drug trafficking 924 (c) and (j), gang murder. The gun murder was allegedly revenge for the robbery of drug trafficking proceeds from Best's girlfriend. Best was alleged to be a member of the "Bronx Boys" who was released from prison in 1998 after a two year sentence for cocaine sales. Best pled guilty with others in 1996 after stray shots into a house killed a 10 year old boy in his bed in 1993. Attorney General Ashcroft required a capital prosecution but eventually allowed prosecutor's to dismiss the murder count after Best was given a life sentence after a separate trial in the drug case. Murder for hire is alleged as an aggravating circumstance. All involved are African-American.

Sahakian, David Michael

S.D. IL CR No. 99-40044

Authorization withdrawn

Name of AG Ashcroft

Race & gender of def W MVictim R BM

Date of DP notice 10/30/2001

three white inmates at Marion alleged to be members of the Aryan Brotherhood (AB) who allegedly killed a COP inmate. Allegedly, Knorr held the victim while McIntosh stabbed him, on Sahakian's orders. Sahakian is allegedly one of three Aryan Brotherhood commissioners, the leader of the Aryan Brotherhood at Marion. The government claims the stabbing stems from an Aryan Brotherhood "war" with blacks from the District of Columbia transferred throughout the BOP from the District of Columbia facility at Lorton, Virginia. The defendants were also indicted in the Central District of California in a 2002 RICO indictment of 40 reputed members and associates of the Aryan Brotherhood for a string of murders and violent attacks allegedly designed to expand the power of the white racist prison gang. The Illinois jury could not reach a verdict. All charges were dismissed without prejudice in July 2005 pending the outcome of the Central District of California Aryan Brotherhood prosecution. In December of 2007, after four life sentences at two trials, Attorney General Mukasey authorized prosecutors to abandon pursuit of the death penalty against Aryan Brotherhood members.

Authorized Federal Capital Prosecutions Where Authorization was Withdrawn - 6/3/2015

Thomas, Keoin

N.D. IN No. 2:01 CR 073 JM

Authorization withdrawn at trial

Name of AG Ashcroft

Race & gender of def B M Victim R WM Date of DP notice 7/25/2003

a Hobbs Act robbery of a gun store, "Firearms Unlimited," and the killing of the proprietor. 18 U.S.C. §§ 924 and 1951. The defendants are African-American and the victim was white. Taylor was alleged to be more culpable and after the jury voted to sentence him to life in prison, Attorney General Ashcroft approved withdrawal of the "death notice" as to Thomas.

Lien, David

N.D. CA CR No. 01-CR-20071

Authorization withdrawn

Name of AG Ashcroft

Race & gender of def A M Victim R AM Date of DP notice 3/6/2003

Fugitive co-defendant Chang was married to the bomb victim's sister. There were domestic problems and a divorce. Lien was allegedly sent to the victim's home with a bomb inside a toy mechanical dog. The victim later purchased batteries, put them in the toy, which blew up, killing him. The Attorney General required a capital prosecution but authorization was eventually withdrawn by Attorney General Gonzales after the defense argued that Lien didn't know what was in the package.

Canty, Raymond

E.D. MI CR No. 01-80571

Authorization withdrawn

Name of AG Ashcroft

Race & gender of def B M Victim R BM Date of DP notice 2/4/2003

involves a gang called the "Young Boys Inc.". Milton Jones, the alleged kingpin, is charged along with 13 others, including state representative Keith Stallworth, charged with laundering money. Jones wrote an autobiography, "Y.B.I." about his life of crime. Three defendants face the death penalty. Jones is charged with two murders in 1998. Murder for hire is alleged as an aggravating circumstance. Canty and Mitchell are charged with killing another in '97. Canty is also charged in two other murders. Attorney General Ashcroft required a capital prosecution. All involved are African-American. Jones agreed to cooperate with government prosecutors in return for a 30 year sentence and authorization was withdrawn as to Canty and Mitchell.

Mitchell, Eugene

E.D. MI CR No. 01-80571

Authorization withdrawn

Name of AG Ashcroft

Race & gender of def B M Victim R BM Date of DP notice 2/4/2003

involves a gang called the "Young Boys Inc.". Milton Jones, the alleged kingpin, is charged along with 13 others, including state representative Keith Stallworth, charged with laundering money. Jones wrote an autobiography, "Y.B.I." about his life of crime. Three defendants face the death penalty. Jones is charged with two murders in 1998. Murder for hire is alleged as an aggravating circumstance. Canty and Mitchell are charged with killing another in '97. Canty is also charged in two other murders. Attorney General Ashcroft required a capital prosecution. All involved are African-American. Jones agreed to cooperate with government prosecutors in return for a 30 year sentence and authorization was withdrawn as to Canty and Mitchell.

Authorized Federal Capital Prosecutions Where Authorization was Withdrawn - 6/3/2015

McMillian, Christopher

N.D. NY No. 3:00 CR-269

Authorization withdrawn at trial

Name of AG Ashcroft

Race & gender of def B M Victim R BM Date of DP notice 9/25/2002

murder during a CCE, motivated by a drug rip off. Another drug dealer was tortured and beaten to death and his marijuana, phone, jewelry and \$2000 cash were stolen. Attorney General Ashcroft required a capital prosecution against three defendants, later withdrawing the notice of intent as to McMillian, who was found to be intellectually disabled by both the defense and government experts. All involved are African-American.

Green, Darryl

D. MA CR No. 02-CR-10301

Authorization withdrawn

Name of AG Ashcroft

Race & gender of def B M Victim R BM Date of DP notice 9/18/2003

two members of the Esmond Street Crew charged with the RICO shooting death of a gang rival ("Franklin Hill Giants") during the Caribbean Carnival in 2001. Key witnesses were four members of the gang who have plea agreements with federal prosecutors. Prosecutors allege four other shootings. Family members of the defendants claim the murder was over a girl and not drugs. The grandmother of the victim and the state prosecutor criticized the decision to seek the death penalty. Both defendants grew up in a violent neighborhood and Morris was shot when he was 16. An innocent bystander was spared when a bullet hit his rearview mirror. After the jury hung as to two non-capital defendants at a separate trial, the judge granted a Rule 29 motion for acquittal. The government then dismissed the indictment and allowed the state to prosecute. All involved are African-American.

Morris, Branden

D. MA CR No. 02-CR-10301

Authorization withdrawn

Name of AG Ashcroft

Race & gender of def B M Victim R BM Date of DP notice 9/18/2003

two members of the Esmond Street Crew charged with the RICO shooting death of a gang rival ("Franklin Hill Giants") during the Caribbean Carnival in 2001. Key witnesses were four members of the gang who have plea agreements with federal prosecutors. Prosecutors allege four other shootings. Family members of the defendants claim the murder was over a girl and not drugs. The grandmother of the victim and the state prosecutor criticized the decision to seek the death penalty. Both defendants grew up in a violent neighborhood and Morris was shot when he was 16. An innocent bystander was spared when a bullet hit his rearview mirror. After the jury hung as to two non-capital defendants at a separate trial, the judge granted a Rule 29 motion for acquittal. The government then dismissed the indictment and allowed the state to prosecute. All involved are African-American.

Authorized Federal Capital Prosecutions Where Authorization was Withdrawn - 6/3/2015

Foster, Aaron Demarco

D. MD CR No. 02-CR-410

Authorization withdrawn

Name of AG Ashcroft

Race & gender of def B M Victim R BM Date of DP notice 10/1/2003

leaders of one of West Baltimore's most violent drug gangs, the Lexington Terrace Boys, who are charged in eight killings, including one potential government witness who was killed to prevent him from testifying about an earlier double homicide of two members of a rival gang, the Stricker Street group. Since 1999 the gang operated from the Lexington Terrace and Edgar Allan Poe Homes public housing projects. During trial, the government presented evidence linking the gang to nine killings. Taylor had a direct role in seven. The mitigation evidence focused on the trauma of a childhood growing up in this neighborhood. When Moses was 4, his father was gunned down in a drug hit in the lobby of one of the buildings. Foster was acquitted of attempted murder in state court in 1998. Taylor and Moses were charged together in the double homicide and in a witness killing. There was also an attempted kidnapping of another potential witness to the 2001 killings. The latest victim is the third brother of one family to die on the streets of Baltimore. Investigators claim the group is in some way connected to 40 homicides. Shortly before trial, a critical witness in the case was shot 10 times and killed. He had been shot at twice before. Separate indictments (03-343 and 03-560) charge Kaarman Hawkins, Parker, Foster and Taylor in that case. The jury returned unanimous life verdicts for Moses and Taylor in 5 hours. All involved are African-American.

Stinson, John William

C.D. CA CR No. 02-00938-GHK

Authorization withdrawn at trial

Name of AG Gonzales

Race & gender of def W M Victim R WM Date of DP notice 5/9/2005

a RICO indictment of 40 reputed members and associates of the Aryan Brotherhood [AB] for a string of murders and violent attacks allegedly designed to expand the power of the white racist prison gang, which was founded at San Quentin state prison in 1964. Authorities say the gang has about 100 members. In 1980, the federal faction of the AB allegedly formed a three-man "Commission" to oversee AB members in federal prisons, and, in 1993, the Federal Commission allegedly formed a "Council" to oversee the day-to-day activities of the federal faction. 17 murders were alleged. At least six murders have occurred since 1996. Twenty-seven defendants initially were eligible for the death penalty. Mills and Bingham are alleged to have made all major decisions involving the criminal activities of the federal faction. Mills is also charged with personally committing one murder and involvement in numerous bad acts, as many as a dozen murders. Stinson, Terflinger, Griffin and Chance, allegedly made all major decisions involving the criminal activities of the California faction of the AB. Slocum, a member of both the Federal and California councils allegedly relayed information between the two and is alleged to have participated in actual murders. McElhiney and Sahakian are alleged to be responsible for running the day-to-day operations of the AB at USP Marion in Illinois. Littrell, Roy, West, Grizzle, Kennedy and Filkins are accused of allegedly murdering AB members/inmates who had run afoul of the organization or violated rules. Grizzle allegedly helped Littrell in one strangulation in the victim's cell. Bridgewater, a member of the Federal Council, is alleged to have murdered two black inmates. Campbell is accused of participating in three murders. Stinson, Terflinger, Chance and Burnett are charged with murders of white inmates who had conflicts with the gang. Sahakian, McIntosh and Knorr are accused of murdering a black inmate at Marion and faced federal capital charges at trial in Illinois at which the jury deadlocked. Sahakian faced three additional murder charges in the California indictment. Schwyhart and Hourston are accused of taking part in the murders of two black inmates. Slocum, Bridgewater, Campbell and Houston were also charged with two BOP prison murders of black men in Pennsylvania at Lewisburg's USP. Charges were dismissed in Pennsylvania. AB members selected to face the death penalty were: McIntosh, Knorr, Sahakian, McElhiney, Littrell, Bridgewater, Terflinger, Schwyhart, Houston, Griffin, Chance, Stinson, Mills and Bingham. Mills and Bingham were sentenced to life in prison in 2006, as were Bridgewater and Houston at a separate trial in 2007. In December of 2007, Attorney General Mukasey authorized prosecutors to abandon pursuit of the death penalty against the remaining AB gang members.

Authorized Federal Capital Prosecutions Where Authorization was Withdrawn - 6/3/2015

Terflinger, Richard Lloyd

C.D. CA No. 02-00938-GHK

Authorization withdrawn

Name of AG Gonzales

Race & gender of def W MVictim R WM

Date of DP notice 5/9/2005

a RICO indictment of 40 reputed members and associates of the Aryan Brotherhood [AB] for a string of murders and violent attacks allegedly designed to expand the power of the white racist prison gang, which was founded at San Quentin state prison in 1964. Authorities say the gang has about 100 members. In 1980, the federal faction of the AB allegedly formed a three-man "Commission" to oversee AB members in federal prisons, and, in 1993, the Federal Commission allegedly formed a "Council" to oversee the day-to-day activities of the federal faction. At least six murders have occurred since 1996. Twenty-seven defendants initially were eligible for the death penalty. Mills and Bingham are alleged to have made all major decisions involving the criminal activities of the federal faction. Mills is also charged with personally committing one murder and involvement in numerous bad acts, as many as a dozen murders. Stinson, Terflinger, Griffin and Chance, allegedly made all major decisions involving the criminal activities of the California faction of the AB. Slocum, a member of both the Federal and California councils allegedly relayed information between the two and is alleged to have participated in actual murders. McElhiney and Sahakian are alleged to be responsible for running the day-to-day operations of the AB at USP Marion in Illinois. Littrell, Roy, West, Grizzle, Kennedy and Filkins are accused of allegedly murdering AB members who had run afoul of the organization or violated rules. Grizzle allegedly helped Litrell in one strangulation in the victim's cell. Bridgewater, a member of the Federal Council, is alleged to have murdered two black inmates. Campbell is accused of participating in three murders. Stinson, Terflinger, Chance and Burnett are charged with murders of white inmates who had conflicts with the gang. Sahakian, McIntosh and Knorr are accused of murdering a black inmate at Marion and faced federal capital charges at trial in Illinois at which the jury deadlocked. Sahakian faced three additional murder charges in the California indictment. Schwyhart and Hourston are accused of taking part in the murders of two black inmates. Slocum, Bridgewater, Campbell and Houston were also charged with two BOP prison murders of black men in Pennsylvania at Lewisburg's USP. Charges were dismissed in Pennsylvania. AB members/inmates selected to face the death penalty were: McIntosh, Knorr, Sahakian, McElhiney, Littrell, Bridgewater, Terflinger, Schwyhart, Houston, Griffin, Chance, Stinson, Mills and Bingham. Mills and Bingham were sentenced to life in prison in 2006, as were Bridgewater and Houston at a separate trial in 2007. Charges were ultimately dismissed. In December of 1997, Attorney General Mukasey authorized prosecutors to abandon pursuit of the death penalty against the remaining AB gang members.

Griffin, Robert Lee

C.D. CA CR No. 02-00938-GHK

Authorization withdrawn at trial

Name of AG Gonzales

Race & gender of def W MVictim R WM

Date of DP notice 6/27/2005

a RICO indictment of 40 reputed members and associates of the Aryan Brotherhood [AB] for a string of murders and violent attacks allegedly designed to expand the power of the white racist prison gang, which was founded at San Quentin state prison in 1964. Authorities say the gang has about 100 members. In 1980, the federal faction of the AB allegedly formed a three-man "Commission" to oversee AB members in federal prisons, and, in 1993, the Federal Commission allegedly formed a "Council" to oversee the day-to-day activities of the federal faction. 17 murders were alleged. At least six murders have occurred since 1996. Twenty-seven defendants initially were eligible for the death penalty. Mills and Bingham are alleged to have made all major decisions involving the criminal activities of the federal faction. Mills is also charged with personally committing one murder and involvement in numerous bad acts, as many as a dozen murders. Stinson, Terflinger, Griffin and Chance, allegedly made all major decisions involving the criminal activities of the California faction of the AB. AB members selected to face the death penalty were: McIntosh, Knorr, Sahakian, McElhiney, Littrell, Bridgewater, Terflinger, Schwyhart, Houston, Griffin, Chance, Stinson, Mills and Bingham. Mills and Bingham were sentenced to life in prison in 2006, as were Bridgewater and Houston at a separate trial in 2007. The Notice of Intent to Seek the Death Penalty was withdrawn as to Griffin, Chance, Stinson and Schwyhart.

Authorized Federal Capital Prosecutions Where Authorization was Withdrawn - 6/3/2015

McElhiney, Michael Patrick

C.D. CA No. 02-00938-GHK

Authorization withdrawn

Name of AG Gonzales

Race & gender of def W M Victim R WM BM Date of DP notice 10/4/2005

a RICO indictment of 40 reputed members and associates of the Aryan Brotherhood [AB] for a string of murders and violent attacks allegedly designed to expand the power of the white racist prison gang, which was founded at San Quentin state prison in 1964. Authorities say the gang has about 100 members. In 1980, the federal faction of the AB allegedly formed a three-man "Commission" to oversee AB members in federal prisons, and, in 1993, the Federal Commission allegedly formed a "Council" to oversee the day-to-day activities of the federal faction. At least six murders have occurred since 1996. Twenty-seven defendants initially were eligible for the death penalty. Mills and Bingham are alleged to have made all major decisions involving the criminal activities of the federal faction. Mills is also charged with personally committing one murder and involvement in numerous bad acts, as many as a dozen murders. Stinson, Terflinger, Griffin and Chance, allegedly made all major decisions involving the criminal activities of the California faction of the AB. Slocum, a member of both the Federal and California councils allegedly relayed information between the two and is alleged to have participated in actual murders. McElhiney and Sahakian are alleged to be responsible for running the day-to-day operations of the AB at USP Marion in Illinois. Littrell, Roy, West, Grizzle, Kennedy and Filkins are accused of allegedly murdering AB members who had run afoul of the organization or violated rules. Grizzle allegedly helped Litrell in one strangulation in the victim's cell. Bridgewater, a member of the Federal Council, is alleged to have murdered two black inmates. Campbell is accused of participating in three murders. Stinson, Terflinger, Chance and Burnett are charged with murders of white inmates who had conflicts with the gang. Sahakian, McIntosh and Knorr are accused of murdering a black inmate at Marion and faced federal capital charges at trial in Illinois at which the jury deadlocked. Sahakian faces three additional murder charges in the California indictment. Schwyhart and Hourston are accused of taking part in the murders of two black inmates. Slocum, Bridgewater, Campbell and Houston were also charged with two BOP prison murders of black men in Pennsylvania at Lewisburg's USP. Charges were dismissed in Pennsylvania. AB members/inmates selected to face the death penalty were: McIntosh, Knorr, Sahakian, McElhiney, Littrell, Bridgewater, Terflinger, Schwyhart, Houston, Griffin, Chance, Stinson, Mills and Bingham. Mills and Bingham were sentenced to life in prison in 2006, as were Bridgewater and Houston at a separate trial in 2007. The Notice of Intent to Seek the Death Penalty was also withdrawn as to Griffin, Chance, Stinson and Schwyhart. Charges were ultimately dismissed against McElhiney.

Chance, David Alan

C.D. CA CR No. 02-00938-GHK

Authorization withdrawn at trial

Name of AG Gonzales

Race & gender of def W M Victim R WM BM Date of DP notice 5/9/2005

a RICO indictment of 40 reputed members and associates of the Aryan Brotherhood [AB] for a string of murders and violent attacks allegedly designed to expand the power of the white racist prison gang, which was founded at San Quentin state prison in 1964. In 1980, the federal faction of the AB allegedly formed a three-man "Commission" to oversee AB members in federal prisons, and, in 1993, the Federal Commission allegedly formed a "Council" to oversee the day-to-day activities of the federal faction. 17 murders were alleged. At least six murders have occurred since 1996. Twenty-seven defendants initially were eligible for the death penalty. Stinson, Terflinger, Griffin and Chance allegedly made all major decisions involving the criminal activities of the California faction of the AB. Stinson, Terflinger, Chance and Burnett are charged with murders of white inmates who had conflicts with the gang. AB members selected to face the death penalty were: McIntosh, Knorr, Sahakian, McElhiney, Littrell, Bridgewater, Terflinger, Schwyhart, Houston, Griffin, Chance, Stinson, Mills and Bingham. Mills and Bingham were sentenced to life in prison in 2006, as were Bridgewater and Houston at a separate trial in 2007. The Notice of Intent to Seek the Death Penalty was withdrawn as to Griffin, Chance, Stinson and Schwyhart after a jury was seated. The indictment against Chance was dismissed.

Authorized Federal Capital Prosecutions Where Authorization was Withdrawn - 6/3/2015

Schwyhart, Jason Lee

C.D. CA No. 02-00938-GHK

Authorization withdrawn

Name of AG Gonzales

Race & gender of def W M Victim R BM Date of DP notice 3/4/2005

a RICO indictment of 40 reputed members and associates of the Aryan Brotherhood [AB] for a string of murders and violent attacks allegedly designed to expand the power of the white racist prison gang, which was founded at San Quentin state prison in 1964. Authorities say the gang has about 100 members. In 1980, the federal faction of the AB allegedly formed a three-man "Commission" to oversee AB members in federal prisons, and, in 1993, the Federal Commission allegedly formed a "Council" to oversee the day-to-day activities of the federal faction. 17 murders were alleged. At least six murders have occurred since 1996. Twenty-seven defendants initially were eligible for the death penalty. Mills and Bingham are alleged to have made all major decisions involving the criminal activities of the federal faction. Mills is also charged with personally committing one murder and involvement in numerous bad acts, as many as a dozen murders. Stinson, Terflinger, Griffin and Chance, allegedly made all major decisions involving the criminal activities of the California faction of the AB. Slocum, a member of both the Federal and California councils allegedly relayed information between the two and is alleged to have participated in actual murders. McElhiney and Sahakian are alleged to be responsible for running the day-to-day operations of the AB at USP Marion in Illinois. Littrell, Roy, West, Grizzle, Kennedy and Filkins are accused of allegedly murdering AB members who had run afoul of the organization or violated rules. Grizzle allegedly helped Litrell in one strangulation in the victim's cell. Bridgewater, a member of the Federal Council, is alleged to have murdered two black inmates. Campbell is accused of participating in three murders. Stinson, Terflinger, Chance and Burnett are charged with murders of white inmates who had conflicts with the gang. Sahakian, McIntosh and Knorr are accused of murdering a black inmate at Marion and faced federal capital charges at trial in Illinois at which the jury deadlocked. Sahakian faces three additional murder charges in the California indictment. Schwyhart and Hourston are accused of taking part in the murders of two black inmates. Slocum, Bridgewater, Campbell and Houston were also charged with two BOP prison murders of black men in Pennsylvania at Lewisburg's USP. Charges were dismissed in Pennsylvania. AB members/inmates selected to face the death penalty were: McIntosh, Knorr, Sahakian, McElhiney, Littrell, Bridgewater, Terflinger, Schwyhart, Houston, Griffin, Chance, Stinson, Mills and Bingham. Mills and Bingham were sentenced to life in prison in 2006, as were Bridgewater and Houston at a separate trial in 2007. The Notice of Intent to Seek the Death Penalty was withdrawn as to Griffin, Chance, Stinson and Schwyhart.

Williams, Vincent

E.D. PA No. 01-CR-512

Authorization withdrawn at trial

Name of AG Gonzales

Race & gender of def B M Victim R BF BM Date of DP notice 5/23/2005

a prosecution against a drug gang, the Boyle Street Boys, charging cocaine sales and four gun murders between 1996 and 2002, including the 2001 execution-style slaying of a witness who was killed before she could testify about an illegal gun ring. Brian Rogers, who shot the female victim to prevent her from testifying against Vincent Williams in a federal gun case, reached a plea agreement. Jamain Williams and Andre Cooper allegedly assisted Rogers in that shooting. Vincent Williams and Andre Cooper are charged with the 2000 murder of a teenage drug seller. Vincent Williams was allegedly the shooter. Jamain Williams was allegedly the triggerman in a second 2000 RICO murder. Both Williams and Cooper committed a third RICO murder in 1999. Cooper was allegedly the shooter. All involved are African American. Vincent Williams was found to be intellectually disabled and authorization was withdrawn during trial.

Cacace, Joel

E.D. NY No. 1:08-CR-00240-NG and E.D. NY CR No. 03-

Authorization Withdrawn and Pre-statute retroactive prosecution

Name of AG Holder and Ashcroft

Race & gender of def W M Victim R WM Date of DP notice 2/10/2011

#2: eight mob RICO gun murders by members of the Colombo family - one in 1991, three (including a double murder) in 1992, one in 1994, one in 1995, one in 1997 and one in 1998. Calabro is charged in all eight, Gioeli in five, Saracino in four, Competiello in two and Cacace in one, the murder of a police officer, allegedly killed because he married the ex-wife of a mafia member. All involved are white, except for one Hispanic victim.

and #1: two mob murders by the Columbo mafia family.

Authorized Federal Capital Prosecutions Where Authorization was Withdrawn - 6/3/2015

Stone, Samuel

E.D. CA No. 1:12-CR-00072-AWI-DLB

Authorization withdrawn

Name of AG Holder

Race & gender of def NA M Victim R NAM **Date of DP notice** 11/22/2011

the 2003 stabbing death of a BOP inmate serving a life sentence, who was housed in SHU at USP Atwater by a cellmate serving a life sentence for a prior murder. Stone was also convicted of a second prior murder. Both are Native American but from rival tribes.

Johnson, John

E.D. LA No. 2:04-CR-00017-HGB-SS

Authorization withdrawn

Name of AG Ashcroft

Race & gender of def B M Victim R WM **Date of DP notice** 2/1/2005

bank robbery gun murder of an off-duty police officer security guard by convicted felons. Jones, Johnson and Smith entered the Iberia Bank and Smith disarmed the security guard. Another guard, hidden from view, opened fire, wounding Smith and Johnson, who was unable to flee the bank. Johnson returned fire, killing one guard and wounding another. Jones fled the bank but all three defendants were arrested within moments. The defendants are black and were over 50 years old. They each have criminal records including bank robbery. The deceased guard is white, the wounded guard is black. While pending retrial, the government withdrew authorization.

Mitchell, Willie Edward

D. MD No. 1:04-CR-00029-MJG

Authorization withdrawn

Name of AG Ashcroft

Race & gender of def B M Victim R BF BM **Date of DP notice** 12/6/2004

racketeering conspiracy, murder in aid of racketeering, drug trafficking and armed robbery charges against the alleged leaders of a violent Northwest Baltimore gang that allegedly used profits from city drug sales to try to make a name in the rap music industry. They are allegedly responsible for five city homicides, all carried out within a five-month stretch in early 2002. The killings include the double slaying of an associate of former heavyweight boxing champion Hasim Rahman and an innocent woman the man was dating at the time. Mitchell is described as the head of the group and is the registered agent of a business called Shake Down Entertainment. Mitchell and Harris are charged in four murders, Gardner in three and Martin in two. Martin will not face the death penalty. Gardner is already serving a life sentence in state prison. The defendants have adopted a "flesh and blood" defense insisting that the Court does not have the jurisdiction and refusing to cooperate with defense counsel. United States v. Mitchell, 2005 WL 3464983 (D MD). Without explanation, Attorney General Gonzales withdrew the request to seek the death penalty. All involved are African American.

Harris, Shelton Lee

D. MD No. 1:04-CR-00029-MJG

Authorization withdrawn

Name of AG Ashcroft

Race & gender of def B M Victim R BF BM **Date of DP notice** 12/6/2004

racketeering conspiracy, murder in aid of racketeering, drug trafficking and armed robbery charges against the alleged leaders of a violent Northwest Baltimore gang that allegedly used profits from city drug sales to try to make a name in the rap music industry. They are allegedly responsible for five city homicides, all carried out within a five-month stretch in early 2002. The killings include the double slaying of an associate of former heavyweight boxing champion Hasim Rahman and a woman the man was dating at the time. Mitchell is described as the head of the group and is the registered agent of a business called Shake Down Entertainment. Mitchell and Harris are charged in four murders, Gardner in three and Martin in two. Martin will not face the death penalty. Gardner is already serving a life sentence in state prison. The defendants have adopted a "flesh and blood" defense insisting that the Court does not have the jurisdiction and refusing to cooperate with defense counsel. United States v. Mitchell, 2005 WL 3464983 (D MD). All involved are African American.

Authorized Federal Capital Prosecutions Where Authorization was Withdrawn - 6/3/2015

Gardner, Shawn Earl

D. MD No. 1:04-CR-00029-MJG

Authorization withdrawn

Name of AG Ashcroft

Race & gender of def B M Victim R BF BM Date of DP notice 12/6/2004

racketeering conspiracy, murder in aid of racketeering, drug trafficking and armed robbery charges against the alleged leaders of a violent Northwest Baltimore gang that allegedly used profits from city drug sales to try to make a name in the rap music industry. They are allegedly responsible for five city homicides, all carried out within a five-month stretch in early 2002. The killings include the double slaying of an associate of former heavyweight boxing champion Hasim Rahman and a woman the man was dating at the time. Mitchell is described as the head of the group and is the registered agent of a business called Shake Down Entertainment. Mitchell and Harris are charged in four murders, Gardner in three and Martin in two. Martin will not face the death penalty. Gardner is already serving a life sentence in state prison. The defendants have adopted a "flesh and blood" defense insisting that the Court does not have the jurisdiction and refusing to cooperate with defense counsel. United States v. Mitchell, 2005 WL 3464983 (D MD). All involved are African American.

