

**DECLARATION OF G.BEN COHEN REGARDING TIME PERIOD BETWEEN  
INDICTMENT AND TRIAL IN FEDERAL DEATH PENALTY CASES  
BETWEEN 2010-2020**

1. I currently serve as a Resource Counsel with the Federal Death Penalty Resource Counsel Project, which assists court-appointed and defender attorneys responsible for the defense of capital cases in the federal courts. Established in 1992 by the Administrative Office of the United States Courts, Defender Services Division, now the Defender Services Office, the Project serves as a national clearinghouse for information concerning federal capital cases. 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. The responsibilities of 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.<sup>1</sup>

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<sup>1</sup> The 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 25. [http://www.uscourts.gov/sites/default/files/original\\_spencer\\_report.pdf](http://www.uscourts.gov/sites/default/files/original_spencer_report.pdf). The Subcommittee report “urges the judiciary and counsel to maximize the benefits of the

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3. In the course of regularly conducted activities, the Project maintains a comprehensive database of federal death penalty prosecutions and information about these cases. The database is maintained by reviewing dockets, obtaining indictments, pleadings of substance, notices of intent to seek or not seek the death penalty, reviewing public records, and by regularly conducted email, telephonic or in-person interviews between Resource Counsel and defense counsel, and consultation with clerk's offices and judge's chambers. This information is regularly updated and is checked for accuracy.

4. The Project's information regarding federal capital prosecutions has been relied upon by the Administrative Office of the United States Courts and the Federal Judicial Center. Declarations based upon the data collected by the Project has been accepted, cited to and relied upon in numerous opinions and

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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 36. 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." See <https://www.uscourts.gov/sites/default/files/fdpc2010.pdf>. Report to the Committee on Defender Services Judicial Conference of the United States – Update on the Cost and Quality of Defense Representation in Federal Death Penalty Cases (September 2010) at 76.

judgments.<sup>2</sup> The data collected by the Project has also been relied upon as basis for analysis in law review journals, training manuals, and other published material.<sup>3</sup> Resource Counsel collect comprehensive, accurate data concerning various practices that have emerged since the federal courts resumed trying capital cases in 1990. This collection of data includes maintaining information concerning district-level practices.

5. The data below reflects the information concerning all authorized cases (i.e., cases in which the government filed a notice of intent to seek the

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<sup>2</sup> See e.g. *United States v. Fell*, 224 F. Supp. 3d 327, 340 (D. Vt. 2016) (“The most striking evidence of arbitrary application of the death sentence provided by Mr. McNally was his review of all cases like the present case in which there were multiple victims”); *United States v. George*, No. 17-201, 2018 U.S. Dist. LEXIS 216649 (E.D. La. Dec. 27, 2018) (citing Federal Death Penalty Resource Counsel declaration for factual finding that “15 months is below the average time between notice and trial in federal capital cases weighs in favor of a finding of reasonableness.”); *United States v. Williams*, No. H-03-221-11, 2004 U.S. Dist. LEXIS 33412, at \*16-17 (S.D. Tex. Dec. 29, 2004) (relying upon “facts in the Declaration” reflecting statistics concerning to find that the defendant “met his burden under Armstrong that similarly situated defendants of a different race were not being charged with the death penalty and that the Defendant had presented “some evidence” of discriminatory intent. *United States v. Bass*, 536 U.S. 862, 863, 122 S. Ct. 2389, 153 L. Ed. 2d 769 (2002).”); *United States v. Ayala Lopez*, 319 F. Supp. 2d 236, 240 (D.P.R. 2004) (citing declaration of Kevin McNally as basis for holding “we find compelling what other federal district courts have done when faced with the “ever-present risk of prejudice” of joint trials.”).

<sup>3</sup> See e.g. Rory Little, *The Federal Death Penalty: History And Some Thoughts About The Department Of Justice's Role*, 26 Fordham Urb. L.J. 347 (1999); Lieutenant Commander Stephen C. Reyes, *Left Out in the Cold: The Case for a Learned Counsel Requirement in the Military*, 2010 Army Law. 5 (2010); Kevin McNally, *Race and the Federal Death Penalty: A Nonexistent Problem Gets Worse*, 53 DePaul L. Rev. 1615 (2004); G. Ben Cohen, Rob Smith, *The Geography of the Federal Death Penalty*, 85 Wash. L. Rev. 425 (2010); Rory Little, *What Federal Prosecutors Really Think: The Puzzle of Statistical Race Disparity Versus Specific Guilt and the Specter of Timothy*

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death penalty) that proceeded to trial, while still authorized, from January 1, 2010 to the present. This is the most recent period, and the one for which the Project has the most complete and detailed information. Detailed data on each such cases, on which this declaration is based, is contained in Appendix A.

6. Between 2010 and the current date, there have been 34 defendants who have proceeded to, and completed a trial while authorized. Of those 34 defendants, 13 defendants received a death sentence, 20 defendants received a life sentence, and one defendant was acquitted on the capital charge. This declaration charts the time for the 33 cases that proceeded to penalty verdict.

7. In the 33 cases that proceeded to a penalty phase verdict, the average time from indictment to verdict was 1,382 days. Cases that resulted in a death verdict proceeded to penalty verdict on average 718 days faster than cases that resulted in a life sentence because the jury declined to return a death verdict.

**Average Time from Indictment to Penalty Verdict  
2010-2020**

<b>Outcome</b>	<b>Number of Cases</b>	<b>Average of Days Indictment to Penalty Verdict</b>
Death	13	946
Life	20	1,664
<b>Total</b>	<b>33</b>	<b>1,382</b>

8. Differences in the length of time between indictment and penalty verdict appear to correlate with race of the victim. Cases involving one or more white victims proceed 270 days faster than cases without any white victims, *i.e.*, cases where the only victim or victims are non-white.

**Average Time from Indictment to Penalty Verdict  
By Race of Victim 2010-2020**

<b>RACE OF VICTIMS</b>	<b>NUMBER</b>	<b>AVERAGE OF DAYS INDICTMENT TO PENALTY VERDICT</b>
<b>NON-WHITE VICTIM(S)</b>	18	1454
<b>ONE OR MORE WHITE VICTIMS</b>	15	1296

9. These differences are magnified when the defendant is Black and the victim is white.

10. The four cases with white victims **and** Black defendants proceeded to trial more than a year faster than any other category: on average 844 days from indictment to penalty verdict compared to the average of 1,454 for cases

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involving non-white victims.

11. The above information regarding federal capital cases was collected in the regular course of the business of the Federal Death Penalty Resource Counsel Project, as part of tracking ongoing federal capital cases.

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 19th day of January, 2021.

**/s/ G. BEN COHEN**

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## APPENDIX A

#	Defendant	District	Circuit	Outcome	Race of Def	Race of Vic	NOI	Indictment	Date Voir Dire Start	Date Guilt Phase Start	Date - Guilt Verdict	Date Penalty Phase Start	Date Penalty Verdict	Days Indictment to Penalty Verdict	Days Indictment to Start of Voir Dire	Days Indictment to Notice of Intent	Days Notice of Intent to Start of Trial	Days Guilt Verdict to Penalty Phase Start
1	Phillips, Maurice	PA E.D. PA	3rd	Life	B M	B	5/6/2009	9/12/2007	1/4/2010	2/1/2010	4/14/2010	4/19/2010	4/28/2010	959	845	602	243	5
2	Argueta, Antonio	MD D. MD	4th	Life	H M	H	5/8/2007	4/3/2006	1/12/2010	2/2/2010	3/4