Bodkins, Lanny Benjamin

W.D. VA No. 4:04-CR-70083-JLK

Authorization withdrawn at trial

Name of AG Ashcroft

Race & gender of def W M Victim R BM Date of DP notice 2/17/2005

a 1999 drug related gun murder-for-hire contract on a possible government witness involving interstate stalking. Plunkett, who allegedly hired Taylor, and the victim are black. Bodkins, the alleged triggerman, and Taylor are white. Bodkins and Plunkett were approved for a death penalty trial. Taylor, the driver, was not. The government agreed to withdraw the death penalty after Bodkins testified and expressed remorse.

Plunkett, Antoine

W.D. VA No. 4:04-CR-70083-JLK

Authorization withdrawn at trial

Name of AG Ashcroft

Race & gender of def B M Victim R BM Date of DP notice 2/17/2005

a 1999 drug related gun murder-for-hire contract on a possible government witness involving interstate stalking. Plunkett, who allegedly hired Taylor, and the victim are black. Bodkins, the alleged triggerman, and Taylor are white. Bodkins and Plunkett were approved for a death penalty trial. Taylor, the driver, was not. The government agreed to withdraw the death penalty after Bodkins testified and expressed remorse.

Lopez, Wilver

E.D. NY 2:04-CR-00939-LDW

Authorization withdrawn

Name of AG Gonzales

Race & gender of def H M Victim R HM Date of DP notice 7/31/2006

seven members of La Mara Salvatrucha 13, MS-13, accused of gun murders including the shooting and stabbing to death of a female associate suspected of being a police informant. Lopez was captured on a wiretap admitting to shooting a 24 year old man. He stated that Berrios and Salino-Galiano were with him and repeatedly stabbed the victim. Lopez was not charged with the murder of a 16 year old female cooperating witness. The Court set a deadline for a DOJ decision and DOJ responded by filing "Protective Notices of Intent to Seek the Death Penalty," against Lopez, Berrios, Salino-Galiano and Luis. The government withdrew the notices as to all but Lopez. Attorney General Holder withdrew the Notice of Intent to Seek the Death Penalty.

Authorized Federal Capital Prosecutions Where Authorization was Withdrawn - 6/3/2015

Hall, Eric

D. MD No. JFM-04-0323

Authorization withdrawn

Name of AG Gonzales

Race & gender of def B M Victim R BM Date of DP notice 7/14/2006

a RICO prosecution against a drug gang alleged to have committed four gun murders and three attempted murders. The "Rice Organization" is alleged to have trafficked in cocaine and heroin. Only Hall was chosen to face the death penalty. After Attorney General Gonzales "authorized" a death penalty prosecution against Hall, a superseding indictment dropped one of the murders. Eventually, Attorney General Gonzales withdrew the Notice of Intent to Seek the Death Penalty. All involved are African-American.

Duncan, Norman

E.D. MI No. 05-80025

Authorization withdrawn

Name of AG Gonzales

Race & gender of def B M Victim R BM Date of DP notice 11/1/2006

the 12/14/2001 gun, bank robbery murder of a Total Armed Services (TAS) armored truck which was delivering cash to the Dearborn Federal Credit Union (DFCU) in Dearborn, Michigan. There were six potential capital defendants. Three hooded subjects, armed with shotguns, opened fire, fatally wounding a black TAS guard/messenger, the father of five. The subjects grabbed bags containing \$204,000 in currency and a .38 caliber revolver owned by TAS (carried by the victim). O'Reilly, Duncan and Watson were allegedly directly responsible for the shooting and killing of the TAS messenger. They will face the death penalty. O'Reilly, Duncan and Broom also committed a June 19, 2003 robbery, where another guard was seriously wounded and \$170,000 was stolen. Six robbers participated in the DFCU robbery/murder. They were provided the vehicle by Archie Broom, who worked at a U-Haul facility. Cromer, Duncan, Broom and O'Reilly were members of the Blue Stone Motorcycle Club (BSMC), a defunct black motorcycle club. A conversation was recorded between O'Reilly and a confidential informant, wherein O'Reilly said that he and Watson were the subjects who shot the TAS guard and Johnson was the get-away driver. Duncan was armed and participated in the robberies. Broom helped get the weapons and supplied the U-Haul used at the DFCU robbery/murder. Broom obtained a cooperation agreement. Duncan is serving a 12-20 year sentence for an attempted robbery where an accomplice was killed. O'Reilly is white, the other defendants are black. O'Reilly and Duncan are alleged to be the most culpable.

Watson, Kevin

E.D. MI No. 05-80025

Authorization withdrawn

Name of AG Gonzales

Race & gender of def B M Victim R BM Date of DP notice 11/1/2006

the 12/14/2001 gun, bank robbery murder of a Total Armed Services (TAS) armored truck which was delivering cash to the Dearborn Federal Credit Union (DFCU) in Dearborn, Michigan. There were six potential capital defendants. Three hooded subjects, armed with shotguns, opened fire, fatally wounding a black TAS guard/messenger, the father of five. The subjects grabbed bags containing \$204,000 in currency and a .38 caliber revolver owned by TAS (carried by the victim). O'Reilly, Duncan and Watson were allegedly directly responsible for the shooting and killing of the TAS messenger. They will face the death penalty. O'Reilly, Duncan and Broom also committed a June 19, 2003 robbery, where another guard was seriously wounded and \$170,000 was stolen. Six robbers participated in the DFCU robbery/murder. They were provided the vehicle by Archie Broom, who worked at a U-Haul facility. Cromer, Duncan, Broom and O'Reilly were members of the Blue Stone Motorcycle Club (BSMC), a defunct black motorcycle club. A conversation was recorded between O'Reilly and a confidential informant, wherein O'Reilly said that he and Watson were the subjects who shot the TAS guard and Johnson was the get-away driver. Duncan was armed and participated in the robberies. Broom helped get the weapons and supplied the U-Haul used at the DFCU robbery/murder. Broom obtained a cooperation agreement. Duncan is serving a 12-20 year sentence for an attempted robbery where an accomplice was killed. O'Reilly is white, the other defendants are black. O'Reilly and Duncan are alleged to be the most culpable.

Authorized Federal Capital Prosecutions Where Authorization was Withdrawn - 6/3/2015

Cheever, Scott

D. KS CR No. 05-10050-01-06-MLB

Authorization withdrawn at trial

Name of AG Gonzales

Race & gender of def W M Victim R WM Date of DP notice 7/8/2005

law enforcement officer victim - A drug manufacturing facility was raided resulting in a shooting and killing of a deputy sheriff while he was attempting to serve a search warrant. It is alleged that Cheever tried to kill three other officers when he was holed up after the initial shooting. Cheever struggled with addiction to methamphetamine since he graduated from high school. The indictment alleges a gun murder in the course of drug trafficking and the murder of a witness, in violation of 18 U.S.C. §§924 and 1512. The government dismissed the federal case as the jury was being selected. All involved are white. Cheever was sentenced to death in state court.

Hardy, Damion

E.D. NY CR No. 04-706 (S6) (FB)

Authorization withdrawn

Name of AG Keisler, AAG

Race & gender of def B M Victim R BM Date of DP notice 12/10/2007

involves five RICO gun murders by the gang "Cash Money Brothers" who were involved in murder, robbery, kidnapping and drug trafficking in Brooklyn, New York. The indictment alleges one murder in 1999, three in 2000 and one in 2003, four by Hardy, three by Moore, two by Meyers, two by Raheem and one by Sarkissian. There is an uncharged vehicular homicide of an innocent bystander - white male who was run over by one of the gunshot victim's car. Hardy was found incompetent. All involved are black.

Moore, Eric

E.D. NY CR No. 04-706 (S6) (FB)

Authorization withdrawn

Name of AG Keisler, AAG

Race & gender of def B M Victim R BM Date of DP notice 12/10/2007

involves five RICO gun murders by the gang "Cash Money Brothers" who were involved in murder, robbery, kidnapping and drug trafficking in Brooklyn, New York. The indictment alleges one murder in 1999, three in 2000 and one in 2003, four by Hardy, three by Moore, two by Meyers, two by Raheem and one by Sarkissian. There is an uncharged vehicular homicide of an innocent bystander - white male who was run over by one of the gunshot victim's car. All involved are black.

Price, Gerard

E.D. NY No. 05-492

Authorization withdrawn

Name of AG Gonzales

Race & gender of def B M Victim R BM Date of DP notice 11/15/2006

a 1999 drug (crack) related RICO gun murder. The indictment alleges five attempted murders. All involved are black. Attorney General Gonzales required a capital prosecution, but then withdrew the Notice of Intent to seek the death penalty.

Authorized Federal Capital Prosecutions Where Authorization was Withdrawn - 6/3/2015

Williams, Michael Dennis

C.D. CA No. 05-CR-920

Authorization withdrawn

Name of AG Mukasey

Race & gender of def B M Victim R HM Date of DP notice 5/29/2008

Hobbs Act bank robbery and murder. Robbers armed with high-powered assault rifles ambushed an armored car behind a South Los Angeles bank, killing a guard, a 61 year old father of ten children. The robbers fired more than 50 shots. There were eight men and women who are suspects in this bank robbery murder (including two accomplices in a van and two women watching the bank for the robbers). The robbery/murder was highly coordinated, involving at least three vehicles and surveillance and may involve street gang members. Attorney General Mukasey required a capital prosecution despite a local recommendation that the death penalty not be sought. Attorney General Holder withdrew the request for the death penalty on the first day of trial.

Johnson, Antoine Lamont

C.D. CA No. 05-CR-920

Authorization withdrawn

Name of AG Mukasey

Race & gender of def B M Victim R HM Date of DP notice 5/29/2008

Hobbs Act bank robbery and murder. Robbers armed with high-powered assault rifles ambushed an armored car behind a South Los Angeles bank, killing a guard, a 61 year old father of ten children. The robbers fired more than 50 shots. There are eight men and women who are suspects in this bank robbery murder (including two accomplices in a van and two women watching the bank for the robbers). The robbery/murder was highly coordinated, involving at least three vehicles and surveillance and may involve street gang members. Attorney General Mukasey required a capital prosecution despite a local recommendation that the death penalty not be sought. Attorney General Holder withdrew the request for the death penalty on the first day of trial.

Gladding, Noah

W.D. NY No. 6:05-CR-06166-CJS

Authorization withdrawn

Name of AG Gonzales

Race & gender of def W M Victim R WM Date of DP notice 7/31/2006

an interstate (Connecticut to New York) kidnapping gun murder motivated by a substantial drug debt. Connelly assisted in the abduction. Gladding hit the victim with a rock. Gladding was the shooter and Howenstine provided the gun. Connelly and Howenstine torched the car afterward. Attorney General Gonzales withdrew the notice of intent to seek the death penalty. All involved are white.

Johnson, Herman Norman

E.D. MI No. 2:05-CR-80337-CGC-SDP

Authorization withdrawn

Name of AG Gonzales

Race & gender of def B M Victim R OM Date of DP notice 5/23/2007

gun murder of a cooperating witness to money laundering and/or installing hidden compartments in vehicles for transporting drugs. The murder weapon was found in Johnson's apartment and gun shot residue on his hoodie. The defendant is black, the victim Chaldean.

Authorized Federal Capital Prosecutions Where Authorization was Withdrawn - 6/3/2015

Jackson, David Lee

E.D. TX No. 1:06-CR-51

Death Sentence Vacated and Authorization Withdrawn

Name of AG Gonzales

Race & gender of def B M Victim R BM Date of DP notice 1/4/2006

a 1999 BOP inmate stabbing murder at the USP in Beaumont, Texas. Jackson was incarcerated for a bank robbery. Co-defendant Gully was in prison for drug trafficking. Both were sent to ADX in Florence, Colorado after the homicide. Gully did not face the death penalty. All involved are black. A direct appeal was denied. 549 F.3d 963 (5th Cir. 2008). A 28 USC 2255 motion was granted when the government conceded a Brady error. He was resentenced to life when the Department of Justice agreed.

Peterson, Aquil

N.D. CA No. 05-00324-MMC

Authorization withdrawn

Name of AG Gonzales

Race & gender of def B M Victim R BM Date of DP notice 11/1/2006

a San Francisco based conspiracy from 1994 to 2005 alleging three separate 2002 RICO murders including the killing of a government witness. 18 U.S.C. §1512. Cyrus faces three murder charges, Peterson faces one.

Lopez-Matias, Rodney

D. PR No. 06-368 (JAF)

Authorization withdrawn

Name of AG Gonzales

Race & gender of def H M Victim R HM Date of DP notice 2/6/2007

a carjacking murder. The victim was stabbed and beaten and then drowned. The judge dismissed the notice of intent to seek the death penalty because case was authorized without defendants being afforded opportunity to develop and present information during the authorization process. The First Circuit reversed. 522 F.3d 150 (1st Cir. 2008). Attorney General Holder withdrew the Notice of Intent to Seek the Death Penalty. All involved are Hispanic.

Riera-Crespo, Eduardo

D. PR No. 06-368 (JAF)

Authorization withdrawn

Name of AG Gonzales

Race & gender of def H M Victim R HM Date of DP notice 2/6/2007

a carjacking murder. The victim was stabbed and beaten and then drowned. The judge dismissed the notice of intent to seek the death penalty because case was authorized without defendants being afforded opportunity to develop and present information during the authorization process. The First Circuit reversed. 522 F.3d 150 (1st Cir. 2008). Attorney General Holder withdrew the Notice of Intent to Seek the Death Penalty. All involved are Hispanic.

Bacote, Michael

E.D. TX No. 1:08-CR-00036

Authorization withdrawn

Name of AG Keisler

Race & gender of def B M Victim R BM Date of DP notice 9/11/2007

a USP Beaumont BOP inmate murder. All involved are blacks from Washington DC (the "DC Crew") who were in USP Atlanta, then USP Beaumont, together. The deceased was a government witness against two of Ebron's associates in an aggravated robbery in 1997. Ebron held the deceased while Mosely stabbed him 100 times. Mosely died before he could be charged. Ebron was previously convicted in 1999 of murder. Bacote, who is intellectually disabled, was incarcerated for armed robbery.

Authorized Federal Capital Prosecutions Where Authorization was Withdrawn - 6/3/2015

Burton, Harry

D. MD No. 1:07-CR-00149-WDQ

Authorization withdrawn

Name of AG Mukasey

Race & gender of def B M Victim R BF BM Date of DP notice 12/6/2007

three RICO drug related (crack) murders in 2003 by Burton, alleged leader of the "Latrobe organization," a drug and gun gang. Allen Gill is charged in one, the murder of a female, Burton's girlfriend who allegedly set up Burton to be shot. All involved are black. Burton is possibly intellectually disabled. Attorney General Mukasey, on the eve of trial, withdrew the death authorization and authorized a plea to 60 years.

Smith, Danny Damon

E.D. VA No. 3:07CR433

Authorization withdrawn

Name of AG Mukasey

Race & gender of def B M Victim R BF Date of DP notice 2/20/2008

the gun murder of a female informant in a drug (crack) case.

Zambrano, Jesus

E.D. TX CR No. 9:91-CR4

Guilty plea

Name of AG Barr

Race & gender of def H M Victim R WM Date of DP notice 4/23/1991

law enforcement officer victim. Two Hispanic men in Texas were sentenced to life imprisonment and 40 years, respectively, for the marijuana-related murder of a white law enforcement officer after a joint trial. The sentencing jury found no aggravating factors. 963 F.2d 725 (5th Cir.), cert. denied, 113 S.Ct. 353 (1992). A third Hispanic defendant, Jesus Zambrano, was also initially approved for capital prosecution but received a sentence of 30 years after he testified for the government against the Villarreal brothers.

Culbert, Stacy

E.D. MI CR No. 92-81127

Guilty plea at trial

Name of AG Barr

Race & gender of def B M Victim R BM Date of DP notice 7/22/1994

involves eight gun murders by a drug gang member. A prosecutor claimed that the gang was involved in up to 50 murders.

Johnson, Darryl

W.D. NY CR No. 92-159-C

Guilty plea

Name of AG Reno

Race & gender of def B M Victim R BM Date of DP notice 7/29/1993

an African-American from the West Coast charged with two cocaine-related killings by a California and Tennessee connected, Buffalo, New York group, suspected in as many as five other murders. Murder for hire is alleged as an aggravating circumstance. A guilty plea was entered in 1995 on the morning of trial. The defendant was sentenced to life imprisonment.

O'Bryant, Lonnie

E.D. MI CR No. 92-81127

Guilty plea

Name of AG Barr

Race & gender of def B M Victim R BM Date of DP notice 8/11/1993

involves eight gun murders by a drug gang member. A prosecutor claimed that the gang was involved in up to 50 murders.

Perry, Wayne Anthony

D. DC CR No. 92-474

Guilty plea

Name of AG Reno

Race & gender of def B M Victim R BF BM Date of DP notice 6/8/1993

involves eight killings and a hitman for a D.C. cocaine distribution ring between 1989-1991, facing eight homicide counts. Murder for hire is alleged as an aggravating circumstance. In 1994, the defendant pleaded guilty to five homicide counts in exchange for the government's dropping the death penalty. He received five consecutive nonparolable life sentences and was sent to the federal "super max" prison in Colorado, ADX Florence.

Williams, Michael | E.D. MI CR No. 92-81127

Guilty plea | Name of AG Barr

Race & gender of def B M Victim R BM Date of DP notice 8/11/1993

involves eight gun murders by a drug gang member. A prosecutor claimed that the gang was involved in up to 50 murders.

Wilkes, Charles | E.D. MI CR No. 92-81127

Guilty plea | Name of AG Barr

Race & gender of def B M Victim R BM Date of DP notice 5/19/1994

involves eight gun murders by a drug gang member. A prosecutor claimed that the gang was involved in up to 50 murders.

McCauley, Donzell M. | D. DC CR No. 94-121

Guilty plea | Name of AG Reno

Race & gender of def B M Victim R WM Date of DP notice 3/24/1995

law enforcement officer victim - a young black man from the District of Columbia who struggled with and shot to death a police officer. Attorney General Reno required a capital prosecution for the murder of a white law enforcement police officer despite the U.S. Attorney's initial decision that the death penalty not be sought. This authorization marked the first time in the post-Gregg era of capital punishment that the Attorney General required a capital prosecution in a federal criminal case despite the initial opposition of the local U.S. Attorney. Subsequently, the defendant entered a plea of guilty and was sentenced to life imprisonment.

Vest, James | W.D. MO CR No. 94-00037-04

Guilty plea | Name of AG Reno

Race & gender of def W M Victim R HM Date of DP notice 10/28/1994

three white brothers from Kansas City who were approved for a capital prosecution in 1994. They were charged with the well-planned double homicide of two Mexican drug dealers. Graves were dug and the victims abducted and bound with duct tape, suffocating to death. A fourth brother, Darrell Vest, did not face the death penalty. One defendant was also charged with a separate murder count in another drug rip-off. Guilty pleas were negotiated for all three.

Vest, Mark | W.D. MO CR No. 94-00037-04

Guilty plea | Name of AG Reno

Race & gender of def W M Victim R HF HM Date of DP notice 10/28/1994

three white brothers from Kansas City who were approved for a capital prosecution in 1994. They were charged with the well-planned double homicide of two Mexican drug dealers. Graves were dug and the victims abducted and bound with duct tape, suffocating to death. A fourth brother, Darrell Vest, did not face the death penalty. One defendant was also charged with a separate murder count in another drug rip-off. Guilty pleas were negotiated for all three.

Vest, Steven

W.D. MO CR No. 94-00037-04

Guilty plea

Name of AG Reno

Race & gender of def W M Victim R HM Date of DP notice 10/28/1994

three white brothers from Kansas City who were approved for a capital prosecution in 1994. They were charged with the well-planned double homicide of two Mexican drug dealers. Graves were dug and the victims abducted and bound with duct tape, suffocating to death. A fourth brother, Darrell Vest, did not face the death penalty. One defendant was also charged with a separate murder count in another drug rip-off. Guilty pleas were negotiated for all three.

Bonds, Andre

E.D. MO CR No. 4:95CR332

Guilty plea

Name of AG Reno

Race & gender of def B M Victim R WF Date of DP notice 2/9/1996

a black teenager in an interstate carjacking case involving an 18 year old African-American defendant (and his 16 year old co-defendant) who allegedly killed one white female, took her car across state lines, kidnaping and raping her girlfriend - another Caucasian. Mr. Bonds pled guilty in 1996 and was sentenced to life imprisonment.

Chen, Fu Xin

E.D. NY CR No. 95 0870

Guilty plea

Name of AG Reno

Race & gender of def A M Victim R AF Date of DP notice 7/9/1996

two Chinese gang members who kidnaped intrastate Chinese nationals living in the U.S. for ransom to be paid by relatives in China. One victim was raped and severely abused before being strangled after her family failed to pay the ransom demanded. Jia Wu and Fu Xin Chen pled guilty and received life sentences in 1996. Capital authorization against a third defendant, You Zhong Peng, was withdrawn by the Department of Justice just three days before his scheduled 1997 trial.

Chen, Jia Wu

E.D. NY CR No. 95 0870

Guilty plea

Name of AG Reno

Race & gender of def A M Victim R AF Date of DP notice 7/9/1996

two Chinese gang members who kidnaped intrastate Chinese nationals living in the U.S. for ransom to be paid by relatives in China. One victim was raped and severely abused before being strangled after her family failed to pay the ransom demanded. Jia Wu and Fu Xin Chen pled guilty and received life sentences in 1996. Capital authorization against a third defendant, You Zhong Peng, was withdrawn by the Department of Justice just three days before his scheduled 1997 trial.

Damon, Marvin

E.D. VA CR No. 3:95CR45

Guilty plea

Name of AG Reno

Race & gender of def B M Victim R BM Date of DP notice 8/9/1995

two members of a drug ring, from Richmond, Virginia, African-American, 52 and 30 years old, charged with the distribution of heroin, mainly in one housing development in Richmond where another African-American was shot to death in 1994 by Damon, at co-defendant Williams' request. The government alleged numerous other homicides committed by Damon as Williams' enforcer. Damon agreed to plead guilty, attempted suicide and finally entered a plea. Damon has a low IQ which played a role in resolving the case short of trial. Williams pled guilty after a jury was seated.

DeLaTorree, Jason

D. NM CR No. 95-538-MV

Guilty plea at trial

Name of AG Reno

Race & gender of def H M Victim R HM Date of DP notice 6/21/1996

murder in the aid of racketeering. The charges involve an L.A. gang, Sureno 13, moving crack and PCP from L.A. to Albuquerque. Among the seven murders connected to the gang one was of a high school student and another was a triple homicide. Five attempted murders were alleged, as well as a conspiracy to kill rival black drug dealers. Authorization was requested and granted by the Attorney General in 1996, for four of six defendants, but the government later withdrew its request for the death penalty as to one, after he was shown to be uninvolved in one of the two homicides originally charged against him. The remaining three entered guilty pleas: Mazzini received 25 years; Najjar received 30 years; and De LaTorre received 22 years.

Fleming, Lamont

E.D. NC CR No. 4:95-CR-41-1-H-2

Guilty plea

Name of AG Reno

Race & gender of def B M Victim R BF BM Date of DP notice 6/21/1996

involves a crack cocaine conspiracy alleging four 1995 murders by an African-American gang originating in Brooklyn, New York. Fleming, Gist and co-defendant Linton were triggermen. DOJ did not authorize capital prosecutions against four other defendants, including Linton. Guilty pleas were entered by the two capital defendants who were charged in two murders. The two capital homicides involved the separate murders of two participants in a prior drug-related murder. All involved are black.

Gist, Cory

E.D. NC CR No. 4:95-CR-41-1-H-2

Guilty plea

Name of AG Reno

Race & gender of def B M Victim R BF BM Date of DP notice 6/21/1996

involves a crack cocaine conspiracy alleging four 1995 murders by an African-American gang originating in Brooklyn, New York. Fleming, Gist and co-defendant Linton were triggermen. DOJ did not authorize capital prosecutions against four other defendants, including Linton. Guilty pleas were entered by the two capital defendants who were charged in two murders. The two capital homicides involved the separate murders of two participants in a prior drug-related murder. All involved are black. Attorney General Reno required a capital prosecution as to Gist.

Haworth, Richard

D. NM CR No. 95-491 LH

Guilty plea

Name of AG Reno

Race & gender of def W M Victim R WM HM Date of DP notice 2/14/1996

Haworth was the leader of a New Mexico drug trafficking conspiracy, during the course of which he murdered at least three individuals (two Hispanic, one Anglo). The government dropped its request for the death penalty in exchange for his plea and a life sentence on the eve of his scheduled trial in February, 1997. After six weeks of jury selection, the government accepted Spivey's guilty plea to a single homicide count and a 30-year sentence. Both Haworth and Spivey are white.

Mazzini, Marcos

D. NM CR No. 95-538-MV

Guilty plea

Name of AG Reno

Race & gender of def H M Victim R BM HM Date of DP notice 6/21/1996

murder in the aid of racketeering. The charges involve an L.A. gang, Sureno 13, moving crack and PCP from L.A. to Albuquerque. Among the seven murders connected to the gang one was of a high school student and another was a triple homicide. Five attempted murders were alleged, as well as a conspiracy to kill rival black drug dealers. Authorization was requested and granted by the Attorney General in 1996, for four of six defendants, but the government later withdrew its request for the death penalty as to one, after he was shown to be uninvolved in one of the two homicides originally charged against him. The remaining three entered guilty pleas: Mazzini received 25 years; Najjar received 30 years; and De LaTorre received 22 years.

Najar, Vincent

D. NM CR No. 95-538-MV

Guilty plea

Name of AG Reno

Race & gender of def H M Victim R BM Date of DP notice 6/21/1996

murder in the aid of racketeering. The charges involve an L.A. gang, Sureno 13, moving crack and PCP from L.A. to Albuquerque. Among the seven murders connected to the gang one was of a high school student and another was a triple homicide. Five attempted murders were alleged, as well as a conspiracy to kill rival black drug dealers. Authorization was requested and granted by the Attorney General in 1996, for four of six defendants, but the government later withdrew its request for the death penalty as to one, after he was shown to be uninvolved in one of the two homicides originally charged against him. The remaining three entered guilty pleas: Mazzini received 25 years; Najjar received 30 years; and De LaTorre received 22 years.

Spivey, Everett

D. NM CR No. 95-491

Guilty plea at trial

Name of AG Reno

Race & gender of def W M Victim R WM Date of DP notice 2/14/1996

Haworth was the leader of a New Mexico drug trafficking conspiracy, during the course of which he murdered at least three individuals (two Hispanic, one Anglo). The government dropped its request for the death penalty in exchange for his plea and a life sentence on the eve of his scheduled trial in February, 1997. After six weeks of jury selection, the government accepted Spivey's guilty plea to a single homicide count and a 30-year sentence. Both Haworth and Spivey are white.

Williams, Robert Russell

E.D. VA No. 3:95CR45

Guilty plea at trial

Name of AG Reno

Race & gender of def B M Victim R BM Date of DP notice 8/9/1995

two members of a drug ring, from Richmond, Virginia, African-American, 52 and 30 years old, charged with the distribution of heroin, mainly in one housing development in Richmond where another African-American was shot to death in 1994 by Damon, at co-defendant Williams' request. The government alleged numerous other homicides committed by Damon as Williams' enforcer. Murder for hire is alleged as an aggravating circumstance. Damon agreed to plead guilty, attempted suicide and finally entered a plea. Williams pled guilty after a jury was seated.

Beckford, Devon Dale

E.D. VA CR No. 3:95CR00087

Guilty plea

Name of AG Reno

Race & gender of def B M Victim R BM Date of DP notice 9/19/1997

another New York - Richmond cocaine connection was uncovered which involved members of a Brooklyn gang, all African-American, who transported crack cocaine to Richmond, Virginia. The 32-count indictment charged five of the alleged members of the so-called "Poison Clan" with capital murder in six killings, two in 1988 and four in 1994. (Devon Dale Beckford, 33, brother of Dean Beckford, identified by the FBI as a gang leader was not arrested until July, 1997.) Murder for hire is alleged as an aggravating circumstance. After a seven-week trial, a jury declined to impose the death penalty on all four defendants: Dean Beckford, 32, Leonel Romeo Cazaco, 22, Claude Gerald Dennis, 28 and Richard Thomas, 22. Dean Beckford and Claude Dennis were found guilty of the 1998 double murder. (Dennis had previously been acquitted on these charges in state court in 1989.) Cazaco and Thomas were also convicted of a capitol charge. Thomas had been acquitted in state court on the one homicide count on which he was convicted in federal court.

Bennett, Daniel Ray

C.D. CA CR No. 96-1140(A)-ER

Guilty plea

Name of AG Reno

Race & gender of def B M Victim R BM Date of DP notice 3/27/1997

an African-American drug boss and a hitman, in this first Ninth Circuit case to be authorized for death penalty prosecution, Stanley was accused of hiring Bennett to murder a former member of Stanley's drug trafficking operation in Las Vegas, Nevada. Government court filings indicated that the murder conspiracy was monitored by wiretap. Murder for hire is alleged as an aggravating circumstance. Both pled guilty. Attorney General Reno required a capital prosecution.

Cable, Donald Thomas

M.D. TN CR No. 3:96- 00004

Guilty plea

Name of AG Reno

Race & gender of def W M Victim R WF Date of DP notice 2/27/1998

the 1995 killing of a federal grand jury investigation witness two days before her testimony. The female victim was in her early 40's and white, as are all the defendants. Cable was the triggerman who is said to have stabbed the victim to death. Dugger hired Cable after one David Day, the government's key witness, hired Dugger on behalf of a large-scale methamphetamine dealer, Tim Holloway. Dugger was in poor health (a recent liver transplant) and allegedly incompetent. Day received a 20 year sentence as a government witness.

Clary, Moses

D. NJ CR No. 96-576 (Rodriguez)

Guilty plea

Name of AG Reno

Race & gender of def B M Victim R WF BM Date of DP notice 10/29/1997

a 19-year-old African-American defendant with a history of intellectual disability was charged with complicity because his deceased co-conspirator shot a security guard during a robbery of an armed car in a suburban Camden, N.J. shopping mall. The male victim was black and seventeen. A white bystander, a 14 year old girl, was accidentally shot and killed by the security guard during the robbery. Clary accepted an offer of life in 1998, attempted to withdraw it, and was refused.

Cuff, John | S.D. NY CR No. 96 CR 515 (MJW)

Guilty plea | Name of AG Reno

Race & gender of def B M | Victim R BF BM | Date of DP notice 12/11/1997

a CCE prosecution of the leaders of a drug organization which operated in the Bronx and Manhattan for a decade. Heatley, 43, ordered 14 homicides, admitting involvement in 13, ten of which were carried out by Cuff, who acted as Mr. Heatley's bodyguard and driver. Cuff had been a housing police officer from 1982 until 1986. Heatley pled guilty in return for a life sentence. On the 1999 trial date, Cuff also pled guilty. He also received a life sentence. Heatley has a serious history of crimes of violence, but was previously acquitted four times in state court trials.

Kaczynski, Theodore John | E.D. CA CR No. S-96-259

Guilty plea at trial | Name of AG Reno

Race & gender of def W M | Victim R WM | Date of DP notice 5/15/1997

the Unabomber case. The defendant faced capital indictments in two federal districts, Eastern District of California and District of New Jersey, for terrorist mail bombings over a period of 18 years. Three men were killed, in California and New Jersey, and 29 were injured, including one man whose arm was blown off and another who lost a hand. A plea was negotiated as opening statements were about to commence and after a BOP psychiatrist had confirmed defense experts' findings that the former Berkeley professor suffered from paranoid schizophrenia. Kaczynski tried, but failed, to withdraw his guilty plea. 2001 WL 114688 (9th Cir. 2001). He remains at ADX Florence.

Montanez, Ian Rosario | D. PR CR No. 96-001 (PG)

Guilty plea | Name of AG Reno

Race & gender of def H M | Victim R HM | Date of DP notice 1/21/1997

the first death penalty case to be authorized in a Puerto Rico federal court. The Attorney General required a capital prosecution against the alleged triggerman in a bank robbery during which a security guard was killed and several bystanders injured. Montanez pled guilty in April 1998 to a life sentence.

Ortiz-Velez, Felix | M.D. PA CR No. 3-CR-96-005 (Rambo)

Guilty plea | Name of AG Reno

Race & gender of def H M | Victim R HM | Date of DP notice 6/25/1997

two drug-related murders, one involving torture. Murder for hire is alleged as an aggravating circumstance. Ortiz pled guilty to being an "enforcer," acting on the instructions of Mr. Otero, who also pled guilty. Otero's homicide counts were dismissed although both received life sentences, Otero on the drug case.

Otero, Julio | M.D. PA CR No. 3-CR-96-005

Guilty plea | Name of AG Reno

Race & gender of def H M | Victim R HM | Date of DP notice 6/25/1997

two drug-related murders, one involving torture. Murder for hire is alleged as an aggravating circumstance. Ortiz pled guilty to being an "enforcer," acting on the instructions of Mr. Otero, who also pled guilty. Otero's homicide counts were dismissed although both received life sentences, Otero on the drug case.

Stanley, Edward

C.D. CA CR No. 96-1140(A)-ER

Guilty plea

Name of AG Reno

Race & gender of def B M Victim R BM Date of DP notice 3/27/1997

an African-American drug boss and a hitman. United States v. Daniel Ray Bennett and Edward Stanley (C.D. CA CR No. 96-1140(A)). In this first Ninth Circuit case to be authorized for death penalty prosecution, Stanley was accused of hiring Bennett to murder a former member of Stanley's drug trafficking operation in Las Vegas, Nevada. Murder for hire is alleged as an aggravating circumstance. Government court filings indicated that the murder conspiracy was monitored by wiretap. Both pled guilty. Attorney General Reno required a capital prosecution.

Storey, Gregory

D. KS CR No. 96-40018-01-OES

Guilty plea

Name of AG Reno

Race & gender of def W M Victim R WM Date of DP notice 10/18/1996

a white prison inmate who killed another white prisoner at the United States Penitentiary at Leavenworth. Storey may have had Aryan Brotherhood ties. The death penalty was initially sought. However, the prosecution ended in a negotiated guilty plea to second degree murder in 1997. Storey was sentenced to 327 months, to run consecutive to sentences imposed in Nevada and Colorado. He subsequently was an unindicted co-conspirator in a 2002 nationwide Aryan Brotherhood RICO indictment in Los Angeles, in 2002, involving 40 reputed members and associates of the Aryan Brotherhood for a string of murders and violent attacks allegedly designed to expand the power of the white racist prison gang.

Walter, Abram

D. AK CR No. F96-026 (HRH)

Guilty plea

Name of AG Reno

Race & gender of def W M Victim R NAF Date of DP notice 2/20/1997

a white survivalist, charged with the robbery murder of a native Alaskan storekeeper whose remote outpost in a roadless Alaskan wilderness served as a U.S. Post Office. The Attorney General required a capital prosecution.

Frank, Deric

S.D. NY No. 97 CR 269 (DLC)

Guilty plea at trial

Name of AG Reno

Race & gender of def B M Victim R BF Date of DP notice 11/18/1997

domestic killing - a 1997 intrastate kidnaping of a (former) girlfriend. The defendants assaulted her and took her to the Bronx where she was burned alive in the trunk of her car. There were many orders of protection of the deceased due to repeated domestic violence complaints against Frank. Both the defendants, and the victim, 24, are black. Deric Frank was authorized for a federal capital prosecution, pled guilty and cooperated against Bailey. Bailey was sentenced to life in prison, but did not face the death penalty. Frank was sentenced to 25 years. All involved were African-American.

Heatley, Clarence

S.D. NY CR No. 96 CR 515 (MJW)

Guilty plea

Name of AG Reno

Race & gender of def B M Victim R BM HM Date of DP notice 12/11/1997

a CCE prosecution of the leaders of a drug organization which operated in the Bronx and Manhattan for a decade. Heatley, 43, ordered 14 homicides, ten of which were carried out by Cuff, a former policeman. Heatley pled guilty in return for a life sentence. On the 1999 trial date, Cuff also pled guilty. He also received a life sentence. Heatley has a serious history of crimes of violence, but was previously acquitted four times in state court trials.

Holland, Charles

N.D. AL CR No. 96-B-0208-NE

Guilty plea

Name of AG Reno

Race & gender of def W M Victim R WM Date of DP notice 11/14/1997

the 1991 killing of an informant in a drug conspiracy case who had been given a new identity and sent out of state. However, he returned and was spotted at a flea market in Ft. Payne. The drug ring boss, Marvin Holley, and Holland kidnaped (intrastate) the victim and killed him with a hammer. Holley's trial in 1998 resulted in a life sentence. All involved are white.

Lam, Tanh Huu

E.D. CA CR No. S 97-054-WBS

Guilty plea

Name of AG Reno

Race & gender of def A M Victim R AF Date of DP notice 12/18/1998

the throwing of a Molotov cocktail through a dining room window. One victim, a 9 year old Asian female, was killed. Others were injured. The target was alleged to be a man who had an affair with Lam's wife. There were two cars seen at the time of the bombing/arson. Authorization for Lam was initially not sought or granted. The jury deadlocked at Lam's first trial. The government then produced a new individual who tape-recorded Lam talking about setting up another arson. The Attorney General Reno gave the go-ahead to seek the death penalty at a retrial, but a conditional guilty plea was entered. Federal jurisdiction is based on the happenstance that an apartment building was bombed. All involved were Vietnamese.

Reader, Arthur Charles

E.D. TX CR No. 5:97 CR 15

Guilty plea

Name of AG Reno

Race & gender of def B M Victim R BF Date of DP notice none filed

the abduction of a 27 year old African-American female by her 35 year old African-American boyfriend in Texarkana, Texas. After crossing the line over into Texarkana, Arkansas, the victim was stabbed eighty four times, hit in the head with a brick and left to die. The defendant allegedly would not tell law enforcement officials where she was because he wanted her to die.

Wooldridge, Steven W.

W.D. AR CR No. 4:97 CR 40013-001

Guilty plea

Name of AG Reno

Race & gender of def W M Victim R WF Date of DP notice 1/5/1998

a Ft. Smith, Arkansas interstate kidnaping, sexual attack and murder. Wooldridge asked for directions from the female victim in her front yard in Texarkana, Arkansas. He then forced her into his vehicle and took her to a storage shed in Texas where he may have sexually assaulted her. Eventually, Wooldridge took his victim to another location and killed her. Wooldridge confessed, denying sexual assault. All involved are white.

Black, Douglas

D. CO No. 98-CR-196

Guilty plea

Name of AG Reno

Race & gender of def W M Victim R WM Date of DP notice none filed

two "super-max", Florence, Colorado inmates, who attacked two suspected snitches. One inmate, an ex-police officer, was murdered. Another inmate survived the attack. The stabbing was witnessed by prison staff who were assaulted when they tried to get Riddle off the victim. The United States Attorney did not seek permission to ask for the death penalty but the Attorney General required a capital prosecution. Riddle negotiated a 168 month sentence. Black agreed to plead to aggravated assault in return for a sentence of no more than 84 months. Black had a prior murder. Riddle had a record of crimes in and out of prison. Black's sentence was 78 consecutive months.

Holloway, Tim

M.D. TN CR No. 3:96-00004

Guilty plea

Name of AG Reno

Race & gender of def W M Victim R WF Date of DP notice 2/27/1998

the 1995 killing of a federal grand jury investigation witness two days before her testimony. The female victim was in her early 40's and white, as are all the defendants. Cable was the triggerman who is said to have stabbed the victim to death. Dugger hired Cable after one David Day, the government's key witness, hired Dugger on behalf of a large-scale methamphetamine dealer, Tim Holloway. Dugger was in poor health (a recent liver transplant) and allegedly incompetent. Day received a 20 year sentence as a government witness.

Kauffman, Christopher

S.D. IA CR No. 97 Wolle

Guilty plea

Name of AG Reno

Race & gender of def W M Victim R WF Date of DP notice none filed

two carjackings/murders, a bank robbery and inter-state flight by two young, white step-brothers. Two white women were murdered in their homes and their cars were used in the robbery of \$70,000 from a bank. Each brother was a triggerman. The United States Attorney and defense counsel negotiated plea agreements specifying life sentences shortly after the Attorney General Reno required a capital prosecution.

Llamas, Tamara

E.D. NC CR No. 7:97-CR-63-1-H

Guilty plea

Name of AG Reno

Race & gender of def W F Victim R WF Date of DP notice 3/2/1998

a murder-for-hire of an informant in a marijuana conspiracy. Llamas, a white female, allegedly ordered the killing of a drug informant. The triggerman was Wakefield. The drug informant was carelessly named in a warrant, and was murdered a month later. The marijuana conspiracy involved North and South Carolina, Texas and Oregon.

McMahan, Jamie

S.D. IA CR No. 97 Wolle

Guilty plea

Name of AG Reno

Race & gender of def W M Victim R WF Date of DP notice none filed

two carjackings/murders, a bank robbery and inter-state flight by two young, white step-brothers. Two white women were murdered in their homes and their cars were used in the robbery of \$70,000 from a bank. Each brother was a triggerman. The United States Attorney and defense counsel negotiated plea agreements shortly after the Attorney General required a capital prosecution.

Pena, Richard

E.D. LA CR No. 97-CR-145

Guilty plea

Name of AG Reno

Race & gender of def H M Victim R BM Date of DP notice 8/20/1998

he prosecution of an alleged cocaine drug lord (Richard) and his brother (Jhonny). Richard Pena, a 32 year old, who became an American citizen in 1994, was a drug kingpin of a group that moved large amounts of cocaine and marijuana in Southeastern United States. Murder for hire is alleged as an aggravating circumstance. This group involved numerous family members and a New Orleans police officer. Richard Pena was charged with eight homicides, four approved as capital counts by the Attorney General. Pena, himself, committed two of the murders, and ordered the death of the others. A non-capital co-defendant was an ex-police officer who arrested one victim in August of 1995 and delivered him to Pena and two associates. His remains were found two months later. Pena pled guilty and received a sentence of life without release.

Rausini, Walder Pierre

N.D. CA CR No. 95-0319- SI

Guilty plea

Name of AG Reno

Race & gender of def H M Victim R WM Date of DP notice 3/1/1999

involves the murder of the head of a "Continuing Criminal Enterprise." Lance Estes, a 34 year old white male, had been involved in drug trafficking for many years and had taken over a CCE, whose head had gone to prison. Charged with involvement in this CCE, Estes worked out a deal as an informant for the government but continued to direct his drug enterprise. Rausini was alleged to be working as a "cook" in the Estes organization, converting methamphetamine into "ice." He ordered the murder of Estes in an effort to take over Estes' organization. A co-defendant shot Estes, whose body turned up after Labor Day 1995 in a dumpster in Oceanside with a single gunshot wound to the head. Rausini is also accused of ordering a second murder of another member of the of the CCE because of his plans to become a government informant. Another co-defendant was the killer in this murder. Rausini was 26 years old at the time of the murders with which he is charged and had no serious prior convictions. Murder for hire is alleged as an aggravating circumstance. The government did not seek the death penalty against Rausini's codefendants. Rausini is a Brazilian. The victims are both white.

Riddle, Steven

D. CO No. 98-CR-196

Guilty plea

Name of AG Reno

Race & gender of def W M Victim R WM Date of DP notice none filed

two "super-max", Florence, Colorado inmates, who attacked two suspected snitches. One inmate, an ex-police officer, was murdered. Another inmate survived the attack. The stabbing was witnessed by prison staff who were assaulted when they tried to get co-defendant Riddle off the victim. The United States Attorney did not seek permission to ask for the death penalty but the Attorney General required a capital prosecution. Riddle negotiated a 168 month cap. Black agreed to plead to aggravated assault in return for a sentence of no more than 84 months. Black had a prior murder. Riddle had a record of crimes in and out of prison. Riddle was sentenced to 120 consecutive months.

Wakefield, Jimmy Ray

E.D. NC CR No. 7:97-CR-63-1-H

Guilty plea

Name of AG Reno

Race & gender of def W M Victim R WF Date of DP notice 3/2/1998

a murder-for-hire of an informant in a marijuana conspiracy. Llamas, a white female, allegedly ordered the killing of a drug informant. The triggerman was Wakefield. The drug informant was carelessly named in a warrant, and was murdered a month later. The marijuana conspiracy involved North and South Carolina, Texas and Oregon.

Abeln, Rick

S.D. IL CR No. 98-30022- WDS

Guilty plea

Name of AG Reno

Race & gender of def W M Victim R WF Date of DP notice 7/24/1998

the 1997 murder of Debra Abeln in East St. Louis, Illinois, in front of her 12 year old son. Richard Abeln and co-defendant Guy Westmoreland were indicted for conspiracy to distribute marijuana and cocaine, as well as the killing of Mrs. Abeln. Mr. Abeln confessed to hiring Deandre Lewis through Westmoreland to kill his wife. It was alleged that Mrs. Abeln was killed to cover up drug trafficking. Deandre Lewis has been identified as the gunman. Lewis' motivation was said to be a drug debt. Westmoreland was initially not authorized for a capital prosecution, but after Abeln's guilty plea, Westmoreland and Lewis were charged in a superseding capital indictment. Murder for hire is alleged as an aggravating circumstance. All involved are Caucasian, except Lewis, who is African-American.

Rollack, Peter

S.D. NY CR No. S4 97 CR 1293

Guilty plea

Name of AG Reno

Race & gender of def B M Victim R HM BM Date of DP notice 1/28/1999

eight racketeering murders between 1994 and 1997 by a gang headed by Rollack called "Sex, Money and Murder" which later affiliated itself with "the Bloods." Rollack approved a Thanksgiving 1997 double killing and personally killed four others, including a witness to another homicide. One victim in the Thanksgiving shooting was thought to be a witness in a North Carolina drug enterprise prosecution against Rollack, but actually was not. Only Rollack was targeted, and authorized for, a federal capital prosecution. All involved were African-American, or Hispanic. On January 3, 2000, just before jury selection was to begin, the defendant entered a guilty plea in exchange for a life sentence. He was sent to "super-max," with severe restrictions on who he may communicate with.

Dean, Chris

D. VT CR No. 2:98M0021

Guilty plea

Name of AG Reno

Race & gender of def W M Victim R WM Date of DP notice 1/15/1999

a mail bomb which killed a 17 year old Vermont man and disfigured his mother. The bombing was motivated by an internet dispute involving the deceased's fraudulent behavior. All involved are white. The United States Attorney did not request that this be a capital prosecution, but the Attorney General required a capital prosecution. Main Justice disagreed. Both the defendant and his victim were white. Dean pled guilty in September of 1999 and was sentenced to life.

Santiago, Jose

S.D. NY CR No. 98-CR- 290

Guilty plea

Name of AG Reno

Race & gender of def H M Victim R HM Date of DP notice 2/4/2000

two- count RICO indictment charging murder in aid of racketeering. The defendants are members of the Latin Kings. Hector Colon put out a "terminate on sight order on the deceased." The victim had stabbed Colon after an argument over a girl. Santiago entered the victim's apartment alone, with a gun provided by another gang member, Angel Lugo, and shot the victim in front of his family, including two young children. Colon was killed in September of 1999 in a shootout with the FBI. The Attorney General required a capital prosecution against Santiago alone. The government first announced that Lugo (the superior who ordered the killing) would face the death penalty but decided to file a "notice" only as to Santiago. Santiago agreed to a 50 year sentence.

Chong, Richard Lee Tuck

D. HI CR No. 98-00416 ACK

Guilty plea

Name of AG Reno

Race & gender of def A M Victim R OM Date of DP notice 2/12/1999

a defendant originally indicted in the State of Hawaii for murder and various firearms violations. He fled the jurisdiction. A federal prosecution under 18 U.S.C. §924(j), use of a firearm to commit a drug related murder, was filed. The 47 year old Chong has a lengthy record of convictions for serious offenses and a violent prison record, including sodomy/assault with an ice pick and starting a fire. He had only been recently released when he allegedly shot the victim over a \$100 drug debt. The defendant is Asian and the victim is Hawaiiin. Chong entered a guilty plea and was sentenced to life in prison.

Lane, Robert

D. MD CR No. L-98-73

Guilty plea

Name of AG Reno

Race & gender of def B M Victim R WM Date of DP notice 3/30/1999

a series of carjackings, culminating in a murder where the 86 year old victim apparently resisted and was beaten with a hammer or lead pipe on the head and killed by Lane who had been released from prison after abducting a woman. Lane faced the death penalty.

Bullock, Joseph

E.D. VA No. 3:98CR150

Guilty plea

Name of AG Reno

Race & gender of def B M Victim R BM Date of DP notice 7/6/1998

another Richmond, multi-defendant, murder, drug conspiracy prosecution ... this one involving four murders in 1993 and 1994. Only Bullock faced the death penalty. Hickman, Lightfoot and Weeks did not.

Valle-Lassalle, Victor Manuel

D. PR CR No. 97-284 (JAF)

Guilty plea

Name of AG Reno

Race & gender of def H M Victim R HM Date of DP notice 12/17/1998

a large scale drug conspiracy and two 1996 killings by Valle-Lassalle and one by the others in 1996. The second was a witness elimination -- the government witness was cut up with a machete. The United States Attorney requested permission to seek the death penalty only against Valle-Lassalle and Rodriguez-Marrero, and the Attorney General required that they also seek the execution of Nieves-Alonso and Pena-Gonzales. Murder for hire is alleged as an aggravating circumstance. All involved are Hispanic. Valle-Lassalle received a 40 year sentence.

Glover, Cody

D. KS CR No. 98-10059-01-MLB

Guilty plea

Name of AG Reno

Race & gender of def B M Victim R WM Date of DP notice 11/2/1998

another Kansas Hobbs Act prosecution involving a robbery/murder in a convenience store. Glover, who is black, confessed to entering the store, demanding money and then attempting to execute the two white store clerks who did not resist, killing one employee and critically wounding a second. Co-defendant Mark Holley admitted he was to receive part of the robbery proceeds for being the getaway driver. Holley was not authorized for a capital prosecution but Glover faced the death penalty for use of a gun during a crime of violence, although the United States Attorney apparently did not request authority to seek Glover's execution. The Attorney General required a capital prosecution. Glover pled guilty in April 1999 and received a life sentence.

Kee, Charles Michael

S.D. NY CR No. 98-CR-778

Guilty plea

Name of AG Reno

Race & gender of def B M Victim R BM Date of DP notice 2/7/2000

a Bronx gang member who attempted to extort money to repay a debt by keeping a female juvenile hostage. A few days later, the girl's boyfriend was murdered by a juvenile in Kee's presence. Kee was a "Bloods" gang leader, organizing juveniles to commit crimes. The United States Attorney did not request permission to seek the death penalty, but the Attorney General required a capital prosecution.

Aiken, Ian Orville

S.D. FL CR No. 97-233-CR- GOLD

Guilty plea

Name of AG Reno

Race & gender of def B M Victim R BM Date of DP notice 4/1/1999

racketeering indictment against a gang known as the "Moscow Posse," who engaged in acts of violence, including murder, robbery, kidnapping, witness tampering, narcotics trafficking and extortion. Ian Aiken, the kingpin, and Oliver Lyons were accused of murdering Derrick Christian in New York City on October 27, 1995. Roland Aiken, Daniel Aiken and Eric Morris are accused of gunning down Desmond LaTouch in a Florida parking lot the next day, at Ian Aiken's request. Aiken also faced state murder charges in Miami. (The Moscow Posse was being investigated by authorities since the massacre at the Taste of the Islands restaurant, where four people died and 18 others were wounded in a gang shootout in August of 1992.) It is alleged in aggravation that Aiken was involved in a total of four murders, an attempted murder, a burglary, a robbery and a kidnapping. There may have been as many as 15 homicides alleged. Only Aiken faced the death penalty.

Peoples, Cornelius

W.D. MO CR No. 00 CR 395

Guilty plea

Name of AG Reno

Race & gender of def B M Victim R WM Date of DP notice 1/8/1999

the murder of a federal government witness. Peoples, 24, conspired with co-defendant Lightfoot to prevent the victim from testifying at Lightfoot's federal trial on charges of bank robbery. Lightfoot contracted the killing of his roommate for becoming a government witness. The victim, 33, was found dead of gunshot wounds in his home in Kansas City. He contacted government witness, Anthony Hunter, who contacted Barfield who hired Haskell, the triggerman. Barfield did not face the death penalty and was acquitted. Haskell was sentenced to life in prison. All defendants are black. The victim is white. After Lightfoot was sentenced to life in prison, the government withdrew its request for the death penalty for Peoples. The Eighth Circuit reversed the convictions and the government again sought the death penalty. 250 F.3d 360 (2001). An appeal was rejected. 360 F.3d 892. Peoples entered into a plea agreement involving cooperation and was sentenced to 20 years, later reduced to 15 years.

Burgett, James Harold

W.D. TN CR No. 98-20160- G

Guilty plea

Name of AG Reno

Race & gender of def B W M Victim R WF Date of DP notice 9/7/1999

a witness killing. Burgett killed his ex-wife because she helped authorities arrest him for making pornographic tapes of his 3 year old daughter. When Burgett found out she secretly tape-recorded him, he shot and killed Diane Wilcox and wounded his 18 year old step-daughter while on bail awaiting a 27 months prison term for child pornography. State capital charges were dismissed although Burgett pled guilty in a separate statutory rape state case. Both Burgett and Wilcox are white. Burgett pled guilty and was sentenced to life in prison.

Lawrence, Jonathan Huey

N.D. FL CR No. 3:98CR73 (RV)

Guilty plea

Name of AG Reno

Race & gender of def W M Victim R WM Date of DP notice 12/8/1998

an apparently motiveless murder on federal property, Outlying Field, a Naval Air Station helicopter training area. The defendants met while in a state prison mental health facility. The government's theory was that this was a thrill killing. Rodgers shot a man through a window a month later. He later plead guilty to assault. All parties are white. The Attorney General required a capital prosecution. Both Lawrence and Rodgers pled guilty in exchange for the government's agreement not to seek the death penalty. Both subsequently received the death penalty in state court after pleading guilty to shooting an 18 year old woman and cutting off a leg and storing it in a freezer. Both received life sentences in federal court for the murder of the state victim's intellectually disabled cousin. The two victims were found in shallow graves a few miles apart. Satanic and Klan material was found in the trailer the former mental patients shared.

Rodgers, Jeremiah Martel

N.D. FL CR No. 3:98CR73 (RV)

Guilty plea

Name of AG Reno

Race & gender of def W M Victim R WM Date of DP notice 12/8/1998

an apparently motiveless murder on federal property, Outlying Field, a Naval Air Station helicopter training area. The defendants met while in a state prison mental health facility. The government's theory was that this was a thrill killing. Rodgers also shot a man through a window a month later. He later plead guilty to assault. All parties are white. The Attorney General required a capital prosecution. Both Lawrence and Rodgers pled guilty in exchange for the government's agreement not to seek the death penalty. Both subsequently received the death penalty in state court after pleading guilty to a separate incident involving a gun murder of an 18 year old woman and cutting off a leg and storing it in a freezer. 846 So.2d 440 (Fla. 2003); 2006 WL 1766734 (Fla.) Both received life sentences in federal court for the murder of the state victim's intellectually disabled cousin. The two victims were found buried in shallow graves a few miles apart. Satanic and Klan material was found in the trailer the former mental patients shared.

Gomez, Edsel Torres

D. PR CR No. 98-72

Guilty plea

Name of AG Reno

Race & gender of def H M Victim R HM Date of DP notice 10/26/1998

seven killings in a cocaine and heroin trafficking conspiracy. In the "Cayey Massacre," four men were tortured and murdered. Later, three other men were shot and killed in two incidents. Gomez, one of Puerto Rico's major drug dealers, agreed, in concert with another drug dealer, to eliminate various competitors who were trying to take over Gomez's market. Gomez was the only defendant authorized for a capital prosecution. Three co-defendants, including one accused of murders in 1991 and 1993, did not face the death penalty. Murder for hire is alleged as an aggravating circumstance. All persons involved are Latino.

Nieves-Alonso, Heriberto

D. PR CR No. 97-284 (JAF)

Guilty plea

Name of AG Reno

Race & gender of def H M Victim R HM Date of DP notice 12/17/1998

a large scale drug conspiracy and two 1996 killings by Valle-Lassalle and one by the others in 1996. The second was a witness elimination -- the government witness was cut up with a machete. The United States Attorney requested permission to seek the death penalty only against Valle-Lassalle and Rodriguez-Marrero, and the Attorney General required that they also seek the execution of Nieves-Alonso and Pena-Gonzales. Murder for hire is alleged as an aggravating circumstance. All involved are Hispanic.

Friend, Eugene

E.D. VA CR No. 3:99CR201

Guilty plea

Name of AG Reno

Race & gender of def B M **Victim R** AM **Date of DP notice** 10/1/1999

the carjacking of a Chinese truck driver, who was murdered by out-of-work African-American truckers, who wanted to make off with the truck and its cargo. A third brother, a juvenile, 15, as well as the mother and a girlfriend are also involved but did not face the death penalty. Both defendants pled guilty. Eugene may have been involved in a second homicide.

Carpenter, Robert L.

W.D. TN CR No. 99-20155

Guilty plea at trial

Name of AG Reno

Race & gender of def B M **Victim R** WF **Date of DP notice** 1/5/2000

carjacking case in a suburb of Memphis. The victim was a 63 year old white female and the carjacking occurred "in broad daylight at noon" at a Sonic "drive-in." The defendants were 18 and 19 and African-American. A third, uncharged defendant was a juvenile. The Carpenter brothers plead guilty during jury selection. They were tried in Tennessee state court and sentenced to life in prison.

Carpenter, Antonio

W.D. TN CR No. 99-20155

Guilty plea at trial

Name of AG Reno

Race & gender of def B M **Victim R** WF **Date of DP notice** 1/5/2000

carjacking case in a suburb of Memphis. The victim was a 63 year old white female and the carjacking occurred "in broad daylight at noon" at a Sonic "drive-in." The defendants were 18 and 19 and African-American. A third, uncharged defendant was a juvenile. The Carpenter brothers plead guilty during jury selection. They were tried in Tennessee state court and sentenced to life in prison.

Kendall, Michael Robbie

N.D. MS CR No. 3:99CR102

Guilty plea

Name of AG Reno

Race & gender of def W M **Victim R** WM **Date of DP notice** 6/8/2000

the murder of an Ole Miss senior accountancy major in 1999. Lowery was shot at Puskus Lake. Others were in the line of fire.

Llera-Plaza, Carlos Ivan

E.D. PA CR No. 98-362

Guilty plea at trial

Name of AG Reno

Race & gender of def H M **Victim R** HM **Date of DP notice** 7/23/2001

involves a Puerto Rico/Philadelphia cocaine connection between 1996-1998 and four murders for hire, three in Pennsylvania and one in Puerto Rico. Rodriguez allegedly ran the organization with a fugitive named Cacerez. Two victims were suspected of abducting a courier and stealing cocaine. A \$25,000 contract was offered but an innocent victim was mistakenly killed in Puerto Rico. One suspect was located in Philadelphia and two Hispanic males, ages 29 and 17, were killed. The 17 year old was an innocent victim, the high school student nephew of the target. Later, the second target was located and killed. Martinez-Acosta, 21, allegedly did the shooting in the first three, on orders of the alleged kingpin Rodriguez. Llera-Plaza was allegedly the middle-man in arranging the killings, the shooter in at least two and the driver. The triggerman in the fourth killing is cooperating. The government sought the death penalty against Rodriguez in four killings, Llera-Plaza in three and Martinez-Acosta in two. Attorney General Ashcroft approved plea agreements for Llera-Plaza and Martinez-Acosta, specifying life sentences. Judge Pollak then declared a mistrial for Rodriguez, who eventually entered into a plea agreement approved by Attorney General Ashcroft. All involved are Hispanic.

Rodriguez, Victor

E.D. PA CR No. 98-362

Guilty plea at trial

Name of AG Reno

Race & gender of def H M Victim R HM Date of DP notice 5/30/2000

involves a Puerto Rico/Philadelphia cocaine connection between 1996-1998 and four murders for hire, three in Pennsylvania and one in Puerto Rico. Rodriguez allegedly ran the organization with a fugitive named Cacerez. Two victims were suspected of abducting a courier and stealing cocaine. A \$25,000 contract was offered but an innocent victim was mistakenly killed in Puerto Rico. One suspect was located in Philadelphia and two Hispanic males, ages 29 and 17, were killed. The 17 year old was an innocent victim, the high school student nephew of the target. Later, the second target was located and killed. Martinez-Acosta, 21, allegedly did the shooting in the first three, on orders of the alleged kingpin Rodriguez. Llera-Plaza was allegedly the middle-man in arranging the killings, the shooter in at least two and the driver. The triggerman in the fourth killing is cooperating. The government sought the death penalty against Rodriguez in four killings, Llera-Plaza in three and Martinez-Acosta in two. Attorney General Ashcroft approved plea agreements for Llera-Plaza and Martinez-Acosta, specifying life sentences. Judge Pollak then declared a mistrial for Rodriguez, who eventually entered into a plea agreement approved by Attorney General Ashcroft. All involved are Hispanic.

Stayner, Cary

E.D. CA CR No. CR-F-00- 5217 AWI

Guilty plea

Name of AG Reno

Race & gender of def W M Victim R WF Date of DP notice 2/10/2000

four homicides in two separate incidents in Yosemite National Park. Stayner, 37 and a motel handyman, confessed to the (intrastate) kidnapping, sexual assault and decapitation killing of a park naturalist. He also confessed to killing three sightseers, a mother and two teenage girls, five months earlier. There were initially arrests of ex- convicts for the killing of the sightseers. Stayner's brother was a highly publicized kidnap victim in 1972. All involved are white. He was sentenced to death in state court.

Furrow, Buford

C.D. CA CR No. 99-838 (A) -RAP

Guilty plea

Name of AG Reno

Race & gender of def W M Victim R AM Date of DP notice 2/18/2000

civil rights - the racially motivated shooting and killing of an Asian (Filipino) postal worker in 1999. Furrow, 37 and Caucasian, is alleged to be a member of the Aryian Nation. He also walked into a Jewish Community Care Center and shot five people, including three children. Furrow then carjacked a Toyota. Furrow described this attack as "a wake up call to America to kill Jews."

Young, Donnell

M.D. TN CR No. 3:98-00038 (NIXON)

Guilty plea at trial

Name of AG Ashcroft

Race & gender of def B M Victim R BM Date of DP notice 10/29/2002

a gang called the "Rollin" 90s Crips or Bangside 90s faction out of Los Angeles which allegedly moved 150 kilos of crack to Las Vegas. From there sales operations were allegedly set up in Oklahoma City and Nashville. The group has also been called the "Shakir Enterprise." A Crips gang member and his wife were killed in Oklahoma City, and their 3 year old daughter, who was also shot, stayed with her dead parents and slept with them at night for several days. Richard Chambers, 59, was shot to death in Cheatham County, Tennessee. There may have been up to 13 killings in three states. Three victims were themselves charged with murder in the indictment. The indictment charges Shakir, 25, with six killings from 1995-97, Payne, 20, with participating in two killings and in the shooting of the gang associate's 3-year-old-girl, and Young, 24, with helping kill one person and assaulting and torturing two others. Four of the killings were said to be to silence potential witnesses, other slayings were allegedly motivated by revenge. Murder for hire is alleged as an aggravating circumstance. Payne was found to be incompetent to stand trial. After Shakir was sentenced to life imprisonment after a trial, Attorney General Holder approved a plea agreement and Young was sentenced to 40 years.

Satcher, Steve

D. MD CR No. AW00-0105

Guilty plea at trial

Name of AG Reno

Race & gender of def B M Victim R BF Date of DP notice 11/27/2000

domestic killing - the carjacking, interstate kidnapping and murder of the mother of Satcher's child. Satcher engaged the services of co-defendants Horton and Stancil for one-half kilogram of cocaine. They abducted the victim and took her from Maryland to North Carolina in the trunk of her car. She was strangled and beaten. Horton and Stancil doused the car with gasoline and ignited it. Murder for hire was alleged as an aggravating circumstance. All three defendants are African-American, as is the victim. Stancil cooperated. Attorney General Reno refused a request to seek the death penalty against Horton. Attorney General Ashcroft approved a plea agreement to a life sentence for Satcher

Garcia, Rico

N.D. CA CR No. 00-CR-20018

Guilty plea

Name of AG Ashcroft

Race & gender of def H M Victim R HM Date of DP notice 10/20/2001

involves five Nuestra Familia murders including the 1998 RICO murder of another gang member in a war for control of the "Salinas regiment" of the Neustra Familia, a Latino prison gang. Garcia, 35, is charged as the triggerman in this killing. Two others were allegedly with him. Garcia was originally charged in state court and plead to other charges for a 22 year sentence in exchange for the state dropping the homicide. The prosecution involves shootings, assaults, robberies and drug dealing. Ramirez is charged in two killings, Garcia was charged in three, now two, and the other defendants one each. Attorney General Ashcroft required a capital prosecution for Garcia but eventually approved a guilty plea. All involved are Hispanic.

Pham, Trung Thanh

E.D. CA CR No. 00-CR-411

Guilty plea

Name of AG Ashcroft

Race & gender of def A M Victim R AM Date of DP notice 4/11/2001

the throwing of a Molotov cocktail through a dining room window allegedly by Pham. One victim, Hien Tran, a 9 year old Asian female, was killed. Others were seriously injured. The target was a man who had an affair with co-defendant Lam's wife. Authorization for Lam was initially not sought or granted. The jury deadlocked at Lam's first trial. The government produced a new witness who said Lam ordered the firebombing. Attorney General Reno gave the go-ahead to seek the death penalty at a retrial, but a guilty plea was entered. Later, the government decided to seek the death penalty against Pham, who, along with two others, was allegedly paid to do the firebombing. Federal jurisdiction is based on the happenstance that an apartment building was bombed. Attorney General Ashcroft later approved a plea agreement with Trung Pham who received a life sentence with a possible Rule 35 reduction to 30 years. Tu Trong and Quac Pham did not face the death penalty. All involved are of Asian descent.

Lallamand, Sienky

N.D. IL CR No. 00 CR 143

Guilty plea

Name of AG Ashcroft

Race & gender of def B M Victim R BM Date of DP notice none filed

Mr. Lallamand is accused under 18 U.S.C. §2232(a) with constructing a pipe bomb and delivering it to the victim who was married to a woman with whom Lallamand was having an affair. The defendant and the deceased are African-American. Lallamand defrauded the deceased of \$200,000 using the victim's identification. A plea agreement was reached but the defendant withdrew. Attorney General Ashcroft required a capital prosecution. Attorney General Ashcroft eventually approved a plea agreement specifying a life sentence. The victim was African-American.

Wilson, Bryant Lakeith | W.D. TN CR No. 01-20041-DV

Guilty plea | Name of AG Ashcroft

Race & gender of def B M Victim R WF Date of DP notice 11/15/2001

bank robbery in which a 79 year old white woman was killed in front of her daughter. This was the last in a series of eight such heists from Houston to Memphis. The defendants are African-American. Attorney General Ashcroft required a capital prosecution against Wilson, but then approved a plea agreement specifying a life sentence, the same agreement reached in state court.

Shorter, Ramon Lori | W.D. TN CR No. 01-20041-DV

Guilty plea | Name of AG Ashcroft

Race & gender of def B M Victim R WF Date of DP notice 11/15/2001

bank robbery in which a 79 year old white woman was killed in front of her daughter. This was the last in a series of eight such heists from Houston to Memphis. The defendants are African-American. The Attorney General approved a plea agreement specifying a life sentence, the same agreement reached in state court.

Jones, Milton | E.D. MI CR No. 01-80571

Guilty plea | Name of AG Ashcroft

Race & gender of def B M Victim R BM Date of DP notice 2/4/2003

involves a gang called the "Young Boys Inc.". Milton Jones, the alleged kingpin, is charged along with 13 others, including state representative Keith Stallworth, with laundering money. Jones wrote an autobiography, "Y.B.I." about his life of crime. Three defendants faced the death penalty. Jones is charged with two murders in 1998. Murder for hire is alleged as an aggravating circumstance. Canty and Mitchell are charged with killing another in '97. Canty is also charged in two other murders. Attorney General Ashcroft required a capital prosecution. All involved are African-American. Jones agreed to cooperate with government prosecutors in return for a 30 year sentence.

Millegan, Rufus Jerry, Jr. | D. MD CR No. 01-CR-367

Guilty plea | Name of AG Ashcroft

Race & gender of def B M Victim R WF Date of DP notice 3/4/2002

the gun murder of a white woman by two black men at a secluded location on federal property, the Beltsville Agricultural Research Center (USDA). The victim was shot eleven times with two different types of ammunition. There are signed confessions by both defendants. Millegan confessed that he committed the murder, along with McClure, both shooting the victim with their weapons. McClure wrote that he told Millegan they should "press her" about a robbery of drugs from Millegan's apartment. The deceased was taken to a road on federal land in Beltsville, where both allegedly shot her. Attorney General Ashcroft required a capital prosecution. Millegan plead guilty. McClure declined to plead guilty and had a bench trial.

Rudolph, Eric Robert

N.D. AL No. 00-CR-422

Guilty plea at trial

Name of AG Ashcroft

Race & gender of def W M Victim R WM Date of DP notice 12/11/2003

law enforcement officer victim - two bombing murders including causing the death of a law enforcement officer in a 1998 Southside bombing of a Birmingham abortion clinic resulting in the death of an off-duty white police officer and severe injury to a white clinic nurse. Rudolph, who is white, was described by Attorney General Ashcroft as "America's most notorious fugitive." Rudolph was convicted of three bombings in Atlanta: the 1996 Olympic park bombing that killed a black woman and two other bombings in 1997. He was captured after a 5 year manhunt. Attorney General Gonzales approved a plea agreement specifying a life sentence.

Maxwell, William

W.D. TN CR No. 01-CR-20247

Guilty plea

Name of AG Ashcroft

Race & gender of def B M Victim R BF Date of DP notice 9/19/2002

bank robbery resulting in the death of a black female employee of Union Planters Bank. A security guard was also shot in the face by Johnson, but survived. The defendants are African-American. Haynes was a shooter. The state and federal government both sought the death penalty against Haynes and Maxwell but not against Johnson who may be intellectually disabled. A federal jury sentenced Haynes to life imprisonment. After this verdict, Attorney General Ashcroft reversed his position and approved a plea agreement specifying a life sentence for Maxwell.

Skiba, Lawrence

W.D. PA 01-CR-291

Guilty plea

Name of AG Ashcroft

Race & gender of def W M Victim R WM Date of DP notice 6/13/2003

an interstate mail fraud murder for hire, allegedly by a hitman in 2000. Skiba and his brother-in-law took out insurance policies on the victim in 1997. The United States alleges that Skiba was involved in two other suspicious deaths: a fatal fire at a hotel he owned in 1993 to collect insurance money and a 1998 suicide by an intellectually disabled man after Skiba allegedly gave him a gun. Also alleged is an unsuccessful attempt to kill a man in 2000, three days before his death to collect on a \$15,000 life insurance policy. Attorney General Ashcroft approved a plea agreement to testify against the shooter. Skiba was sentenced to 20 years. All involved are white.

Cisneros, Luis

D. AZ CR No. 03-CR-730

Guilty plea

Name of AG Ashcroft

Race & gender of def H M Victim R HM Date of DP notice 12/22/2003

three RICO murders by a prison and drug gang, "the Cisneros Organization." Luis Cisneros and Alvarado are charged in all three murders, the others in two. A father and son were allegedly murdered six months apart by this Hispanic gang. The father was a suspected government witness/informant. 18 U. S. C. §924 and 1512. Numerous other murders, some of potential witnesses, are alleged as FRE 404(b) evidence. The least culpable were apparently Llamas and Alvarado, did not face the death penalty. The prosecution was moved from New Mexico to Arizona after an alleged courthouse security leak. Attorney General Gonzales approved a global plea settlement, a bi-product of a joint defense agreement, specifying Luis Cisneros, Eppinger and Rivera life sentences and Felipe Cisneros and Llamas concurrent terms with their state sentences plus two years. All involved are Hispanic.

Cisneros, Felipe N.

D. AZ CR No. 03-CR-730

Guilty plea

Name of AG Ashcroft

Race & gender of def H M Victim R HM Date of DP notice 12/22/2003

three RICO murders by a prison and drug gang, "the Cisneros Organization." Luis Cisneros and Alvarado are charged in all three murders, the others in two. A father and son were allegedly murdered six months apart by this Hispanic gang. The father was a suspected government witness/informant. 18 U. S. C. §924 and 1512. Numerous other murders, some of potential witnesses, are alleged as FRE 404(b) evidence. The least culpable were apparently Llamas and Alvarado, who did not face the death penalty. The prosecution was moved from New Mexico to Arizona after an alleged courthouse security leak. Attorney General Gonzales approved a global plea settlement, a bi-product of a joint defense agreement, specifying Luis Cisneros, Eppinger and Rivera life sentences and Felipe Cisneros and Llamas concurrent terms with their state sentences plus two years. All involved are Hispanic.

Eppinger, Paul E.

D. AZ CR No. 03-CR-730

Guilty plea

Name of AG Ashcroft

Race & gender of def H M Victim R HM Date of DP notice 12/22/2003

three RICO murders by a prison and drug gang, "the Cisneros Organization." Luis Cisneros and Alvarado are charged in all three murders, the others in two. A father and son were allegedly murdered six months apart by this Hispanic gang. The father was a suspected government witness/informant. 18 U. S. C. §924 and 1512. Numerous other murders, some of potential witnesses, are alleged as FRE 404(b) evidence. The least culpable were apparently Llamas and Alvarado, who did not face the death penalty. The prosecution was moved from New Mexico to Arizona after an alleged courthouse security leak. Attorney General Gonzales approved a global plea settlement, a bi-product of a joint defense agreement, specifying Luis Cisneros, Eppinger and Rivera life sentences and Felipe Cisneros and Llamas concurrent terms with their state sentences plus two years. All involved are Hispanic.

Rivera, Angel R

D. AZ CR No. 03-CR-730

Guilty plea

Name of AG Ashcroft

Race & gender of def H M Victim R HM Date of DP notice 12/22/2003

three RICO murders by a prison and drug gang, "the Cisneros Organization." Luis Cisneros and Alvarado are charged in all three murders, the others in two. A father and son were allegedly murdered six months apart by this Hispanic gang. The father was a suspected government witness/informant. 18 U. S. C. §924 and 1512. Numerous other murders, some of potential witnesses, are alleged as FRE 404(b) evidence. The least culpable were apparently Llamas and Alvarado, who did not face the death penalty. The prosecution was moved from New Mexico to Arizona after an alleged courthouse security leak. Attorney General Gonzales approved a global plea settlement, a bi-product of a joint defense agreement, specifying Luis Cisneros, Eppinger and Rivera life sentences and Felipe Cisneros and Llamas concurrent terms with their state sentences plus two years. All involved are Hispanic.

Zapata, Jairo

E.D. NY CR No. 01-516

Guilty plea

Name of AG Ashcroft

Race & gender of def H M Victim R HM Date of DP notice 1/24/2003

Attorney General Ashcroft rejected a plea agreement and required a capital prosecution against a defendant from Columbia who had a signed cooperation agreement. Zapata is charged in one CCE drug-related murder for hire in 1993. Two separate homicides are alleged in aggravation, all three occurred during a seven month period in 1993. As he was announcing his resignation, Attorney General Ashcroft approved a plea to life in prison. He was sentenced to 30 years.

Ward, Israel

W.D. MO CR No. 3:02 CR 05025

Guilty plea

Name of AG Ashcroft

Race & gender of def B M Victim R WF BM Date of DP notice 8/7/2003

two gun murders during course of drug trafficking by black defendants from Tulsa selling crack in Tulsa. Smith is alleged to be a leader. A black victim allegedly stole drugs and was shot to death along with a white female who was with him at the time. Attorney General Ashcroft required a capital prosecution. Attorney General Gonzales approved a plea agreement with Ward.

Cassell, Kevin Thomas

W.D. VA CR No. 03-CR-13

Guilty plea

Name of AG Ashcroft

Race & gender of def B M Victim R BM Date of DP notice 7/15/2003

involves four defendants from D.C. who drove to Virginia with the intent to commit robbery. Cassell was the driver. Breeden is alleged to be the organizer, having lost his girlfriend's car payment while gambling. Carpenter allegedly held the victim, a drug dealer, at gunpoint. Carpenter shot the victim in the knee with a shotgun. Then Breeden allegedly stabbed the victim 7 times in the chest and neck. Outterbridge then shot the victim in the head. All involved are African-American, except the victims of a violent, but non-fatal, robbery of a white couple using an ATM that resulted in serious injury. The group also committed another robbery. Attorney General Ashcroft required a capital prosecution against Breeden, Carpenter and Cassell. Outterbridge, 19 and the youngest, is a cooperator. Breeden has a prior stabbing conviction. The district court rejected a claim that the notice of intent to seek the death penalty was filed too late. 2003 WL 22019060.

Benjamin, Terrance

E.D. LA No. 03-CR-274

Guilty plea at trial

Name of AG Ashcroft

Race & gender of def B M Victim R HM BM Date of DP notice 10/19/2004

a drug gang conspiracy in the Cooper housing Projects charging four gun murders. The indictments charged two §924(j) murders and two §1959 RICO murders in 1997, 2000 and 2003. The 2003 victim was an innocent bystander person. Winston Gilmore was charged in two homicides, Cobbins, Washington, Simpson and Louis Gilmore are charged in one each. Benjamin is charged as the triggerman in three homicides and faced the death penalty. Louis Gilmore, Cobbins and Washington were sentenced to 300 months. Simpson, Winston Gilmore and Terrance Benjamin were sentenced to life in prison. All involved are African-American.

Massino, Joseph

E.D. NY CR No. 1:03-CR-00929-NGG

Guilty plea

Name of AG Ashcroft

Race & gender of def W M Victim R WM Date of DP notice 11/12/2004

a 1999 RICO mob murder ordered by the Boss of the Bonanno crime family, Joseph Massino. DeFilippo and Spirito were also charged. The jury hung as to DeFilipo. Only Massino, who was convicted of seven murders in July of 2004, faced the death penalty. Attorney General Ashcroft required a capital prosecution shortly before his resignation, despite the fact that Massino was secretly cooperating with the government. Shortly after, Massino was allegedly told by the Acting Boss, Vincent Basciano, of a murder Basciano ordered and a plot to kill an Assistant United States Attorney. Subsequently, Massino was accepted as a cooperating witness and Attorney General Gonzales withdrew the death penalty request. All involved are white.

Le, Cuong Gia

E.D. VA CR No. 03-CR-48

Guilty plea

Name of AG Ashcroft

Race & gender of def A M Victim R AM Date of DP notice 2/27/2004

a Vietnamese American gang (the "Oriental Playboys") member who came to the United States when he was 10 or 11 years old. Le is accused of multiple (two) RICO murders in a shooting involving rival gang members in a Vietnamese restaurant on May 13, 2001. He hit three people. One person died immediately and one died later. A rival gang member survived, identifying Le. Le fled and was arrested in July of 2003. The court denied a motion to bar the death penalty due to a belated notice of intent. Attorney General Ashcroft eventually approved a plea agreement involving cooperation. Le also admitted involvement in an uncharged 1997 murder.

Shields, Sonny Adam

W.D. TN No. 2:04-CR-20254-BBD-tmp-4

Guilty plea

Name of AG Mukasey

Race & gender of def B M Victim R BM Date of DP notice 8/28/2008

a 2004 carjacking and interstate kidnapping gun murder. Two males armed with a handgun abducted the victim from Memphis, Tennessee, at gunpoint and forced him into his 1995 Mitsubishi Diamante and fled the scene. The victim was taken to an ATM and forced to withdraw money. He was later found dead, shot and burned in Crittenden County, Arkansas. His vehicle was found burned in Memphis, Tennessee. Sonny Shields allegedly identified his cousin, Shannon Shields, as the person involved in the carjacking and kidnapping and as the person who shot the victim. He further allegedly identified Parker and Stafford as the males who assisted him in taking the victim to Arkansas and killing him. Shannon Shields received medical treatment for burns he received allegedly while setting the victim's vehicle on fire. Parker and Stafford also allegedly made statements that both Shannon Shields and Stafford were involved. Shannon Shields was found to be intellectually disabled. Thereafter, Attorney General Holder approved a plea agreement and a life sentence for Sonny Shields. All are African-American, as is the victim.

Becton, Charod

S.D. NY CR No. 1:02-CR-00451-MBM

Guilty plea

Name of AG Gonzales

Race & gender of def B M Victim R BF HM Date of DP notice 2/23/2005

drug related murders. Becton and Henderson and two others, one of whom is cooperating with the prosecution and the other who committed suicide allegedly, went to rob some drug dealers. Inside the apartment were two males and one female. The female was the girlfriend of another drug dealer, but was also involved with Henderson. She let the defendants into the apartment. Once inside, it is alleged that the defendants bound and gagged the occupants, including the female, tortured them until they revealed where the drugs were stashed and then stabbed them to death. Before leaving, it is alleged that the defendants left the gas on in the apartment where candles were lit, in an attempt to blow the apartment up and cover their tracks. Becton was allowed to plead guilty shortly before trial by Attorney General Gonzales. Henderson was acquitted of the murders.

Diaz, Edgar

N.D. CA No. 05-00167 (WHA)

Guilty plea

Name of AG Gonzales

Race & gender of def B M Victim R BF BM Date of DP notice 7/7/2006

a seven RICO murder prosecution against eight members of a San Francisco drug (crack, marijuana, Ecstasy) trafficking gang, the Down Below Gangsters. The indictment alleged five 2004 killings, including a double murder, one murder in 2003 and another in 2005. Diaz, Johnson, Fort and Calloway are charged in three murders, Rollins in two, Ellis, Milburn and Jackson in one. There are two uncharged homicides. Diaz and Fort agreed to plead guilty and receive a 40 year sentence, but Attorney General Mukasey rejected Fort's plea agreement. All involved are African -American.

Covarrubius, Javier

C.D. CA No. 05 CR 578

Guilty plea at trial

Name of AG Gonzales

Race & gender of def H M Victim R HF **Date of DP notice** 6/28/2006

law enforcement officer victim - three RICO murders by the "Vineland Boys" (VBS) drug gang formed in the 1980's by a San Fernando Valley football team. One of it's founding members was murdered in 1999. The VBS pays taxes to the Mexican Mafia. Covarrubius, Ledesma and Sandoval are charged in one 2003 murder and Robledo and David Garcia are charged in two 2003 murders. The government alleges the murder of a police officer and a 16 year old girl who was a witness against a gang member. Four attempted murders were charged. Attorney General Gonzales required a capital trial. Robledo, Covarrubius and Ledesma entered guilty pleas on the 4th day of jury selection. All involved are Hispanic.

Ledesma, Jose

C.D. CA No. 05 CR 578

Guilty plea at trial

Name of AG Gonzales

Race & gender of def H M Victim R HF **Date of DP notice** 6/28/2006

law enforcement officer victim - three RICO murders by the "Vineland Boys" (VBS) drug gang formed in the 1980's by a San Fernando Valley football team. One of it's founding members was murdered in 1999. The VBS pays taxes to the Mexican Mafia. Covarrubius, Ledesma and Sandoval are charged in one 2003 murder and Robledo and David Garcia are charged in two 2003 murders. The government alleges the murder of a police officer and a 16 year old girl who was a witness against a gang member. Four attempted murders were charged. Attorney General Gonzales required a capital trial. Robledo, Covarrubius and Ledesma entered guilty pleas on the 4th day of jury selection. All involved are Hispanic.

Robledo, Raul

C.D. CA No. 05 CR 578

Guilty plea

Name of AG Gonzales

Race & gender of def H M Victim R HF **Date of DP notice** 6/28/2006

law enforcement officer victim - three RICO murders by the "Vineland Boys" (VBS) drug gang formed in the 1980's by a San Fernando Valley football team. One of it's founding members was murdered in 1999. The VBS pays taxes to the Mexican Mafia. Covarrubius, Ledesma and Sandoval are charged in one 2003 murder and Robledo and David Garcia are charged in two 2003 murders. The government alleges the murder of a police officer and a 16 year old girl who was a witness against a gang member. Four attempted murders were charged. Attorney General Gonzale required a capital trial. Robledo, Covarrubius and Ledesma entered guilty pleas on the 4th day of jury selection. All involved are Hispanic.

Friend, Valeri

S.D. WV CR No. 2:05-00107

Guilty plea

Name of AG Gonzales

Race & gender of def W F Victim R WF **Date of DP notice** 8/16/2006

a 2005 gun murder-for-hire of a cooperating witness/informant in a drug (cocaine) prosecution. Lecco asked Burton, who asked Friend to help kill the female victim who was shot and beaten to death and buried in a shallow grave. Attorney General Gonzales required a death penalty prosecution. Lecco and Friend were sentenced to death at a joint trial but a new trial was granted by the trial judge when the government revealed that a juror was under federal investigation for child pornography. 634 F.Supp.2d 633 (SD WV 2009). Friend entered into a plea agreement approved by Attorney General Holder and testified against Lecco, who was sentenced to life in prison at a retrial. Friend received 35 years. All involved are white.

Moreira, Juan

D. MD No. 8:05 CR 00393-DKC

Guilty plea

Name of AG Gonzales

Race & gender of def H M Victim R HM Date of DP notice 5/8/2007

five RICO gun murders by members of the Langley Park clique of MS-13 gang, including the murder of a potential government witness by Argueta, Guillen and Palacios, a 2003 double murder, various attempted murders and a gang rape of two women. Bernal is charged in two murders and the others in one. Villatoro and Canales were not charged in federal court. Villatoro received a life sentence in state court. There are three additional uncharged related murders. Moreira was implicated in one. All involved are Hispanic.

Amador, Jorge

D. MD No. 8:05 CR 00393-DKC

Guilty plea

Name of AG Gonzales

Race & gender of def H M Victim R HM Date of DP notice 5/8/2007

five RICO gun murders by members of the Langley Park clique of MS-13 gang, including the murder of a potential government witness by Argueta, Guillen and Palacios, a 2003 double murder, various attempted murders and a gang rape of two women. Bernal is charged in two murders and the others in one. Villatoro and Canales were not charged in federal court. Villatoro received a life sentence in state court. There are three additional uncharged related murders. Amador is implicated in one 2005 murder. Attorney General Holder authorized a plea agreement specifying 30 years. All involved are Hispanic.

Fort, Emile

N.D. CA No. 05-00167 (WHA)

Guilty plea at trial

Name of AG Gonzales

Race & gender of def B M Victim R BM Date of DP notice 10/3/2006

a seven RICO murder prosecution against eight members of a San Francisco drug (crack, marijuana, Ecstasy) trafficking gang, the Down Below Gangsters. The indictment alleges five 2004 killings, including a double murder, one murder in 2003 and another in 2005. Diaz, Johnson, Fort and Calloway are charged in three murders, Rollins in two, Ellis, Milburn and Jackson in one. An innocent child, a seven week old baby, was killed by a stray bullet. There are two uncharged homicides. Diaz and Fort agreed to plead guilty and receive a 40 year sentence, but Attorney General Mukasey rejected Fort's plea agreement. Later, during trial, Attorney General Holder approved a plea agreement, specifying 41 years, just before opening statements. All involved are African -American.

Hanner, Claron Levi

W.D. PA No. 2:05-CR-00385-TFM

Guilty plea

Name of AG Gonzales

Race & gender of def B M Victim R WM Date of DP notice 12/29/2006

involves a contract gun murder of a 53-year-old father of a jailed witness who was cooperating (and due to testify the next day) against Soloman. Hanner rang the doorbell and shot the witness's father when he answered the door. Solomon hired Hanner who dropped his cellphone near the scene of the murder. Hanner pled guilty and testified against Solomon. The victim is white, with five children. Solomon and Hanner are African-American.

Petzold, Michael Alan

D. ND CR No. 3:05-CR-00101-RRE

Guilty plea

Name of AG Gonzales

Race & gender of def H M Victim R HM Date of DP notice 12/19/2006

a drug-related (methamphetamine and marijuana) conspiracy in North Dakota, Washington, Minnesota, Nebraska and California and a 2005 CCE gun murder. All involved as Hispanic. Petzold, a "manager" for the Arandas drug organization, allegedly assisted the shooter and was present. Only Petzold was authorized. He entered into a plea agreement approved by Attorney General Gonzales, who did not authorize a capital prosecution against the others: Arandas, Martinez and Wessels.

Brown, Jarvis

S.D. IN EV06-CR-0014-01-Y/H

Guilty plea

Name of AG Gonzales

Race & gender of def B M Victim R WF BM Date of DP notice 6/22/2007 and 6/26/2007

four gun murders, including the killing of a government witness, and eight other shootings in eleven days in 2005. The defendants robbed and murdered an Evansville drug dealer. Later, a woman who was with them who was gunned down on the street because the defendants suspected she was an informant. Jordan and Brown were charged in all four murders, Weems in one. Jordan and Brown faced the death penalty. Weems agreed to testify against them. Later, Jordan entered into a plea agreement. All involved are black, except the female witness victim, who was white. Attorney General Mukasey approved a plea agreement specifying a life sentence, but Brown declined to enter a plea. Subsequently, he changed his mind and the plea was accepted.

Cooya, Shawn

M.D. PA No 4:08-CR-70

Guilty plea

Name of AG Holder

Race & gender of def NA M Victim R NAM Date of DP notice 7/30/2009

a BOP inmate killing at FCC Allenwood allegedly motivated because the victim was converting to Christianity. The stabbing murder is on videotape. All involved are Native-American. Attorney General Holder required the United States Attorney to seek the death penalty as to both and rejected plea agreements for Cooya (25 years) and Williams (20 years), who has a prior second degree murder conviction.

Williams, Ritz

M.D. PA No 4:08-CR-70

Guilty plea

Name of AG Holder

Race & gender of def NA M Victim R NAM Date of DP notice 7/30/2009

a BOP inmate killing at FCC Allenwood allegedly motivated because the victim was converting to Christianity. The stabbing murder is on videotape. All involved are Native-American. Attorney General Holder required the United States Attorney to seek the death penalty as to both and rejected plea agreements for Cooya (25 years) and Williams (20 years), who has a prior second degree murder conviction.

Jordan, Gabriel

S.D. IN EV06-CR-0014-01-Y/H

Guilty plea

Name of AG Gonzales

Race & gender of def B M Victim R WF BM Date of DP notice 6/22/2007

four gun murders, including the killing of a government witness, and eight other shootings in eleven days in 2005. The defendants robbed and murdered an Evansville drug dealer. Later, a woman who was with them who was gunned down on the street because the defendants suspected she was an informant. Jordan and Brown were charged in all four murders, Weems in one. Jordan and Brown faced the death penalty. Weems agreed to testify against them. Later, Jordan entered into a plea agreement. All involved are black, except the female witness victim, who was white. Attorney General Mukasey approved a plea agreement. Jordan was sentenced to 28 years.

Alers-Santiago, Raymond

D. PR No. 06-368 (JAF)

Guilty plea

Name of AG Gonzales

Race & gender of def H M Victim R HM Date of DP notice 2/6/2007

a carjacking murder. The victim was stabbed and beaten and then drowned. The judge dismissed the notice of intent to seek the death penalty because case was authorized without defendants being afforded opportunity to develop and present information during the authorization process. The First Circuit reversed. 522 F.3d 150 (1st Cir. 2008). Attorney General Mukasey authorized a plea pursuant to a cooperation agreement. All involved are Hispanic.

Talik, Eugene J., Jr.

N.D. WV No. 5:06-CR-51

Guilty plea at trial

Name of AG Gonzales

Race & gender of def W M Victim R WF Date of DP notice 12/29/2006

interstate domestic strangulation murder for hire of a single white female with children by a 38 year old white trucking supervisor and his accomplice.

Aquart, Azikiwe

D. CT 3:06CR160 (PCD)

Guilty plea

Name of AG Mukasey

Race & gender of def B M Victim R BF BM Date of DP notice 1/29/2009

a triple murder of a rival in the drug business, his girlfriend and a visitor, who were bound and gagged and bludgeoned to death with a baseball bat by leaders of a Jamaican drug gang. All the defendants and victims are black. The Aquart brothers faced the death penalty. Johnson, who is cooperating, did not.

Rico, Jose Rios

D. AZ No. 05-0272-PHX-JAT

Guilty plea

Name of AG Gonzales

Race & gender of def H M Victim R WF Date of DP notice 8/6/2006

drug (meth) related contract gun murder of a white woman suspected of being a government witness by an Hispanic. Attorney General Gonzales required a capital prosecution. Attorney General Mukasey approved a plea agreement.

Taylor, Donald Scott | D. NM No. 07-1244

Guilty plea | Name of AG Mukasey

Race & gender of def W M | Victim R WM | Date of DP notice 7/17/2008

an Aryan Brotherhood 2005 drug-related (methamphetamine) RICO gun murder for hire of an elderly (71 years of age) rancher. Taylor was involved in a previous botched WalMart robbery. He stabbed a guard while awaiting trial. All involved are white. Attorney General Holder approved a plea agreement on the verge of trial.

Baker, Antoine Demetris | E.D. AR No. 4:06 CR 00041 GTE

Guilty plea at trial | Name of AG Gonzales

Race & gender of def B M | Victim R BM | Date of DP notice 8/8/2007

a drug-related witness murder. Baker was involved in a crack cocaine conspiracy and was arrested on a state robbery charge. He was visited at the local jail by two individuals and instructed them to kill the robbery victim who was shortly murdered. The killer, Baker's cousin, Mario Dedman, was prosecuted in state court, convicted of capital murder and sentenced to life imprisonment. A third accomplice, Willie Lee Davis, Jr., was indicted in this case with Baker, pled guilty and was sentenced to life imprisonment. All involved are black. Baker was serving a 50 year sentence for another murder. Attorney General Holder approved a plea agreement during jury selection.

Tisdale, Jason | D. KS No. 07-10142

Guilty plea | Name of AG Mukasey

Race & gender of def B M | Victim R BF BM | Date of DP notice 6/2/2008

four RICO and drug-related murders by the Crips gang. Tisdale was charged in three murders, a double homicide in 1998 and another in 2004. Campbell was charged in one 2006 murder. All involved are African-American.

Andrews, Patrick | N.D. WV No. 1:12-CR-00100-IMK-JSK

Guilty plea | Name of AG Holder

Race & gender of def B M | Victim R BM | Date of DP notice 9/15/2011, NOI 10/23/2012

a BOP inmate murder at USP Hazelton on videotape by two defendants. Andrews is serving consecutive 37 years to life sentences out of D.C. for two prior murders. Bellinger, also from D.C., is serving a life sentence for assault with intent to kill. Attorney General Holder rejected a plea agreement to manslaughter and 15 years. Attorney General Holder rejected a second offer to plead guilty to second degree murder and 30 years. Eventually, Andrews offered to plead to a life sentence, which was accepted in the final weeks before trial. Bellinger did not face the death penalty. He also received a life sentence after a non-capital trial. All involved are African-American.

Wade, Joshua | D. AK No. 3:07-CR-00111-RRB-JDR All

Guilty plea | Name of AG Holder

Race & gender of def W M Victim R WF Date of DP notice 4/30/2009

a carjacking gun murder and robbery of a female next door neighbor. Wade stole the victim's car and used her ATM card. He was acquitted in 2003 of a prior 2000 homicide charge. All involved are white. Attorney General Holder approved a plea agreement specifying a life sentence. Wade was also sentenced to life in prison in state court.

Atwater, DeMario James | M.D. NC No. 1:08-CR-00384-JAB

Guilty plea | Name of AG Mukasey

Race & gender of def B M Victim R WF Date of DP notice 2/13/2009

carjacking gun murder and ATM robbery of the popular University of North Carolina student body president. The co-defendant Lovette is a juvenile and not eligible for the death penalty. Lovette is accused of an earlier murder of a Drake University graduate student. The victim was allegedly kidnapped from her home and forced to withdraw money from ATMs before being shot to death. The government claims that Atwater shot the victim with a shotgun after Lovette had shot her four times with a handgun. Atwater is black, the female victim white.

Leon Guerrero, James | E.D. CA No. 08 CR 00259

Guilty plea | Name of AG Holder

Race & gender of def H M Victim R HM Date of DP notice 4/7/2009

law enforcement officer victim - the stabbing death of a BOP Hispanic prison guard at Atwater by two inmates. The killing is on videotape. Co-defendant Sablan is suspected of being involved in a prior correctional officer murder. The victim was a 22 year old military veteran who served two tours in Iraq. He was chased down and tackled by Sablan and stabbed by Guerrero with an eight inch ice pick type weapon. Leon Guerrero is from Guam. Sablan is from Saipan. This was Attorney General Holder's first decision to "authorize" a case.

Jacques, Michael | D. VT No. 2:08-CR-117

Guilty plea | Name of AG Holder

Race & gender of def W M Victim R WF Date of DP notice 8/25/2009

2008 kidnapping, rape and murder by Jacques of his 12 year old niece. All involved are white.

Watland, Gary | D. CO No. 1:11-CR-00038-JLK

Guilty plea | Name of AG Holder

Race & gender of def W M Victim R WM Date of DP notice 3/1/2011

a 2008 murder of a BOP inmate at USP Florence by a convicted murderer with an escape conviction. Watland was sentenced to 25 years in Maine for murder and 35 years for an attempted escape. The victim was stabbed in the neck. All involved are white.

Taylor-Keller, Lorie Ann

W.D. VA No. 5:10 CR 00015

Guilty plea

Name of AG Holder

Race & gender of def W F Victim R WF WM Date of DP notice 12/29/2011

interstate domestic gun and arson triple murders of three; an ex-husband of Lorie Keller, his new wife and her five year old child. They were shot and the house burned. All involved are white.

Pleau, Jason W.

D. RI No. CR 10 184-015

Guilty plea

Name of AG Holder

Race & gender of def W M Victim R WM Date of DP notice 6/18/2012

Hobbs Act gun murder of the manager of a gas station. The governor of Rhode Island refused to release the defendant to federal authorities but was ordered to do so. 680 F.3d 1 (1st Cir.). Pleau served 13 years in prison before the murder for violent crimes including assault on a prison guard. All involved are white, except Santiago who is Hispanic.

Lopez, Enrique

N.D. TX No. 3:09-CR-320-M

Guilty plea

Name of AG Holder

Race & gender of def H M Victim R HM Date of DP notice 7/28/2010

Lopez was involved in five bank robberies, one of which resulted in the shooting/murder of a Brinks driver outside a bank. The robberies, including the shooting, are on videotape. Lopez is charged as the shooter. The co-defendant, Sandoval, is Lopez's brother in law. Both defendants and the victim are Hispanic.

Montgomery, Chastain, Sr.

W.D. TN No. CR 11-20044

Guilty plea

Name of AG Holder

Race & gender of def B M Victim R WF BF Date of DP notice 3/8/2013

two cross-racial 2010 gun murders, by a former prison guard, of two female postal workers by a father and his 18 year old son. The son was killed in a police shootout following a carjacking four months later. Montgomery and one victim are black. The other victim is white.

Williams, Connell C.

W.D. OK No. 5:11-CR-298

Guilty plea at trial

Name of AG Holder

Race & gender of def B M Victim R BM Date of DP notice 4/17/2012

child abuse §1111 murder on a military base (Fort Sill). A nine year old boy was starved to death. He weighed 41 pounds at the time of his death. All involved are African-American.

Acosta, Wilfredo Martinez

E.D. PA CR No. 98-362

Guilty plea at trial

Name of AG Reno

Race & gender of def H M

Victim R HM

Date of DP notice 5/30/2000

involves a Puerto Rico/Philadelphia cocaine connection between 1996-1998 and four murders for hire, three in Pennsylvania and one in Puerto Rico. Rodriguez allegedly ran the organization with a fugitive named Cacerez. Two victims were suspected of abducting a courier and stealing cocaine. A \$25,000 contract was offered but an innocent victim was mistakenly killed in Puerto Rico. One suspect was located in Philadelphia and two Hispanic males, ages 29 and 17, were killed. The 17 year old was an innocent victim, the high school student nephew of the target. Later, the second target was located and killed. Martinez-Acosta, 21, allegedly did the shooting in the first three, on orders of the alleged kingpin Rodriguez. Llera-Plaza was allegedly the middle-man in arranging the killings, the shooter in at least two and the driver. The triggerman in the fourth killing is cooperating. The government sought the death penalty against Rodriguez in four killings, Llera-Plaza in three and Martinez-Acosta in two. Attorney General Ashcroft approved plea agreements for Llera-Plaza and Martinez-Acosta, specifying life sentences. Judge Pollak then declared a mistrial for Rodriguez, who eventually entered into a plea agreement approved by Attorney General Ashcroft. All involved are Hispanic.

Authorized Federal Capital Prosecutions Which Resulted in

Dismissal by Judge for Legal Reasons - 6/3/2015

Williams, George Travis

N.D. GA CR No. 1:92-CR-142

Dismissal after notice by Judge

Name of AG Barr

Race & gender of def B M Victim R BM Date of DP notice 5/27/1992

a black Atlanta drug distributor who had capital charges dismissed in connection with three murders. Mr. Williams was accused of ordering the killing of one person in 1988, and killing two in 1989 and another in 1990. Murder for hire is alleged as an aggravating circumstance. In June, 1994, the district court dismissed the capital charges on double jeopardy grounds, because the government had already secured a conviction and 30-year sentence for much of the alleged drug-related conduct. A government motion to reconsider this ruling was denied. All involved were African-American.

Hardy, Paul

E.D. LA CR No. 94-381

Dismissal after notice by Judge

Name of AG Reno

Race & gender of def B M Victim R BF Date of DP notice 10/6/1995

civil rights - an African- American New Orleans police officer, Len Davis, who was being investigated (and tape recorded) in a drug conspiracy case. Davis ordered the murder of a 32 year old mother of three, Kim Groves, who witnessed his beating of a witness in an unrelated incident. Groves had filed a brutality complaint against Davis. Paul Hardy, 27, carried out the killing. Murder for hire is alleged as an aggravating circumstance. Davis, then Hardy, were sentenced to death by a jury in 1996, which heard sequential penalty phase presentations. Davis did not attend his. The Fifth Circuit reversed one of the convictions and ordered a new sentencing trial on the remaining convictions in 1999. 185 F.3d 407. On remand, the District Court dismissed the Notice of Intent to Seek the Death Penalty based on Ring v. Arizona. This ruling was reversed by the Fifth Circuit. Davis was resentenced to death in 2005 at a separate trial. The trial court found Hardy to be intellectually disabled. 762 F.Supp.2d 849 (ED LA 2010).

Ferebee, Donald

D. MD CR No. 96-96-2273

Dismissal after notice by Judge

Name of AG Reno

Race & gender of def B M Victim R BF BM Date of DP notice 4/2/1998

a Baltimore drug dealer alleged to have arranged for the contract killing of a police informant who had implicated him in a prior drug-related murder. A female bystander was also killed accidentally during the shooting. The death penalty was authorized only for the murder of the witness/informant. The actual gunman cooperated with the government and did not face the death penalty for either of the killings. The government also declined to seek the death penalty against the other perpetrator present at the scene of the killing. All defendants and both victims are African-American. Attorney General Reno authorized the death penalty against Ferebee in April, 1998, and the trial was postponed pending Ferebee's appeal since he is already serving a federal life-without-parole sentence for the initial murder. Attorney General Ashcroft rejected a plea agreement involving a life sentence. The 4th circuit remanded for a determination as to whether the Notice of Intent to seek the Death Penalty was filed too late. 332 F.3d 722. The Court denied rehearing. 2003 WL 221 36798. The District Court determined that it had been filed too late and dismissed the death notice. 2005 WL 1429261.

Garcia, Efraim

E.D. MI CR No. 97-80727

Dismissal after notice by Judge

Name of AG Reno

Race & gender of def H M Victim R WM Date of DP notice 9/24/1998

a gang known as the "Cash Flow Posse" charged with various racketeering crimes, including five murders and other assaults. The motive was a dispute over gang territory. Garcia was a 29 year old Colombian. All the killings but one predate the effective date of the '94 act. Garcia was the only capital defendant. He was charged with personally carrying out all five murders. Garcia was offered a plea to life, signed a Rule 11 plea agreement but the plea agreement broke down during the colloquy in court. The United States then decided to seek the death penalty. However, the district court dismissed the capital count (a racketeering murder) because of an insufficient "Commerce Clause" nexus. 68 F.Supp.2d 802 (E.D. MI 1999). The government decided not to appeal.

Authorized Federal Capital Prosecutions Which Resulted in

Dismissal by Judge for Legal Reasons - 6/3/2015

Colon-Miranda, Andres

D. PR CR No. 95-029 JAF

Dismissal after notice by Judge

Name of AG Reno

Race & gender of def H M Victim R HM Date of DP notice 11/7/1997

a judge blocked a capital trial of three Puerto Rican defendants involved in a drug gang homicide. 985 F.Supp. 36; 992 F.Supp. 82. The government initially indicated that authorization would not be sought for a capital prosecution, but then attempted to reverse its position seven weeks before trial. Attorney General Reno required a capital prosecution. The district court declined to continue the trial and refused, despite the Attorney General's authorization and notice of aggravating circumstances filed shortly before trial, to permit the government to ask for the death penalty.

Martinez-Velez, David Samuel

D. PR CR No. 95-029 JAF

Dismissal after notice by Judge

Name of AG Reno

Race & gender of def H M Victim R HM Date of DP notice 11/7/1997

a judge blocked a capital trial of three Puerto Rican defendants involved in a drug gang homicide. 985 F.Supp. 36; 992 F.Supp. 82. The government initially indicated that authorization would not be sought for a capital prosecution, but then attempted to reverse its position seven weeks before trial. Attorney General Reno required a capital prosecution. The district court declined to continue the trial and refused, despite the Attorney General's authorization and notice of aggravating circumstances filed shortly before trial, to permit the government to ask for the death penalty.

Rosario-Rodriguez, Edwin

D. PR CR No. 95-029 JAF

Dismissal after notice by Judge

Name of AG Reno

Race & gender of def H M Victim R HM Date of DP notice 11/7/1997

a judge blocked a capital trial of three Puerto Rican defendants involved in a drug gang homicide. 985 F.Supp. 36; 992 F.Supp. 82. The government initially indicated that authorization would not be sought for a capital prosecution, but then attempted to reverse its position seven weeks before trial. Attorney General Reno required a capital prosecution. The district court declined to continue the trial and refused, despite the Attorney General's authorization and notice of aggravating circumstances filed shortly before trial, to permit the government to ask for the death penalty.

Brown, Ricky Lee

N.D. WV No. 1:98CR34

Dismissal after notice by Judge

Name of AG Reno

Race & gender of def W M Victim R WF WM Date of DP notice 2/22/1999

arson/murder by their parents of five children, after an insurance policy was issued on the dwelling and the Brown's children. Federal charges were based on the use of the mail and phones. The district court declined to make a pretrial determination on Ricky Brown's intellectual disability claim. However, the capital counts were dismissed after the Supreme Court's decision in United States v. Jones, 592 U.S. 848 (2000). After a non-capital trial, the Browns were acquitted. Ales pled guilty and became a government witness. All involved are Caucasian. State charges were also filed.

Authorized Federal Capital Prosecutions Which Resulted in

Dismissal by Judge for Legal Reasons - 6/3/2015

Brown, Barbara M.

N.D. WV CR No. 1:98CR34

Dismissal after notice by Judge

Name of AG Reno

Race & gender of def W FVictim R WF WM

Date of DP notice 2/22/1999

arson/murder by their parents of five children, after an insurance policy was issued on the dwelling and the Brown's children. Federal charges were based on the use of the mail and phones. However, the capital counts were dismissed after the Supreme Court's decision in United States v. Jones, 592 U.S. 848 (2000). After a non-capital trial, the Browns were acquitted. Ables pled guilty and became a government witness. All involved are Caucasian. State charges were also filed.

Ables, Janette A.

N.D. WV CR No. 1:98CR34

Dismissal after notice by Judge

Name of AG Reno

Race & gender of def W FVictim R WF WM

Date of DP notice 2/22/1999

arson/murder by their parents of five children, after an insurance policy was issued on the dwelling and the Brown's children. Federal charges were based on the use of the mail and phones. However, the capital counts were dismissed after the Supreme Court's decision in United States v. Jones, 592 U.S. 848 (2000). After a non-capital trial, the Browns were acquitted. Ables pled guilty and became a government witness. All involved are Caucasian. State charges were also filed.

Stewart, Charles Louis

W.D. KY CR No. 4:99-CR-11-M

Dismissal after notice by Judge

Name of AG Ashcroft

Race & gender of def W MVictim R WM

Date of DP notice 7/6/2001

contract killing of men in Alabama and Kentucky. Lyon, 19, and co-defendant Charles Stewart, 54, are charged with conspiracy and murder for hire. Stewart and Richard Dorman, 62, are charged with being partners in an 18-month forged-check and fraud scheme, using the deceased's identity. Lyon and his deceased father, Stewart's nephew, were hired to murder James Norris in Kentucky. Norris was found under a bale of hay beaten to death in a barn behind his home. Lyon was also hired to kill James Nichols in Alabama, whose body was discovered in 1999 in a partially submerged van. Nichols' 85 year old mother was also in the van, but survived. Co-conspirator Dorman was kidnapped (interstate) and locked into the trunk of a car that was then run into the Green River in Henderson County. He survived to be charged as part of the conspiracy. The elder Lyon committed suicide to avoid apprehension. Stewart was arrested in the Spring of 2000 after appearing on "America's Most Wanted." Lyon faced the death penalty but was sentenced to life in prison after his jury was instructed that Stewart would not because the Attorney General took too long to file a notice of intent to seek the death penalty. A third bank fraud victim is missing and presumed dead. Lyon committed an unrelated fourth murder. All involved are white.

Gomez-Olmeda, David

D. PR CR No. 03-CR-73

Dismissal after notice by Judge

Name of AG Ashcroft

Race & gender of def H MVictim R HM

Date of DP notice 9/22/2003

a killing during an FBI undercover sting operation involving guns. The victim was an FBI confidential informant who was wired at the time. The FBI witness was shot to death and robbed in an FBI surveillance van. A videotape recorded the murder. The money robbed was FBI money and the car stolen was an FBI car. David Gomez entered into a plea agreement. However, Attorney General Ashcroft rejected a plea agreement and required a capital prosecution which was dismissed by the District Court.

Authorized Federal Capital Prosecutions Which Resulted in

Dismissal by Judge for Legal Reasons - 6/3/2015

Pennington, Tiffany Dominique

W.D. KY CR No. 01-CR-35

Dismissal after notice by Judge

Name of AG Ashcroft

Race & gender of def B M Victim R WF Date of DP notice 7/18/2001

bank robbery/murder of a white woman by two black defendants. Pennington was the triggerman. Moore provided the gun and was the get-a-way driver. Only Pennington faced the death penalty. He attempted to plead guilty before the government filed a notice of intent to seek the death penalty, but the plea was rejected and the government filed its notice. Thereafter, his guilty plea was accepted. Since the indictment did not allege Post-Ring "special findings," the District Court ultimately dismissed the Notice of Intent to seek the death penalty. A government appeal was dismissed.

Safarini, Zayd Hassan Abd Latif

D. DC CR No. 91-CR-504

Dismissal after notice by Judge

Name of AG Ashcroft

Race & gender of def AR M Victim R IM Date of DP notice 12/12/2002

a Jordamian who was one of the four hijackers who used semiautomatic weapons, hand grenades and explosives to take over a Pan Am flight in Karachi, Pakistan in 1986. The terrorists left 22 people dead, including 2 Americans of Indian descent and 100 wounded. Originally, Safarini was convicted and imprisoned in Pakistan but he was released on September 27, 2001. U.S. law enforcement arrested him the next day as he was traveling to Jordan. The judge recommended he be sent to Supermax, ADX Florence.

Nelson, Brian

E.D. LA CR No. 02-CR-304

Dismissal after notice by Judge

Name of AG Ashcroft

Race & gender of def B M Victim R WM Date of DP notice 7/1/2003

September 2002 shotgun murder of a New Orleans man and the carjacking of his wife. The United States Attorney said: "If we're given the green light, we will seek the death penalty." However, the defendants entered into plea agreements with the United States Attorney. The defendants are black and the victims a young white married couple. The defendants had been mistakenly released by state authorities after allegedly being involved in a rape and robbery spree. Dawson and Franklin entered into plea agreements which were accepted and approved. Attorney General Ashcroft rejected a plea agreement and required a capital prosecution against Nelson, the triggerman, who has an I.Q. of 67. Nelson tried to shoot the woman but the gun jammed. District court found Nelson intellectually disabled and precluded the death penalty. 419 F.Supp.2d 891 (2006).

Littrell, Gary Joe

C.D. CA No. 02-00938-GHK

Dismissal after notice by Judge

Name of AG Gonzales

Race & gender of def W M Victim R WM Date of DP notice 5/11/2006

a RICO indictment of 40 reputed members and associates of the Aryan Brotherhood [AB] for a string of murders and violent attacks allegedly designed to expand the power of the white racist prison gang, which was founded at San Quentin state prison in 1964. Authorities say the gang has about 100 members. 17 murders were alleged. At least six murders have occurred since 1996. Twenty-seven defendants initially were eligible for the death penalty. Littrell, Roy, West, Grizzle, Kennedy and Filkins are accused of allegedly murdering AB members who had run afoul of the organization or violated rules. Grizzle allegedly helped Littrell in one strangulation in the victim's cell. AB members selected to face the death penalty were: McIntosh, Knorr, Sahakian, McElhiney, Littrell, Bridgewater, Terflinger, Schwyhart, Houston, Griffin, Chance, Stinson, Mills and Bingham. Mills and Bingham were sentenced to life in prison in 2006, as were Bridgewater and Houston at separate trials in 2007. The Notice of Intent to Seek the Death Penalty was withdrawn as to Griffin, Chance, Stinson and Schwyhart. The judge dismissed the death notice against Littrell because more culpable co-defendants had been sentenced to life in prison. The charges were ultimately dismissed.

Authorized Federal Capital Prosecutions Which Resulted in

Dismissal by Judge for Legal Reasons - 6/3/2015

Hatten, Charles

S.D. WV CR No. 8:02-00232-02

Dismissal after notice by Judge

Name of AG Ashcroft

Race & gender of def W M Victim R WM Date of DP notice 6/21/2003

a drug gun murder of a possible government cooperating witness, a member of a multi-state methamphetamine drug trafficking ring. Both the defendant and the victim have substantial criminal records. All involved are white. Attorney General Ashcroft required a capital prosecution but the District Court dismissed the Notice of Intent to Seek the Death Penalty as filed late. 276 F.Supp.2d 574 (2003). A government appeal was dismissed on motion by the Department of Justice.

Karake, Francois

D. DC No. 02-CR-256

Dismissal after notice by Judge

Name of AG Ashcroft

Race & gender of def B M Victim R WF WM Date of DP notice 11/17/2004

the 1999 kidnapping and murder of eight English speaking tourists in Uganda. The defendants seized 20 tourists who were looking for gorillas at the national park associated with Diane Fosse. They separated out the eight who spoke English, raped one of the two Americans and killed all eight with axes. The two Americans were a married couple from Seattle. The defendants are black and the victims are white. The defendants were tortured in Uganda and confessions were excluded leading to dismissal of the prosecution.

Nyaminani, Gregoire

D. DC No. 02-CR-256

Dismissal after notice by Judge

Name of AG Ashcroft

Race & gender of def B M Victim R WF WM Date of DP notice 11/17/2004

the 1999 kidnapping and murder of eight English speaking tourists in Uganda. The defendants seized 20 tourists who were looking for gorillas at the national park associated with Diane Fosse. They separated out the eight who spoke English, raped one of the two Americans and killed all eight with axes. The two Americans were a married couple from Seattle. The defendants are black and the victims are white. The defendants were tortured in Uganda and confessions were excluded leading to dismissal of the prosecution.

Bimenyimana, Leonidas

D. DC No. 02-CR-256

Dismissal after notice by Judge

Name of AG Ashcroft

Race & gender of def B M Victim R WF WM Date of DP notice 11/17/2004

the 1999 kidnapping and murder of eight English speaking tourists in Uganda. The defendants seized 20 tourists who were looking for gorillas at the national park associated with Diane Fosse. They separated out the eight who spoke English, raped one of the two Americans and killed all eight with axes. The two Americans were a married couple from Seattle. The defendants are black and the victims are white. The defendants were tortured in Uganda and confessions were excluded leading to dismissal of the prosecution.

Authorized Federal Capital Prosecutions Which Resulted in

Dismissal by Judge for Legal Reasons - 6/3/2015

Smith, Joseph

E.D. LA No. 2:04-CR-00017-HGB-SS

Dismissal after notice by Judge

Name of AG Ashcroft

Race & gender of def B M Victim R WM Date of DP notice 2/1/2005

bank robbery gun murder of an off-duty police officer security guard. Jones, Johnson and Smith entered the Iberia Bank and Smith disarmed the security guard. Another guard, hidden from view, opened fire, wounding Smith and Johnson, who was unable to flee the bank. Johnson returned fire, killing one guard and wounding another. Jones fled the bank but all three defendants were arrested within moments. The defendants are black and were over 50 years old. They each have criminal records, including bank robbery. The deceased guard is white, the wounded guard is black. Smith was found to be intellectually disabled. 2011 WL 2532437.

Shields, Shannon

W.D. TN No. 2:04-CR-20254-BBD-tmp-4

Dismissal after notice by Judge

Name of AG Mukasey

Race & gender of def B M Victim R BM Date of DP notice 8/28/2008

a 2004 carjacking and interstate kidnapping gun murder. Two males armed with a handgun abducted the victim from Memphis, Tennessee, at gunpoint and forced him into his 1995 Mitsubishi Diamante and fled the scene. The victim was taken to an ATM and forced to withdraw money. He was later found dead, shot and burned in Crittenden County, Arkansas. His vehicle was found burned in Memphis, Tennessee. Sonny Shields allegedly identified his cousin, Shannon Shields, as the person involved in the carjacking and kidnapping and as the person who shot the victim. He further allegedly identified Parker and Stafford as the males who assisted him in taking the victim to Arkansas and killing him. Shannon Shields received medical treatment for burns he received allegedly while setting the victim's vehicle on fire. Parker also allegedly made statements that both Shannon Shields and Stafford were involved. Stafford allegedly made statements that both Shannon Shields and Parker were involved. Shannon Shields was found to be intellectually disabled after a pre-trial evidentiary hearing. Thereafter, Attorney General Holder approved a plea agreement and a life sentence for Sonny Shields. All are African-American, as is the victim.

Ball, Antwuan

D. DC CR No. 05-0100 (RWR)

Dismissal after notice by Judge

Name of AG Gonzales

Race & gender of def B M Victim R BM Date of DP notice 9/25/2006

a RICO drug conspiracy responsible for five gun murders, one in 1996, a double in 1998, one in 2002 and another in 2004. Wilson is charged in three murders, Ball in two and Samuels in one. All involved are African-American.

Wilson, David

D. DC CR No. 05-0100 (RWR)

Dismissal after notice by Judge

Name of AG Gonzales

Race & gender of def B M Victim R BF BM Date of DP notice 9/25/2006

a RICO drug conspiracy responsible for five gun murders, one in 1996, a double in 1998, one in 2002 and another in 2004. Wilson is charged in three murders, Ball in two and Samuels in one. All involved are African-American.

Authorized Federal Capital Prosecutions Which Resulted in

Dismissal by Judge for Legal Reasons - 6/3/2015

Davis, Earl

D. MD No. 8:07-CR-00199-RWT

Dismissal after notice by Judge

Name of AG Mukasey

Race & gender of def B M Victim R WM Date of DP notice 4/8/2008

gun murder of a security guard driving an armored vehicle during a delivery to a bank. The robbery is on videotape. DNA from a baseball cap at the scene matches Davis. Other murders (four) are alleged. Davis was found to be intellectually disabled after a pre-trial evidentiary hearing. 611 F.Supp.2d 472 (2009). The accused is black. The victim is white.

Lewis, Antun

N.D. OH No. 1:08CR404

Dismissal after notice by Judge

Name of AG Holder

Race & gender of def B M Victim R BF BM Date of DP notice 9/16/2009

arson murders in Cleveland, Ohio, resulting in the death of nine, including eight children ages 7 to 15 who were sleeping in the house and died from smoke inhalation. All involved are African-American. On December 23, 2010, the Court barred the death penalty because Lewis is intellectually disabled. 2010 WL 5418901.

Authorized Federal Capital Prosecutions Where Defendant Died Before or During Trial - 6/3/2015

Pretlow, Bilal

D. NJ No. 90-CR-238

Killed or died after authorization

Name of AG Barr

Race & gender of def B M **Victim R** BF BM **Date of DP notice** 6/17/1991

a young black New Jersey gang member committed suicide during his federal capital trial. He had been charged with two cocaine-and marijuana-related murders, one involving a 15-year-old-girl. All involved are black.

Brown, Terrance

E.D. MI CR No. 92-81127

Killed or died after authorization

Name of AG Barr

Race & gender of def B M **Victim R** BM **Date of DP notice** 8/11/1993

involves eight gun murders by a drug gang member who himself was found shot to death after the Attorney General approved a capital prosecution.

Stephens, Charles Lee

E.D. TX CR No. 2:99 CR 5

Killed or died after authorization

Name of AG Reno

Race & gender of def B M **Victim R** WF WM **Date of DP notice** 10/22/1999

three young black defendants, who were members of the "Crips" gang, were involved in a series of robberies and killings in East Texas. Stephens, 21, Smith, 20, and Tatum, 20, faced the death penalty in both state and federal court for a botched bank robbery. They were accused of a bank robbery and fatally shooting teller Betty Paddle, 61. A 54 year old bank manager, was also shot, but survived. They are also charged with an intrastate kidnapping/robbery of a used car dealership (a Hobbs Act count) in which the victim was killed with a gun (a 924(j) count). The victim was a 63 year old retired minister. Tatum is also charged in a 1998 slaying of Ronnie Dale Ritch, president of the First State Bank in Overton. Stephens and Tatum abducted Ritch, 50. Stephens had a brain tumor and died after surgery. The USA requested permission to seek the death penalty against all three, and was permitted to do so. All three deceased victims were white.

<i>Name</i>	<i>D.Ct Docket #</i>	<i>Race</i>
Melendez-Garcia, Ada	D. PR CR No. 95-235	
Authorization not requested by USA	Name of AG Reno	
Race and Gender of Def <input type="checkbox"/> H <input type="checkbox"/> F	Race and Gender of Victim(s) <input type="checkbox"/> HF	

a 1995 carjacking case resulting in the murder of Edna L. Rivera-Hernandez, age 23. Her fourth month old son was found abandoned, but alive. It appeared, at first, that the U.S. would not seek the death penalty but a superceeding indictment was filed. The USA requested authorization to seek the death penalty for three defendants - Aponte-Lazu, Jurado and Morales. Attorney General Reno denied permission to seek the death penalty as to all six defendants.

<i>Name</i>	<i>D.Ct Docket #</i>	<i>Race</i>
Peak, Clothera White	M.D. FL CR No. 95-179 CR ORL 22	
Authorization not requested by USA	Name of AG Reno	
Race and Gender of Def <input type="checkbox"/> B <input type="checkbox"/> F	Race and Gender of Victim(s) <input type="checkbox"/> HM	

a carjacking case where the death penalty was not pursued. The triggerman was a juvenile who was prosecuted in state court. The defendants were sentenced to life.

<i>Name</i>	<i>D.Ct Docket #</i>	<i>Race</i>
Bell, Roberta	M.D. PA CR No. 1-CR 95-00163	
Authorization not requested by USA	Name of AG Reno	
Race and Gender of Def <input type="checkbox"/> B <input type="checkbox"/> F	Race and Gender of Victim(s) <input type="checkbox"/> BF	

a murder under 18 U.S.C. §1512. The prosecution involved the killing of a woman informant for the drug task force of Carlisle, Pennsylvania. She was to testify against Tyler's brother. The victim, Doreen Proctor, ended up kidnapped intrastate in one of two cars, lured with the promise of cocaine, and was beaten, shot and killed. Ms. Proctor was in the vehicle with Jerry King and Roberta Bell. Willie and David Tyler followed. The murder weapon was found in Willie Tyler's car. Apparently, two people shot the deceased. Roberta Bell and Willie Tyler were tried and acquitted of murder in January 1996 in state court. The United States Attorney requested authorization to seek the death penalty for co-defendant, Willie Tyler, but it was refused. All involved are African-American.

<i>Name</i>	<i>D.Ct Docket #</i>	<i>Race</i>
Carreno, Blanca Irene	N.D. IL CR No. 96 CR 407	
Authorization request rejected by AG	Name of AG Reno	
Race and Gender of Def <input type="checkbox"/> H <input type="checkbox"/> F	Race and Gender of Victim(s) <input type="checkbox"/> HM	

a kidnapping/murder. All defendants except Blanca Carreno (who may not be death eligible) are charged under 18 U.S.C. §1201(a) (kidnapping) and three counts of §924(c). Salome Varela is the oldest at 22. The interstate kidnapping, of a 17 year old boy named Jaime Estrada, allegedly began in Milwaukee, Wisconsin and the victim was brought to Chicago, Illinois. The victim was shot (perhaps accidentally) in the stomach and not given medical treatment for two or three days. There were three prior kidnappings, apparently as part of a scheme to kidnap drug dealers for ransom. Attorney General Reno refused a request for a capital prosecution as to all defendants. All involved are Hispanic.

<i>Name</i>	<i>D.Ct Docket #</i>	<i>Race</i>
Gibson, Leslie Diane	W.D. VA CR No. 96-00056 (H)	
Authorization not requested by USA	Name of AG Reno	
Race and Gender of Def <input type="checkbox"/> W <input type="checkbox"/> F	Race and Gender of Victim(s) <input type="checkbox"/> BF	

a murder-for-hire. Gibson, 28, with a relatively minor criminal record, paid Wilson (who fled the country) \$3,000 to kill her neighbor. The victim, 23, was shot three times in the head on August 24, 1996 while riding a bicycle near her residence. The USA originally indicated he would seek the death penalty. Since then Ms. Gibson pled guilty. Wilson was arrested and convicted.

<i>Name</i>	<i>D.Ct Docket #</i>	<i>Race</i>
Kozak, Sarah Ann	N.D. IA CR No. 97-3008 MW	
Authorization not requested by USA	Name of AG Reno	
Race and Gender of Def <input type="checkbox"/> W <input type="checkbox"/> F	Race and Gender of Victim(s) <input type="checkbox"/> WM	

an interstate kidnapping/murder of a 15-year-old for an \$800 drug debt. The victim was kidnapped in Clay County, Iowa, and taken just across the border to Jackson County, Minnesota. The defendants, including three juveniles and one fugitive, ages 16-27, were members of a drug gang, "Los Crazy Boys." The victim was kidnapped, with orders to beat him for failing to pay for marijuana. He was first taken to a lake north of Superior, Iowa, where he was kicked and beaten, then on to Minnesota. It was agreed that when the five reached an abandoned farm in Minnesota, that each would shoot one shot. Lua fatally shot him in the head, a juvenile then shot him in the leg and the gun jammed. Lua and another unsuccessfully tried to burn the body and the house. The deceased and the two main potential capital defendants, Lua and Castillo (the alleged drug boss), are Hispanic. The victim was white. See United States v. Ortiz, 40 F.Supp.2d 1073 (N.D. IA 1999).

<i>Name</i>	<i>D.Ct Docket #</i>	<i>Race</i>
Bratcher, Chyann	N.D. TX CR No. 2:95CR00009	
Authorization not requested by USA	Name of AG Reno	
Race and Gender of Def <input type="checkbox"/> W <input type="checkbox"/> F	Race and Gender of Victim(s) <input type="checkbox"/> WM	

18 U.S.C. § 1111(a), premeditation and malice aforethought murder on federal land, at Lake Meredith National Recreation Park (National Park Service).

<i>Name</i>	<i>D.Ct Docket #</i>	<i>Race</i>
Fine, Brenda	N.D. TX CR No. 95 CR 9	
Authorization not requested by USA	Name of AG Reno	
Race and Gender of Def <input type="checkbox"/> W <input type="checkbox"/> F	Race and Gender of Victim(s) <input type="checkbox"/> WM	

18 U.S.C. § 1111(a), premeditation and malice aforethought murder on federal land, at Lake Meredith National Recreation Park (National Park Service).

Name	D.Ct Docket #	Race
Llamas, Tamara	E.D. NC CR No. 7:97-CR-63-1-H	
Guilty plea	Name of AG Reno	
Race and Gender of Def <input type="checkbox"/> W <input type="checkbox"/> F	Race and Gender of Victim(s) <input type="checkbox"/> WF	

a murder-for-hire of an informant in a marijuana conspiracy. Llamas, a white female, allegedly ordered the killing of a drug informant. The triggerman was Wakefield. The drug informant was carelessly named in a warrant, and was murdered a month later. The marijuana conspiracy involved North and South Carolina, Texas and Oregon.

Name	D.Ct Docket #	Race
Baker, Rosie	E.D. NY CR No. 97 CR- 877	
Authorization not requested by USA	Name of AG Reno	
Race and Gender of Def <input type="checkbox"/> B <input type="checkbox"/> F	Race and Gender of Victim(s) <input type="checkbox"/> BM	

a witness killing murder of a doctor while he was sitting in his Mercedes, allegedly to keep him from giving information regarding a Medicaid fraud scam. The defendants are mother and son.

Name	D.Ct Docket #	Race
Squillacote, Theresa Marie	E.D. VA CR No. 98-00061- A	
Authorization not requested by USA	Name of AG Reno	
Race and Gender of Def <input type="checkbox"/> W <input type="checkbox"/> F	Race and Gender of Victim(s) <input type="checkbox"/> x	

an espionage case. The defendants are charged with sending materials to East Germany, South Africa and Russia.

Name	D.Ct Docket #	Race
King, Janet Hope	D. MD CR No. L-98-73	
Authorization not requested by USA	Name of AG Reno	
Race and Gender of Def <input type="checkbox"/> B <input type="checkbox"/> F	Race and Gender of Victim(s) <input type="checkbox"/> WM	

a series of carjackings, culminating in a cross-racial murder where the 86 year old victim apparently resisted and was beaten with a hammer or lead pipe on the head and killed by Lane who had been released from prison after abducting a woman. Lane faced the death penalty but was allowed to plead guilty.

<i>Name</i>	<i>D.Ct Docket #</i>	<i>Race</i>
Jones, Mary	M.D. FL CR No. 6:98CR00151	
Authorization not requested by USA	Name of AG Reno	
Race and Gender of Def <input type="checkbox"/> UK <input type="checkbox"/> F	Race and Gender of Victim(s) <input type="checkbox"/> xF	

a drug overdose. Jones, along with her live-in boyfriend Spero, were charged with heroin distribution. In the course of this, Jones helped one of her customers - a college student on spring break in Daytona Beach - inhale part of a "one-inch line" of heroin. The student apparently had been ingesting other drugs. The heroin, in conjunction with other drugs, killed her.

<i>Name</i>	<i>D.Ct Docket #</i>	<i>Race</i>
Osbourne, Gail	E.D. NY CR No. 97-1121 (S-10) (RJD)	
Authorization not requested by USA	Name of AG Reno	
Race and Gender of Def <input type="checkbox"/> B <input type="checkbox"/> F	Race and Gender of Victim(s) <input type="checkbox"/> Bx	

involves multiple killings - charged four drug related murders, both as a continuing criminal enterprise and racketeering, by a gang of Trinidadian foreign nationals. One count involves the robbery/murder of a drug dealer. Francis was charged with three murders and suspected of many more. According to a news article, Francis is suspected in as many as 30 slayings. New York Post (11/12/98). "Francis, who goes by the name Junks and ran a crew known as the Cool Operators, may have pulled the trigger as many as 10 times ..." He was arrested by Brooklyn detectives for three '96 Brooklyn murders, a double homicide in Bedford - Stuyvesant and another slaying in Crown Heights." James is charged with three homicides, suspected in another in Philadelphia in 1997. Brown was the triggerman in an August 18, 1997 murder/robbery of a drug dealer.

<i>Name</i>	<i>D.Ct Docket #</i>	<i>Race</i>
Hammouda, Micheline	E.D. NY CR No. 98-497 (S-1) (SJ)	
Authorization not requested by USA	Name of AG Reno	
Race and Gender of Def <input type="checkbox"/> B <input type="checkbox"/> F	Race and Gender of Victim(s) <input type="checkbox"/> OM	

an alleged Hobbs Act robbery that also may be a murder for hire. Hammouda, a black woman from Haiti, is alleged to have hired Isaac, a black man from Trinidad, to kill and rob her husband (who may have been Egyptian). Hammouda may have offered Isaac a house she owned in Freeport. An aggravating factor is that Isaac bragged about shooting the victim while he was on his knees praying. There may have been a participant cooperating witness, David Alexander.

<i>Name</i>	<i>D.Ct Docket #</i>	<i>Race</i>
Hironaga, Diana	D. NV CR No. S-98-347-PMP (LRH)	
Authorization not requested by USA	Name of AG Reno	
Race and Gender of Def <input type="checkbox"/> W <input type="checkbox"/> F	Race and Gender of Victim(s) <input type="checkbox"/> WF	

the husband of an heir to the du Pont family chemical fortune, charged with arranging the murder of his stepson's girlfriend in Las Vegas. Moseley, 58, was charged with the use of inter-state commerce facilities in the commission of a murder-for-hire. 18 U.S.C. §1958. He confessed to arranging the murder of Patricia Margello, 45. Her badly beaten body was found at a Las Vegas motel. She had been strangled. Moseley also implicated 3 other people, Hironaga, Murillo and Balignasas. Moseley and Hironaga planned the murder through telephone calls and facsimile messages. Margello was killed by Murillo and Balignasa on August 2, 1998. Moseley and Hironaga each received 16 years, Balignasas 15 and Murillo life. 228 F. 3d 1126 (9th Cir. 2002).

<i>Name</i>	<i>D.Ct Docket #</i>	<i>Race</i>
Brown, Barbara M.	N.D. WV CR No. 1:98CR34	
Dismissal after notice by judge	Name of AG Reno	
Race and Gender of Def <input type="checkbox"/> W <input type="checkbox"/> F	Race and Gender of Victim(s) <input type="checkbox"/> WF <input type="checkbox"/> WM	

arson/murder by their parents of five children, after an insurance policy was issued on the dwelling and the Brown's children. Federal charges were based on the use of the mail and phones. However, the capital counts were dismissed after the Supreme Court's decision in United States v. Jones, 592 U.S. 848 (2000). After a non-capital trial, the Browns were acquitted. Ables pled guilty and became a government witness. All involved are Caucasian. State charges were also filed.

<i>Name</i>	<i>D.Ct Docket #</i>	<i>Race</i>
Ables, Janette A.	N.D. WV CR No. 1:98CR34	
Dismissal after notice by judge	Name of AG Reno	
Race and Gender of Def <input type="checkbox"/> W <input type="checkbox"/> F	Race and Gender of Victim(s) <input type="checkbox"/> WF <input type="checkbox"/> WM	

arson/murder by their parents of five children, after an insurance policy was issued on the dwelling and the Brown's children. Federal charges were based on the use of the mail and phones. However, the capital counts were dismissed after the Supreme Court's decision in United States v. Jones, 592 U.S. 848 (2000). After a non-capital trial, the Browns were acquitted. Ables pled guilty and became a government witness. All involved are Caucasian. State charges were also filed.

<i>Name</i>	<i>D.Ct Docket #</i>	<i>Race</i>
Calcano, Shirley	S.D. NY CR No. S1 98 CR 438 (RLC)	
Authorization not requested by USA	Name of AG Reno	
Race and Gender of Def <input type="checkbox"/> H <input type="checkbox"/> F	Race and Gender of Victim(s) <input type="checkbox"/> HM	

an intrastate kidnapping murder related to drug trafficking. Juan Ramirez solicited the killing. All involved were Hispanic.

<i>Name</i>	<i>D.Ct Docket #</i>	<i>Race</i>
Gilbert, Kristin	D. MA CR No. 98-30044-MAP	
Life sentence from jury	Name of AG Reno	
Race and Gender of Def <input type="checkbox"/> W <input type="checkbox"/> F	Race and Gender of Victim(s) <input type="checkbox"/> WM	

the killing of four patients at a Department of Veterans Affairs Hospital, on federal property, and the attempted killing of three others. Ms. Gilbert, 31, used epinephrine, a drug that can overstimulate the heart, on her patients. Federal prosecutors said Gilbert murdered one patient, a 41-year-old invalid, after asking a supervisor if she could "leave early if he died." All involved are Caucasian. The jury deadlocked and Gilbert was sentenced to life in prison.

<i>Name</i>	<i>D.Ct Docket #</i>	<i>Race</i>
Ricketts, Carolyn Marie	W.D. MI CR No. 1:98-CR- 220	
Authorization not requested by USA	Name of AG	Reno

Race and Gender of Def W F **Race and Gender of Victim(s)** WF

a contract gun murder of a female. A couple, the Ricketts, ran a drug organization which hired Swackhammer as its enforcer. He shot Laurie Jean Briggs, 36, when two men armed with sawed-off shotguns burst into an apartment looking for Briggs' girlfriend. The other triggerman, McKinney, is a government witness who received 18 years in state court. Swackhammer was already serving a prison sentence for bank robbery and attempted escape.

<i>Name</i>	<i>D.Ct Docket #</i>	<i>Race</i>
Myers, Deborah	D. KS CR No. 97-10027-01	
Authorization not requested by USA	Name of AG	Reno

Race and Gender of Def W F **Race and Gender of Victim(s)** WF

an "inside job" robbery resulting in a gun murder. Eric "Ace" Pearson, together with the manager of the store, one Debbie Myers, allegedly planned the robbery. On February 17, 1997, at closing time, two men entered the store (a Mr. Goodscents -- a Subway sandwich-type franchise) and had the employees lay down behind the counter. The two clerks were Amy Montgomery, and another white female. Ms. Montgomery was shot in the back of the head by Mr. Martin, while the robbers left the other victim unharmed. Eric Pearson was driving the car and has made a full confession. The victim was a 19 year old coed at Wichita State University. The male defendants are black.

<i>Name</i>	<i>D.Ct Docket #</i>	<i>Race</i>
Ginyard, Gracie	D. KS CR No. 97-10027-01	
Authorization not requested by USA	Name of AG	Reno

Race and Gender of Def W F **Race and Gender of Victim(s)** WF

an "inside job" robbery resulting in a gun murder. Eric "Ace" Pearson, together with the manager of the store, one Debbie Myers, allegedly planned the robbery. On February 17, 1997, at closing time, two men entered the store (a Mr. Goodscents -- a Subway sandwich-type franchise) and had the employees lay down behind the counter. The two clerks were Amy Montgomery, and another white female. Ms. Montgomery was shot in the back of the head by Mr. Martin, while the robbers left the other victim unharmed. Eric Pearson was driving the car and has made a full confession. The victim was a 19 year old coed at Wichita State University. The male defendants are black.

<i>Name</i>	<i>D.Ct Docket #</i>	<i>Race</i>
Matos, Michelle Rodriguez	D. PR CR No. 99-295 (DRD)	
Authorization not requested by USA	Name of AG	Reno

Race and Gender of Def H F **Race and Gender of Victim(s)** HM

involves multiple killings - three '95 murders, charged different ways, against five defendants. It involved a Hobbs Act robbery by Zuniga-Bruno and Villega-Angulo of Ferndandez Editores de Puerto Rico (a wholesale book distributor), holding hostages, and then shooting the two victims in the back of the head. One survived. A separate homicide involves the murder of an intrastate kidnapping victim who was executed when the same Mexican company refused to pay a ransom. Vega Molina and Rodriguez-Santiago are only charged in one of the two killings. The second homicide is charged as a carjacking, retaliation and a hostage taking killing. Zuniga-Bruno admitted to 40 to 50 murders to the United States in Florida during a proffer session in a previous case.

<i>Name</i>	<i>D.Ct Docket #</i>	<i>Race</i>
Pimentel, JoAnn	E.D. NY CR No. 99 CR 1104	
Authorization not requested by USA	Name of AG Reno	
Race and Gender of Def <input type="checkbox"/> H <input type="checkbox"/> F	Race and Gender of Victim(s) <input type="checkbox"/> HM	
alleges a RICO murder by the Netas.		

<i>Name</i>	<i>D.Ct Docket #</i>	<i>Race</i>
Holt, Casey Michelle	N.D. WV CR No. 3:00CR6	
Authorization not requested by USA	Name of AG Reno	
Race and Gender of Def <input type="checkbox"/> W <input type="checkbox"/> F	Race and Gender of Victim(s) <input type="checkbox"/> WF	
a witness killing during a crack/powder cocaine conspiracy. The white female victim had been buying drugs from the defendants, got into trouble with the law and it was feared she wanted to provide information to the police. She was beaten to death. West and Jackson are African-American men, Holt is a female Caucasian.		

<i>Name</i>	<i>D.Ct Docket #</i>	<i>Race</i>
Forteza-Garcia, Angel	D. PR CR No. 03-CR-73	
Authorization not requested by USA	Name of AG Ashcroft	
Race and Gender of Def <input type="checkbox"/> H <input type="checkbox"/> F	Race and Gender of Victim(s) <input type="checkbox"/> HM	
a murder during an FBI undercover sting operation involving guns. The victim was an FBI confidential informant who was wired at the time. The FBI witness was shot to death and robbed in an FBI surveillance van. A videotape recorded the murder. The money robbed was FBI money and the car stolen was an FBI car. David Gomez entered into a plea agreement, which Attorney General Ashcroft rejected. He approved plea agreements with both Forteza-Garcia brothers.		

<i>Name</i>	<i>D.Ct Docket #</i>	<i>Race</i>
Soto, Janet	S.D. NY CR No. 00 CR 0761 (JSR)	
Authorization not requested by USA	Name of AG Ashcroft	
Race and Gender of Def <input type="checkbox"/> H <input type="checkbox"/> F	Race and Gender of Victim(s) <input type="checkbox"/> HM	
murder of a New York Police department informant, who was allegedly tortured. Soto pled guilty and was sentenced to 20 years. Two co-defendants face the death penalty. All involved are Hispanic.		

<i>Name</i>	<i>D.Ct Docket #</i>	<i>Race</i>
Garcia, Janie Maria	C.D. CA CR No. 3:00CR8	
Authorization not requested by USA	Name of AG Ashcroft	
Race and Gender of Def <input type="checkbox"/> H <input type="checkbox"/> F	Race and Gender of Victim(s) <input type="checkbox"/> HM	

involves a RICO and drug distribution multiple murder prosecution against a branch of the 18th Street gang, with ties to the Mexican Mafia. The lead defendant, Frank Martinez, is alleged to have participated in three homicides. Zaragoza is charged in all three murders and alleged to have been the shooter in two. The victim is Hispanic.

<i>Name</i>	<i>D.Ct Docket #</i>	<i>Race</i>
Johnson, Angela	N.D. IA No. 3:01-CR-03046-MWB	
Death row - 2255	Name of AG Ashcroft	
Race and Gender of Def <input type="checkbox"/> W <input type="checkbox"/> F	Race and Gender of Victim(s) <input type="checkbox"/> WF <input type="checkbox"/> WM	

five murders in 1993 of a potential witness, his girlfriend (both meth dealers) and two daughters, in a drug conspiracy case. The fifth victim is Angela Johnson's former boyfriend, another dealer turned informant, who disappeared in November of 1993. Johnson attempted suicide in jail after she was tricked by a jailhouse informant into revealing the location of the bodies. A-G-A rejected Honken's attempt to enter a plea to a life sentence. Attorney General Gonzales rejected Johnson's attempt to enter a plea to a life sentence. Attorney General Gonzales rejected a plea offer. All involved are white. The direct appeal was denied in September 2007. A petition for a writ of certiorari was denied.

<i>Name</i>	<i>D.Ct Docket #</i>	<i>Race</i>
James, Delfina Mae	D. NM CR No. 95-10 JP	
Authorization not requested by USA	Name of AG Reno	
Race and Gender of Def <input type="checkbox"/> NA <input type="checkbox"/> F	Race and Gender of Victim(s) <input type="checkbox"/> NAx	

murder on tribal land.

<i>Name</i>	<i>D.Ct Docket #</i>	<i>Race</i>
Nipper, Judy Helen Taylor	W.D. LA CR No. 00-CR-50066	
Authorization not requested by USA	Name of AG Ashcroft	
Race and Gender of Def <input type="checkbox"/> W <input type="checkbox"/> F	Race and Gender of Victim(s) <input type="checkbox"/> WF	

involves a phony carjacking\murder in Haiti, which was actually a domestic murder for hire. Authorities believe there was actually a conspiracy between Wharton and a co-worker, Nipper, to kill Wharton's wife. Wharton tried to collect 2.5 million dollars in insurance. He was convicted and sentenced to life in prison. Nipper was acquitted. The victim was white.

Name	D.Ct Docket #	Race
Jackson, Falisha Yolanda	S.D. AL CR No. 01-00007	
Authorization request rejected by AG	Name of AG Ashcroft	

Race and Gender of Def B F **Race and Gender of Victim(s)** BF

a four count indictment charging the five, Rivers - 25, Holiday - 20, Nixon - 22, Gray - 24 and Jackson - 23 with conspiracy to commit bank robbery resulting in death. Rivers voluntarily surrendered. Rivers allegedly organized and planned the robbery. He stayed in the get-a-way car. Nixon allegedly cased the bank. Two people entered the bank and Holiday killed a female victim with a sawed-off shotgun. All defendants and the victim are African-American. Attorney General Ashcroft refused a request for authorization to Jackson and Gray and approved a guilty plea and life sentence for Holiday who also was sentenced to life in prison in state court.

Name	D.Ct Docket #	Race
Gray, Tabitha	S.D. AL CR No. 01-00007	
Authorization request rejected by AG	Name of AG Ashcroft	

Race and Gender of Def B F **Race and Gender of Victim(s)** BF

a four count indictment charging the five, Rivers - 25, Holiday - 20, Nixon - 22, Gray - 24 and Jackson - 23 with conspiracy to commit bank robbery resulting in death. Rivers voluntarily surrendered. Rivers allegedly organized and planned the robbery. He stayed in the get-a-way car. Nixon allegedly cased the bank. Two people entered the bank and Holiday killed a female victim with a sawed-off shotgun. All defendants and the victim are African-American. The Attorney General refused a request for authorization to Jackson and Gray and approved a guilty plea and life sentence for Holiday who also was sentenced to life in prison in state court.

Name	D.Ct Docket #	Race
Nixon, Latoya Tiana	S.D. AL CR No. 01-00007	
Authorization not requested by USA	Name of AG Ashcroft	

Race and Gender of Def B F **Race and Gender of Victim(s)** BF

a four count indictment charging the five, Rivers - 25, Holiday - 20, Nixon - 22, Gray - 24 and Jackson - 23 with conspiracy to commit bank robbery resulting in death. Rivers voluntarily surrendered. Rivers allegedly organized and planned the robbery. He stayed in the get-a-way car. Nixon allegedly cased the bank. Two people entered the bank and Holiday killed a female victim with a sawed-off shotgun. All defendants and the victim are African-American. The Attorney General refused a request for authorization to Jackson and Gray and approved a guilty plea and life sentence for Holiday who also was sentenced to life in prison in state court.

Name	D.Ct Docket #	Race
Johnston, Elizabeth P.	N.D. TX CR No. 01-CR-246	
Authorization not requested by USA	Name of AG Ashcroft	

Race and Gender of Def W F **Race and Gender of Victim(s)** WM

a murder-for-hire plot in which a Dallas mother of five is accused of paying to have her former husband killed for insurance money. The federal charges involve wire fraud related to inter-state transfer of life insurance money from her former husband's slaying in Allegheny, Pennsylvania. She, her nephew, and possibly others plotted the killing for a \$500,000 life insurance policy. Her ex-husband was found shot in the chest and head on the floor of a trailer in 1999 about two years after the divorce.

Name	D.Ct Docket #	Race
St. Martin, Lana M.	N.D. TX CR No. 3:01-CR-245	
Authorization not requested by USA	Name of AG Ashcroft	
Race and Gender of Def <input type="checkbox"/> W <input type="checkbox"/> F	Race and Gender of Victim(s) WM	

a murder-for-hire plot in which a Dallas mother of five is accused of paying to have her former husband killed for insurance money. The federal charges involve wire fraud related to inter-state transfer of life insurance money from her former husband's slaying in Allegheny, Pennsylvania. She, her nephew, and possibly others plotted the contract killing for a \$500,000 life insurance policy. Her ex-husband was found shot in the chest and head on the floor of a trailer in 1999 about two years after the divorce. The victim was white.

Name	D.Ct Docket #	Race
Chaney, Robin	D. MD CR No. 02-CR-083	
Authorization not requested by USA	Name of AG Ashcroft	
Race and Gender of Def <input type="checkbox"/> W <input type="checkbox"/> F	Race and Gender of Victim(s) WF	

an 18 U.S.C. §1111 prosecution involving a stabbing murder on federal land. Chaney, who is retired from USAF with a disability relating to a brain tumor, entered the home of a young female officer who lived at Andrews Air Force Base. Chaney stabbed the deceased multiple times. He had a relationship with the victim's son's father. Apparently, the man was leaving Chaney and returning to live with the victim. The defendant then left the home with the victim's 20 month old son, Riley. All involved are white.

Name	D.Ct Docket #	Race
Montes, Ana B.	D. DC CR No. 02-CR-131	
Guilty plea before DOJ review	Name of AG Ashcroft	
Race and Gender of Def <input type="checkbox"/> H <input type="checkbox"/> F	Race and Gender of Victim(s) none	

an intelligence analyst who was the Pentagon's top expert on Cuba, plead guilty to an espionage charge, admitting that she spied for the Cuban government for 16 years, giving up four agents, because she opposed United States policy toward Havana. Attorney General Ashcroft approved a plea agreement.

Name	D.Ct Docket #	Race
Moore, Brenda	N.D. CA No. 01-0319	
Authorization not requested by USA	Name of AG Ashcroft	
Race and Gender of Def <input type="checkbox"/> W <input type="checkbox"/> F	Race and Gender of Victim(s) Hx	

law enforcement officer victim - multiple (two) murders by the "Nazi Low Riders," affiliated with the Aryan Brotherhood, a California prison gang responsible for two murders, one in '93 and one in '95 involving a Sonoma County Deputy, an Hispanic law enforcement officer. The indictment alleges numerous robberies and murder conspiracies.

<i>Name</i>	<i>D.Ct Docket #</i>	<i>Race</i>
Martinez, Quincie	E.D. NY CR No. 01-CR-1367	
Authorization not requested by USA	Name of AG Ashcroft	
Race and Gender of Def <input type="checkbox"/> H <input type="checkbox"/> F	Race and Gender of Victim(s) <input type="checkbox"/> HM	

Caraballo was the alleged kingpin of a large scale narcotics group in Brooklyn for a decade and the owner of the 5th Avenue Gym. Caraballo was involved in a romantic relationship with Quincy Martinez, the wife of the victim. Caraballo allegedly paid the others in either drugs, cash or both to assist him in killing the victim, who allegedly was shot to death by Aguilar in the presence of Caraballo in a van owned by Caraballo, and with the assistance of Taylor. Aguilar has confessed to shooting the victim repeatedly with two different guns, and has revealed the involvement of all three. Quincy Martinez is the mother of the victim's two daughters and she allegedly conspired with Caraballo to have the victim killed.

<i>Name</i>	<i>D.Ct Docket #</i>	<i>Race</i>
Solovyeva, Natalya	C.D. CA CR No. 02-220 (A)-NM	
Authorization not requested by USA	Name of AG Ashcroft	
Race and Gender of Def <input type="checkbox"/> W <input type="checkbox"/> F	Race and Gender of Victim(s) <input type="checkbox"/> WM	

multiple (five) kidnapping ransom murders by the Russian mob. Wealthy Russian immigrants were kidnapped, held for ransom, murdered and their bodies dumped in a reservoir. 1.2 million was collected in ransom. All involved are Caucasian. Mikhel and Kadamovas are charged in four, the others in two, except Krylov, who is charged in three murders. The indictment charged hostage taking resulting in death. 18 U.S.C. §1203. Mikhel, Kadamovas and Krylov faced the death penalty. Mikhel and Kadamovas were sentenced to death. At a separate trial, Krylov was sentenced to life imprisonment after Attorney General Gonzales rejected an offer to plead guilty.

<i>Name</i>	<i>D.Ct Docket #</i>	<i>Race</i>
Ramsey, Jeana	N.D. IN CR No. 02-CR-116	
Authorization not requested by USA	Name of AG Ashcroft	
Race and Gender of Def <input type="checkbox"/> W <input type="checkbox"/> F	Race and Gender of Victim(s) <input type="checkbox"/> WF	

a bank robbery gun multiple murder. Five people, three African-American males, one African-American female and one white woman (the pregnant girlfriend of Johnson), robbed a bank and shot to death a white female teller, while wounding another white male teller who died ten weeks after the shooting and wounding a white male security guard leaving him paraplegic. Corley, who has taken the name Nasih Khalil Ra'id, was the ring leader who burst into the bank shooting. Johnson was also a gunman. McGregor was a driver. Gay and Ramsey were some distance away. The robbery was videotaped although the gunman was in the disguise. Corley's palm print was found in the bank. Corley was sentenced to death.

<i>Name</i>	<i>D.Ct Docket #</i>	<i>Race</i>
Gay, Danyass Wu	N.D. IN CR No. 02-CR-116	
Authorization not requested by USA	Name of AG Ashcroft	

Race and Gender of Def B F Race and Gender of Victim(s) WF

a bank robbery gun multiple murder. Five people, three African-American males, one African-American female and one white woman (the pregnant girlfriend of Johnson), robbed a bank and shot to death a white female teller, while wounding another white male teller who died ten weeks after the shooting and wounding a white male security guard leaving him paraplegic. Corley, who has taken the name Nasih Khalil Ra'id, was the ring leader who burst into the bank shooting. Johnson was also a gunman. McGregor was a driver. Gay and Ramsey were some distance away. The robbery was videotaped although the gunman was in the disguise. Corley's palm print was found in the bank.

<i>Name</i>	<i>D.Ct Docket #</i>	<i>Race</i>
Guadia-Augilera, Veronica	E.D. TX CR No. 02-CR-62	
Authorization not requested by USA	Name of AG Ashcroft	

Race and Gender of Def H F Race and Gender of Victim(s) HM

an alien smuggling/RICO prosecution involving the deaths of two illegal immigrants found inside their truck after a sweltering 12 hour ride which left at least 13 others hospitalized on a day with temperatures nearing triple digits. 40 people, including at least 5 children, were crammed into a truck carrying medical supplies. The people inside tried to cut a hole in the roof, but failed. Each passenger paid \$1,500 to \$2,000 for the transportation.

<i>Name</i>	<i>D.Ct Docket #</i>	<i>Race</i>
Chacon, Melissa	D. UT No. 2:02-CR 289 C	
Authorization not requested by USA	Name of AG Ashcroft	

Race and Gender of Def H F Race and Gender of Victim(s) HM

involves members of the "King Mafia Disciples," a prison gang originating out of Utah. Defendants are charged with racketeering and murdering a 17 year old, thought to be a rival gang member, in 1996. The wrong person was killed as the intended victim moved. The defendant's are black and Hispanic. The victim is Hispanic There is also an attempted murder charge.

<i>Name</i>	<i>D.Ct Docket #</i>	<i>Race</i>
Garcia, Rosalie	S.D. NY CR No. 01 CR 1110	
Authorization not requested by USA	Name of AG Ashcroft	

Race and Gender of Def H F Race and Gender of Victim(s) HM

involves of the "Hoe Avenue Crew", a herion and cocaine gang charged with multiple (four) racketeering gun murders, one 1993, two in 1994 and one in 1997. Roslie Garcia, age 52 is charged with all four, as is Ramon. Silva is charged in three, Morges in one. The murders are charged under 18 U.S.C. § 1959 as well as 21 U.S.C. § 848 and 18 U.S.C. § 924. Rosalie Garcia's case was not authorized, in part, because of mental retardation.

<i>Name</i>	<i>D.Ct Docket #</i>	<i>Race</i>
Zamudio, Edy Zonia	N.D. TX CR No. 4:00 CR 0260-Y	
Authorization not requested by USA	Name of AG Ashcroft	
Race and Gender of Def <input type="checkbox"/> H <input type="checkbox"/> F	Race and Gender of Victim(s) <input type="checkbox"/> HM	

a multiple murder Fort Worth drug trafficking prosecution of the leaders of an Arlington-based drug ring responsible for multiple (three) murders. The first killing involved a 1998 shooting of an African-American, mistaken for the intended victim, in a car traveling on Cential Expressway. A second 1999 killing was of an Hispanic person, also mistaken for the intended victim, his brother, who allegedly sold a fake kilo of cocaine to Robinson. Britt was the triggerman in the third 1999 killing of another drug dealer, a Mexican national, who had stolen 20 kilos from a Laredo drug kingpin. Robinson was following in another car. Britt and Robinson, African-American, both allegedly fired weapons in the first and second incidents and both were selected to face the death penalty. The victims were Hispanic and African-American.

<i>Name</i>	<i>D.Ct Docket #</i>	<i>Race</i>
Turner, Barbara L.	W.D. MO CR No. 02-3110-CR-S-DW	
Authorization not requested by USA	Name of AG Ashcroft	
Race and Gender of Def <input type="checkbox"/> B <input type="checkbox"/> F	Race and Gender of Victim(s) <input type="checkbox"/> BM	

18 U.S.C. §1111 robbery/murder at a Fort Leonardwood bingo parlor on federal land that Barbara Turner managed and which allegedly had game proceeds of \$30,000 - \$35,000 on hand in cashier's cage. A scuffle ensued. The victim was a retired military security guard. Turner's boyfriend, who also worked at the bingo hall, allegedly fingered Turner as the mastermind in a proffer the government would not accept. All involved are African-American.

<i>Name</i>	<i>D.Ct Docket #</i>	<i>Race</i>
Arnt, Latasha Lorraine	C.D. CA CR No. 03-CR-523	
Authorization not requested by USA	Name of AG Ashcroft	
Race and Gender of Def <input type="checkbox"/> B <input type="checkbox"/> F	Race and Gender of Victim(s) <input type="checkbox"/> WM	

a woman accused of killing her abusive husband, who was in the United States military, in Turkey. She received 10 years.

<i>Name</i>	<i>D.Ct Docket #</i>	<i>Race</i>
Montoya, Sarah	D. NM CR No. 03-1614 RB	
Authorization not requested by USA	Name of AG Ashcroft	
Race and Gender of Def <input type="checkbox"/> H <input type="checkbox"/> F	Race and Gender of Victim(s) <input type="checkbox"/> HF	

alien smuggling case where an illegal immigrant died in the desert. A 2 mile hike across the desert was interrupted by the Border Partol. A woman with a kidney problem was sent back and didn't make it. 18 U.S.C. §1324. All involved are Hispanic.

<i>Name</i>	<i>D.Ct Docket #</i>	<i>Race</i>
Joya, Karla Patricia Chavez	S.D. TX CR No. 03-CR-221	
Authorization not requested by USA	Name of AG Ashcroft	

Race and Gender of Def H F Race and Gender of Victim(s) HF HM

an alien smuggling operation that led to multiple (nineteen) immigrants' deaths in the back of a truck trailer driven by Williams. Joya was alleged to be the leader of this alien smuggling ring. She was extradited from Guatemala. She was also accused of coordinating 3 smaller operations, gathering illegal immigrants together in South Texas, arranging them to be fed and housed and then placing them on trucks headed north. All involved are Latino, except Williams, who is black. Williams was the only one of the 17 defendants to face the death penalty.

<i>Name</i>	<i>D.Ct Docket #</i>	<i>Race</i>
Durand, Tamira	E.D. LA CR No. 03-CR-135	
Authorization not requested by USA	Name of AG Gonzales	

Race and Gender of Def B F Race and Gender of Victim(s) BF

a crack cocaine conspiracy alleging one murder of a potential federal witness.

<i>Name</i>	<i>D.Ct Docket #</i>	<i>Race</i>
Martinez, Isabel	C.D. CA CR No. ED 03-70	
Authorization not requested by USA	Name of AG Ashcroft	

Race and Gender of Def H F Race and Gender of Victim(s) HM

a domestic killing by Martinez with the help of her pregnant 16 year old daughter, the defendant drugged, bound, and transported her allegedly abusive husband over the California-Mexico border. At Ejido Colima she and her daughter allegedly strangled him and left the body. She has confessed to the FBI. Ms. Martinez has no prior record. All involved are Hispanic.

<i>Name</i>	<i>D.Ct Docket #</i>	<i>Race</i>
Thomas, Stephanie Dawn	D. AZ CR No. 03-CR-764	
Authorization not requested by USA	Name of AG Ashcroft	

Race and Gender of Def NA F Race and Gender of Victim(s) HM

the stabbing and killing of an inmate who was a former government witness in a federal prison in Arizona. The BOP murder victim was alleged to have been an informant in a Hell's Angel drug conspiracy in Arizona in the late 1990s. His Presentence Investigation Report was allegedly distributed to members of the conspiracy in the FCI Phoenix prison population. The defendants and the victim are Native American and Hispanic.

<i>Name</i>	<i>D.Ct Docket #</i>	<i>Race</i>
Nelson, Kathleen	S.D. MS CR No. 03-CR-30	
Authorization not requested by USA	Name of AG Ashcroft	
Race and Gender of Def <input type="checkbox"/> B <input type="checkbox"/> F	Race and Gender of Victim(s) <input type="checkbox"/> BF	

the carjacking murder of a witness in a forgery investigation. Clovis Reed was abducted and murdered. Her hands and head were severed in a vain attempt to prevent identification. All involved are African-American.

<i>Name</i>	<i>D.Ct Docket #</i>	<i>Race</i>
Siegel, Nancy Jean	D. MD CR No. AMD-03-0393	
Authorization not requested by USA	Name of AG Ashcroft	
Race and Gender of Def <input type="checkbox"/> W <input type="checkbox"/> F	Race and Gender of Victim(s) <input type="checkbox"/> WM	

a witness killing prosecution of a woman with a history of obtaining large sums of money by using the names of ex-husbands. The murder victim was an elderly man who was strangled, put in a trunk and transported to keep him from giving information to law enforcement agents. She allegedly made damaging admissions. All involved are white.

<i>Name</i>	<i>D.Ct Docket #</i>	<i>Race</i>
Othon, Maria de los Angeles	S.D. CA CR No. 03 01554	
Authorization not requested by USA	Name of AG Ashcroft	
Race and Gender of Def <input type="checkbox"/> H <input type="checkbox"/> F	Race and Gender of Victim(s) <input type="checkbox"/> HF HM	

smuggling illegal immigrants, resulting in the multiple deaths of seven foreign nationals.

<i>Name</i>	<i>D.Ct Docket #</i>	<i>Race</i>
Rodriguez, Emma Sapata	S.D. TX CR No. 03-CR-221	
Authorization not requested by USA	Name of AG Ashcroft	
Race and Gender of Def <input type="checkbox"/> H <input type="checkbox"/> F	Race and Gender of Victim(s) <input type="checkbox"/> HF	

an alien smuggling operation that led to multiple (nineteen) immigrants' deaths in the back of a truck trailer driven by Williams. Joya was the leader of this alien smuggling ring. She was extradited from Guatemala. She was also accused of coordinating 3 smaller operations, gathering illegal immigrants together in South Texas, arranging them to be fed and housed and then placing them on trucks headed north. All involved are Latino, except Williams, who is black. Williams was the only one of the 17 defendants to face the death penalty.

<i>Name</i>	<i>D.Ct Docket #</i>	<i>Race</i>
Gonzalez, Rosa Sarrata	S.D. TX CR No. 03-CR-221	
Authorization not requested by USA	Name of AG Ashcroft	

Race and Gender of Def H F Race and Gender of Victim(s) HF

an alien smuggling operation that led to multiple (nineteen) immigrants' deaths in the back of a truck trailer driven by Williams. Joya was the leader of this alien smuggling ring. She was extradited from Guatemala. She was also accused of coordinating 3 smaller operations, gathering illegal immigrants together in South Texas, arranging them to be fed and housed and then placing them on trucks headed north. All involved are Latino, except Williams, who is black. Williams was the only one of the 17 defendants to face the death penalty.

<i>Name</i>	<i>D.Ct Docket #</i>	<i>Race</i>
Sanchez, Norma Gonzalez	S.D. TX CR No. 03-CR-221	
Authorization not requested by USA	Name of AG Ashcroft	

Race and Gender of Def H F Race and Gender of Victim(s) HF

an alien smuggling operation that led to multiple (nineteen) immigrants' deaths in the back of a truck trailer driven by Williams. Joya was the leader of this alien smuggling ring. She was extradited from Guatemala. She was also accused of coordinating 3 smaller operations, gathering illegal immigrants together in South Texas, arranging them to be fed and housed and then placing them on trucks headed north. All involved are Latino, except Williams, who is black. Williams was the only one of the 17 defendants to face the death penalty.

<i>Name</i>	<i>D.Ct Docket #</i>	<i>Race</i>
Carrizales, Claudia de Villa	S.D. TX CR No. 03-CR-221	
Authorization not requested by USA	Name of AG Ashcroft	

Race and Gender of Def H F Race and Gender of Victim(s) HF

an alien smuggling operation that led to multiple (nineteen) immigrants' deaths in the back of a truck trailer driven by Williams. Joya was the leader of this alien smuggling ring. She was extradited from Guatemala. She was also accused of coordinating 3 smaller operations, gathering illegal immigrants together in South Texas, arranging them to be fed and housed and then placing them on trucks headed north. All involved are Latino, except Williams, who is black. Williams was the only one of the 17 defendants to face the death penalty.

<i>Name</i>	<i>D.Ct Docket #</i>	<i>Race</i>
Holloway, Fatima	S.D. TX CR No. 03-CR-221	
Authorization not requested by USA	Name of AG Ashcroft	

Race and Gender of Def H F Race and Gender of Victim(s) HF

an alien smuggling operation that led to multiple (nineteen) immigrants' deaths in the back of a truck trailer driven by Williams. Joya was the leader of this alien smuggling ring. She was extradited from Guatemala. She was also accused of coordinating 3 smaller operations, gathering illegal immigrants together in South Texas, arranging them to be fed and housed and then placing them on trucks headed north. All involved are Latino, except Williams, who is black. Williams was the only one of the 17 defendants to face the death penalty.

<i>Name</i>	<i>D.Ct Docket #</i>	<i>Race</i>
Cardenas, Erica	S.D. TX CR No. 03-CR-221	

Authorization not requested by USA Name of AG Ashcroft

Race and Gender of Def H F Race and Gender of Victim(s) HF

an alien smuggling operation that led to multiple (nineteen) immigrants' deaths in the back of a truck trailer driven by Williams. Joya was the leader of this alien smuggling ring. She was extradited from Guatemala. She was also accused of coordinating 3 smaller operations, gathering illegal immigrants together in South Texas, arranging them to be fed and housed and then placing them on trucks headed north. All involved are Latino, except Williams, who is black. Williams was the only one of the 17 defendants to face the death penalty.

<i>Name</i>	<i>D.Ct Docket #</i>	<i>Race</i>
Cruz, Monseratte	S.D. NY CR No. 03 CR 1184 (GEL)	

Authorization not requested by USA Name of AG Ashcroft

Race and Gender of Def H F Race and Gender of Victim(s) HM

a drug related push in, Hobbs Act robbery, gun murder of another drug dealer. Ms. Cruz allegedly was present when Torres killed the victim. Torres also faces a separate capital indictment. All involved are Hispanic.

<i>Name</i>	<i>D.Ct Docket #</i>	<i>Race</i>
Carlos, Jessica	D. AZ No. 04-CR-850	

Guilty plea approved by AG before authorization Name of AG Ashcroft

Race and Gender of Def H F Race and Gender of Victim(s) Hx

transportation of an illegal alien resulting in a single death. All involved are Hispanic.

<i>Name</i>	<i>D.Ct Docket #</i>	<i>Race</i>
Morris, Jamie	S.D. GA CR No. 04-CR-8	

Deferred to state Name of AG Ashcroft

Race and Gender of Def W F Race and Gender of Victim(s) HM

law enforcement officer victim - domestic killing - a white defendant and his girlfriend are accused of kidnapping his former wife and killing an acquaintance of hers in Brunswick. The victim, a friend of the defendant's ex-wife, was a U.S. Bureau of Customs and Border Protection officer. The defendant had a history of domestic violence against his ex-wife. The victim, who is Hispanic, had been working with Damaris Kinlaw, to provide her with support and services for several years and even served as her interpreter in court.

Name Harper, Porsha **D.Ct Docket #** D. MD No. 1:04-CR-00190-AMD **Race**

Authorization not requested by USA **Name of AG** Ashcroft

Race and Gender of Def B F **Race and Gender of Victim(s)** BF BM

multiple (two) drug-related gun murders in Maryland while Moore and Harper were driving North on I 95. Harper gave the police permission to search the car and two bodies, a man and a woman were discovered in the trunk. All involved are African-American.

Name Holloway, Jennifer Annette **D.Ct Docket #** D. SC CR No. 04-M-879 **Race**

Deferred to state **Name of AG** Ashcroft

Race and Gender of Def W F **Race and Gender of Victim(s)** WM

a Tennessee couple charged with the fatal carjacking of a Greenville businessman, a retired Sara Lee executive. Holloway told the FBI that she and Edens went to South Carolina to steal a 1996 GMC Suburban that Cockman was selling privately. They met him at the vehicle, pushed him inside, duct-taped his mouth and returned to Tennessee. When they got home they found Cockman dead, and Edens hid the body in the freezer.

Name Martinez, Leticia **D.Ct Docket #** W.D. TX CR No. 04-CR-113 **Race**

Authorization not requested by USA **Name of AG** Ashcroft

Race and Gender of Def H F **Race and Gender of Victim(s)** HM

transportation of illegal aliens, resulting in multiple death. A bridge wash out caused traffic to be diverted to a smaller highway. There was a terrible accident involving a tractor trailer. Six illegal aliens died.

Name Brown, Nicole **D.Ct Docket #** E.D. NY CR No. 04-966 (ERK) (VVP) **Race**

Authorization not requested by USA **Name of AG** Ashcroft

Race and Gender of Def B F **Race and Gender of Victim(s)** BM

involves a RICO drug conspiracy in Queens, New York and Baltimore, Maryland and multiple (three) murders for hire. The first killing involved a drug related shoot out. Five defendants are allegedly involved in a 924 gun murder. McGriff, the head of the "Supreme Team" a street drug gang organized in the 1980's, allegedly ordered the murder. Brown, a female, was allegedly a lookout. Crosby was allegedly an aider and abettor. A weapon was found on the victim. Wright is charged with a double gun murder in 2001 in Baltimore, supposedly ordered by McGriff. All involved are black. Money laundering by the rap music label Murder, Inc. is also alleged. A Protective Notice of Intent to Seek the Death Penalty was withdrawn shortly after filing.

<i>Name</i>	<i>D.Ct Docket #</i>	<i>Race</i>
Torres-Rosario, Jessica	D. PR CR No. 3:05-CR-00021-PG	
Authorization not requested by USA	Name of AG Gonzales	
Race and Gender of Def <input type="checkbox"/> H <input type="checkbox"/> F	Race and Gender of Victim(s) <input type="checkbox"/> HM	

involves a carjacking murder 18 U.S.C. § 2119. The male victim was beaten to death with an aluminum baseball bat. A male and two females met the victim in a bar. Late at night they were at a beach and the male defendant killed the victim. They stole his car. All involved are Hispanic.

<i>Name</i>	<i>D.Ct Docket #</i>	<i>Race</i>
Montgomery, Lisa	W.D. MO No. 5:05-CR-06002-GAF	
Death Row - Appeal	Name of AG Gonzales	
Race and Gender of Def <input type="checkbox"/> W <input type="checkbox"/> F	Race and Gender of Victim(s) <input type="checkbox"/> WF	

a baby girl was cut of her murdered mother's womb and taken across state lines. She was found alive in the possession of a Kansas woman, who police charged with interstate kidnapping resulting in death. Kevin and Lisa Montgomery have two older children, but she had recently lost a baby. The victim was eight months pregnant and strangled with a rope. Montgomery confessed. All involved are white. A direct appeal is pending.

<i>Name</i>	<i>D.Ct Docket #</i>	<i>Race</i>
Friend, Valeri	S.D. WV CR No. 2:05-00107	
Guilty plea	Name of AG Gonzales	
Race and Gender of Def <input type="checkbox"/> W <input type="checkbox"/> F	Race and Gender of Victim(s) <input type="checkbox"/> WF	

a 2005 gun murder-for-hire of a cooperating witness/informant in a drug (cocaine) prosecution. Lecco asked Burton, who asked Friend to help kill the female victim who was shot and beaten to death and buried in a shallow grave. Attorney General Gonzales required a death penalty prosecution. Lecco and Friend were sentenced to death at a joint trial but a new trial was granted by the trial judge when the government revealed that a juror was under federal investigation for child pornography. Friend entered into a plea agreement approved by Attorney General Holder and testified against Lecco, who was sentenced to life in prison. All involved are white.

<i>Name</i>	<i>D.Ct Docket #</i>	<i>Race</i>
Williams, Delilah	D. HI No. 1:06-CR-00079-DAE	
Authorization not requested by USA	Name of AG Gonzales	
Race and Gender of Def <input type="checkbox"/> A <input type="checkbox"/> F	Race and Gender of Victim(s) <input type="checkbox"/> BF	

the murder of a five year old child, who was in Special Education, on federal land, the Schofield (US Army) Barracks. There were bruises on the child's arms, chest, knees and thighs, as well as a small laceration on her back. The father, Naem Williams, confessed to hitting his daughter on numerous occasions. His wife, Delilah Williams (stepmother), 21, confessed to having knowledge of these beatings. The child's room had no mattress, no blankets and no furniture, as all had been removed by her parents as a form of punishment. Blood spatters could be seen throughout the residence from whipping with a belt. Her husband, Naem, will face the death penalty.

<i>Name</i>	<i>D.Ct Docket #</i>	<i>Race</i>
Suniga, Diana Marisa	W.D. TX CR No. 05-CR-678	
Guilty Plea before DOJ review	Name of AG Gonzales	
Race and Gender of Def <input type="checkbox"/> H <input type="checkbox"/> F	Race and Gender of Victim(s) <input type="checkbox"/> HF	
a death from heat exposure during an alien smuggling operation. All involved are Hispanic.		

<i>Name</i>	<i>D.Ct Docket #</i>	<i>Race</i>
Wheeler, Cecilia Cigarroa	W.D. TX CR No. 05-CR-678	
Guilty plea before DOJ review	Name of AG Gonzales	
Race and Gender of Def <input type="checkbox"/> H <input type="checkbox"/> F	Race and Gender of Victim(s) <input type="checkbox"/> HF	
a death from heat exposure during an alien smuggling operation. All involved are Hispanic.		

<i>Name</i>	<i>D.Ct Docket #</i>	<i>Race</i>
Navarro, Kathy	D. PR No. 3:06-CR-00065-JAG	
Authorization not requested by USA	Name of AG Mukasey	
Race and Gender of Def <input type="checkbox"/> H <input type="checkbox"/> F	Race and Gender of Victim(s) <input type="checkbox"/> HM	
four carjackings with one resulting in the murder of a taxi driver.		

<i>Name</i>	<i>D.Ct Docket #</i>	<i>Race</i>
Moonda, Donna	N.D. OH No. 1:06-CR-00395-DDD	
Life sentence from jury	Name of AG Gonzales	
Race and Gender of Def <input type="checkbox"/> W <input type="checkbox"/> F	Race and Gender of Victim(s) <input type="checkbox"/> IM	
a 2005 "interstate stalking," 18 U.S.C. §2261A, §924 domestic gun murder of a millionaire urologist while he was driving on the Ohio Turnpike. Co-defendant Bradford, a black male, allegedly traveled from Pennsylvania to Ohio to kill Dr. Gulam Moonda. Bradford struck a deal for 17 years in return for testimony that Mrs. Moonda offered him money to kill her husband. He was having an affair with the doctor's wife. The deceased was 69 and of Indian descent. Mrs. Moonda, 47, faced the death penalty for charges of murder for hire.		

<i>Name</i>	<i>D.Ct Docket #</i>	<i>Race</i>
Creeger, Sabrina	D. AZ No. 05-0272-PHX-JAT	
Authorization not requested by USA	Name of AG Gonzales	
Race and Gender of Def <input type="checkbox"/> H <input type="checkbox"/> F	Race and Gender of Victim(s) <input type="checkbox"/> WF	
a drug (meth) related contract gun murder of a white woman suspected of being a government witness by an Hispanic.		

<i>Name</i>	<i>D.Ct Docket #</i>	<i>Race</i>
Torrence, Tanya	E.D. VA No. 2:06-CR-00160-RAJ-JEB	
Authorization not requested by USA	Name of AG Gonzales	
Race and Gender of Def <input type="checkbox"/> B <input type="checkbox"/> F	Race and Gender of Victim(s) <input type="checkbox"/> BF	

the kidnapping and gun murder of defendant's estranged boyfriend's mother. The defendant had resided with the victim after being evicted from her apartment. Shortly after moving in with the victim, the defendant shot the victim twice and took the victim to Philadelphia, where she surrendered. The victim was found dead in a van upon surrender at the police station. All involved are black females

<i>Name</i>	<i>D.Ct Docket #</i>	<i>Race</i>
Ross, Carolyn	W.D. MI CR No. 1:05-CR-00160-RHB	
Authorization not requested by USA	Name of AG Gonzales	
Race and Gender of Def <input type="checkbox"/> B <input type="checkbox"/> F	Race and Gender of Victim(s) <input type="checkbox"/> BF	

a contract gun murder of a 16 year old female child. Ross allegedly hired two hitmen to kill her husband's 16-year-old girlfriend. The government is looking for the person who arranged the hit. Sims allegedly told a cellmate that Childs chickened out and "I had to pop the bitch." Other evidence points to Childs as the shooter. All involved are black.

<i>Name</i>	<i>D.Ct Docket #</i>	<i>Race</i>
Figueroa-Cartagena, Neliza	D. PR No. 3:07-CR-00186 (JAF)	
Authorization not requested by USA	Name of AG Mukasey	
Race and Gender of Def <input type="checkbox"/> H <input type="checkbox"/> F	Race and Gender of Victim(s) <input type="checkbox"/> HM	

the duct-tape asphyxiation robbery, murder/carjacking/kidnapping/home invasion for ransom of an elderly, 71, numbers runner. Felix Alberto and Felix Gabriel are brothers. Figueroa is Gabriel's girlfriend. All involved are Hispanic.

<i>Name</i>	<i>D.Ct Docket #</i>	<i>Race</i>
Armstrong, Marjorie Deal	W.D. PA No. 07-CR-00026-SJM	
Authorization not requested by USA	Name of AG Gonzales	
Race and Gender of Def <input type="checkbox"/> W <input type="checkbox"/> F	Race and Gender of Victim(s) <input type="checkbox"/> WM	

murder of a pizza delivery man who had a bomb strapped to him and was told to rob a bank. The bomb exploded killing the unindicted alleged co-conspirator. Armstrong and a co-defendant were also accused of the murder of Armstrong's boyfriend whose body was found in her freezer. Armstrong previously shot another boyfriend six times. Her ex-husband died of head trauma. All involved are white.

<i>Name</i>	<i>D.Ct Docket #</i>	<i>Race</i>
Needham, Derrilyn	S.D. NY No. 06 CR 911	
Authorization not requested by USA	Name of AG Holder	
Race and Gender of Def <input type="checkbox"/> B <input type="checkbox"/> F	Race and Gender of Victim(s) <input type="checkbox"/> BM	
multiple (two) gun murders during robberies of drug dealers in 2002 and 2003. Davis is charged in both murders, the others in one. All involved are black.		

<i>Name</i>	<i>D.Ct Docket #</i>	<i>Race</i>
Taylor, Johnita	D. CO No. 07-CR-00371-REB	
Authorization not requested by USA	Name of AG Mukasey	
Race and Gender of Def <input type="checkbox"/> NA <input type="checkbox"/> F	Race and Gender of Victim(s) <input type="checkbox"/> NAM	
Indian land beating murder of an Oklahoma Indian by four members of the Southern Ute nation. All involved are Native Americans.		

<i>Name</i>	<i>D.Ct Docket #</i>	<i>Race</i>
Watts, April	D. CO No. 07-CR-00371-REB	
Authorization not requested by USA	Name of AG Mukasey	
Race and Gender of Def <input type="checkbox"/> NA <input type="checkbox"/> F	Race and Gender of Victim(s) <input type="checkbox"/> NAM	
Indian land beating murder of an Oklahoma Indian by four members of the Southern Ute nation. All involved are Native Americans.		

<i>Name</i>	<i>D.Ct Docket #</i>	<i>Race</i>
Williams, Monica	D. CO No. 07-CR-00371-REB	
Authorization not requested by USA	Name of AG Mukasey	
Race and Gender of Def <input type="checkbox"/> NA <input type="checkbox"/> F	Race and Gender of Victim(s) <input type="checkbox"/> NAM	
Indian land beating murder of an Oklahoma Indian by four members of the Southern Ute nation. All involved are Native Americans.		

<i>Name</i>	<i>D.Ct Docket #</i>	<i>Race</i>
Castellanos-Benavides, Sarahi	S.D. TX No. C-07-574	
Authorization not requested by USA	Name of AG Mukasey	
Race and Gender of Def <input type="checkbox"/> H <input type="checkbox"/> F	Race and Gender of Victim(s) <input type="checkbox"/> HF HM	
roll-over of a vehicle with four illegal aliens found by the side of the road - three deceased, including a seven year old. Benavides is married to the driver, was driving another vehicle and arranged the smuggling of foreign nationals. She was sentenced to one year. All involved are Hispanic.		

<i>Name</i>	<i>D.Ct Docket #</i>	<i>Race</i>
Christie, Rebecca	D. NM No. 07-614	
Authorization not requested by USA	Name of AG Holder	
Race and Gender of Def <input type="checkbox"/> W <input type="checkbox"/> F	Race and Gender of Victim(s) <input type="checkbox"/> WF	
child abuse (dehydration and malnutrition) murder by a mother on a military base. 18 U.S.C. §1111. The victim was a 3 year old toddler.		

<i>Name</i>	<i>D.Ct Docket #</i>	<i>Race</i>
Voss, Catherina	E.D. VA CR No. 4:08-CR-16	
Authorization not requested by USA	Name of AG Mukasey	
Race and Gender of Def <input type="checkbox"/> W <input type="checkbox"/> F	Race and Gender of Victim(s) <input type="checkbox"/> WM	
a domestic gun murder for hire in Newport News of a husband. Catherina Voss was married to the victim and allegedly contracted with Runyon who hired Draven to shoot Voss' husband. The alleged motive was to obtain the victim's military benefits. Voss will receive a life sentence in return for her testimony.		

<i>Name</i>	<i>D.Ct Docket #</i>	<i>Race</i>
Phillips, Kristin	W.D. MO No. 08-03025-01-CR-S-ODS	
Authorization not requested by USA	Name of AG Holder	
Race and Gender of Def <input type="checkbox"/> W <input type="checkbox"/> F	Race and Gender of Victim(s) <input type="checkbox"/> WF	
the death of an 11 month old daughter who was allegedly deprived of nourishment. Defendant's husband was deployed in Iraq. Three other children, ages 2 to 13, were placed in protective custody. The house was allegedly littered with trash, spoiled food and dirty laundry and there was a strong odor of urine and feces. The 11 month old was not the first of Ms. Phillips children to die under questionable circumstances. All involved are white.		

<i>Name</i>	<i>D.Ct Docket #</i>	<i>Race</i>
Sharma, Erin	M.D. FL No. 5:08-CR-23-OC-10-GRJ	
Authorization not requested by USA	Name of AG Mukasey	
Race and Gender of Def <input type="checkbox"/> W <input type="checkbox"/> F	Race and Gender of Victim(s) <input type="checkbox"/> WM	
former death row inmate John McCullah is accused of killing another inmate at USP Coleman, allegedly set up by or provoked by the two guards/co-defendants, Sharma and Kennedy.		

Name **D.Ct Docket #** **Race**
Tolliver, Theresa A. | W.D. TX No. SA08CR614XR

Authorization not requested by USA | Name of AG Holder

Race and Gender of Def B F **Race and Gender of Victim(s)** BM

a contract murder for hire of Tolliver's husband, an Air Force Sergeant. Theresa Tolliver allegedly agreed with her boyfriend, Emmanuel Fonzie, to kill her husband. Fonzie hired the triggerman Jeremy Farr and was present at the scene. The motive was a life insurance policy. All involved are African-American.

Name **D.Ct Docket #** **Race**
Whitmore, Torenda | S.D. MS No. 1:08 MJ 550

Pending authorization | Name of AG Holder

Race and Gender of Def B F **Race and Gender of Victim(s)** BM

a drug-related carjacking, kidnapping, gun murder. A second victim survived. The triggerman is allegedly Borden. All involved are black. Whitmore is female and a driver.

Name **D.Ct Docket #** **Race**
Korbe, Christina | W.D. PA No. 2:09-cr-00005-TFM

Authorization not requested by USA | Name of AG Holder

Race and Gender of Def W F **Race and Gender of Victim(s)** WM

law enforcement officer victim - gun murder of an FBI agent during a drug raid

Name **D.Ct Docket #** **Race**
Smallwood, Billi Jo | W.D. KY No. 5:08CR38-R

Authorization not requested by USA | Name of AG Holder

Race and Gender of Def W F **Race and Gender of Victim(s)** WF, WM

multiple arson murder in 2007 of the female defendant's two children, a 9 year old boy and a 2 year old girl at their residence on federal land, a United States military base at Fort Campbell. All involved are white.

Name **D.Ct Docket #** **Race**
Dickens, Elisha Lacy | S.D. OH No. 2:08-CR-163

Authorization not requested by USA | Name of AG Mukasey

Race and Gender of Def W F **Race and Gender of Victim(s)** WM

a drug related interstate travel gun murder. All involved are white.

<i>Name</i>	<i>D.Ct Docket #</i>	<i>Race</i>
Ritchie, Erskaneisha	S.D. FL No. 09-20470-CR-MARTINEZ/BROWN	
Authorization not requested by USA	Name of AG Holder	
Race and Gender of Def <input type="checkbox"/> B <input type="checkbox"/> F	Race and Gender of Victim(s) <input type="checkbox"/> HM	

Hobbs Act robbery/murder of a security guard at a shopping mall. Carter is the alleged shooter, Maxime was allegedly armed also. Ritchie and Thomas are girlfriends/lookouts. Approximately 14 rounds were fired and the victim was shot four times. A portion of the incident was captured on mall security video cameras. There are also eyewitness identifications from mall shoppers/workers. The defendants are black, the victim is Hispanic.

<i>Name</i>	<i>D.Ct Docket #</i>	<i>Race</i>
Thomas, Nikkia	S.D. FL No. 09-20470-CR-MARTINEZ/BROWN	
Authorization not requested by USA	Name of AG Holder	
Race and Gender of Def <input type="checkbox"/> B <input type="checkbox"/> F	Race and Gender of Victim(s) <input type="checkbox"/> HM	

Hobbs Act robbery/murder of a security guard at a shopping mall. Carter is the alleged shooter, Maxime was allegedly armed also. Ritchie and Thomas are girlfriends/lookouts. Approximately 14 rounds were fired and the victim was shot four times. A portion of the incident was captured on mall security video cameras. There are also eyewitness identifications from mall shoppers/workers. The defendants are black, the victim is Hispanic.

<i>Name</i>	<i>D.Ct Docket #</i>	<i>Race</i>
Gonzalez, Janet	C.D. CA No. 2:07-CR-01172-DDP	
Authorization not requested by USA	Name of AG Holder	
Race and Gender of Def <input type="checkbox"/> H <input type="checkbox"/> F	Race and Gender of Victim(s) <input type="checkbox"/> HM	

a RICO gang case involving multiple (two) murders. One was the accidental 2007 murder of a 3-month-old baby during the attempted murder of a street vendor who refused to pay a \$50.00 street tax. Later, the triggerman was kidnapped, taken to Mexico and strangled, but survived. Also charged is a 2001 murder of an innocent victim who was mistaken for a gang rival of the Columbia Lil Cycos.

<i>Name</i>	<i>D.Ct Docket #</i>	<i>Race</i>
Luna-Avila, Maria Isadra	W.D. TX No. EP 09 CR 1565	
Authorization not requested by USA	Name of AG Holder	
Race and Gender of Def <input type="checkbox"/> H <input type="checkbox"/> F	Race and Gender of Victim(s) <input type="checkbox"/> HM	

a 2007 alien smuggling resulting in one death. All involved are Hispanic.

Name **D.Ct Docket #** **Race**
Trujillo, Leesa | W.D. TX No. EP 09-CR-2527

Authorization not requested by USA | Name of AG Holder

Race and Gender of Def H F **Race and Gender of Victim(s)** HM

parents charged with domestic child abuse (giving an infant prescription pain killers) murder on federal land. The mother and child are Hispanic. The father is Native American.

Name **D.Ct Docket #** **Race**
Whitt, Maria K. | E.D. KY No. 09-CR-150-KSF

Authorization not requested by USA | Name of AG Holder

Race and Gender of Def W F **Race and Gender of Victim(s)** xM

the 2006 murder of a 90-year-old World War II veteran, by a lethal dose of morphine, while at the Lexington, Kentucky Veteran Affairs Medical Center. Whitt, a nurse, was working at the Medical Center at the time of the victim's death and administered the drug. The government is investigating two deaths under similar circumstances.

Name **D.Ct Docket #** **Race**
Reaves, Tiffany | D. DC No. 1:09CR00153-RMU

Authorization not requested by USA | Name of AG Holder

Race and Gender of Def B F **Race and Gender of Victim(s)** BM

a drug-related gun murder of a DEA informant. Reaves seduced Hayes who was a witness against Gordon after buying crack from him three times. All involved are black.

Name **D.Ct Docket #** **Race**
Mock, Katherine A. | E.D. MO No. 4:09CR00679HEA

Authorization not requested by USA | Name of AG Holder

Race and Gender of Def W F **Race and Gender of Victim(s)** WM

March 2006 gun murder-for-hire of Young's husband for insurance proceeds. All involved are white.

Name **D.Ct Docket #** **Race**
Young, Elain Kay | E.D. MO No. 4:09CR00679HEA

Authorization not requested by USA | Name of AG Holder

Race and Gender of Def W F **Race and Gender of Victim(s)** WM

March 2006 gun murder-for-hire of Young's husband for insurance proceeds. All involved are white.

Name Taylor-Keller, Lorie Ann **D.Ct Docket #** W.D. VA No. 5:10 CR 00015 **Race**

Pending authorization **Name of AG Holder**

Race and Gender of Def W F **Race and Gender of Victim(s)** WF, WM

interstate domestic multiple gun arson triple murders of three; an ex-husband of Lorie Keller, his new wife and her innocent five year old child. They were shot and the house burned. All involved are white.

Name Arenivar, Jennifer **D.Ct Docket #** E.D. NC No. 5:10-CR-126-IBO (1) **Race**

Authorization not requested by USA **Name of AG Holder**

Race and Gender of Def W F **Race and Gender of Victim(s)** WM

child abuse §1111 murder by a mother of an infant who was beaten to death on federal land at Fort Bragg, North Carolina. All involved are white.

Name Albino-Figueroa, Gloria **D.Ct Docket #** D. PR No. 10-537 (M) **Race**

Authorization not requested by USA **Name of AG Holder**

Race and Gender of Def H F **Race and Gender of Victim(s)** HF

M#1 asked Albino-Figueroa and her son to set up a meeting with a witness who M#1 then killed. All involved are Hispanic.

Name Welch, Casslyn Mae **D.Ct Docket #** D. NM No. 1:10-CR-02734 **Race**

Probable authorization **Name of AG Holder**

Race and Gender of Def W F **Race and Gender of Victim(s)** WF, WM

multiple (two) carjacking murder by escaped convicts.

Name Flanagan, April Nicole **D.Ct Docket #** E.D. TX No. 9:09-CR-21 **Race**

Pending authorization **Name of AG Holder**

Race and Gender of Def W F **Race and Gender of Victim(s)** WM

a free world double RICO gun murder by multiple members of the Aryan Brotherhood of Texas gang. There are five potential defendants. Frazier and Stalsby are charged in both murders, the others in one. All involved are white.

<i>Name</i>	<i>D.Ct Docket #</i>	<i>Race</i>
Wood, Carrie Christine	E.D. TX No. 9:09-CR-21	
Pending authorization	Name of AG Holder	
Race and Gender of Def <input type="checkbox"/> W <input type="checkbox"/> F	Race and Gender of Victim(s) <input type="checkbox"/> WM	

a free world double RICO gun murder by multiple members of the Aryan Brotherhood of Texas gang. There are five potential defendants. Frazier and Stalsby are charged in both murders, the others in one. All involved are white.

<i>Name</i>	<i>D.Ct Docket #</i>	<i>Race</i>
Lajoie, Kelley	D. RI No. CR 10 184-015	
Pending authorization	Name of AG Holder	
Race and Gender of Def <input type="checkbox"/> UK <input type="checkbox"/> F	Race and Gender of Victim(s) <input type="checkbox"/> WM	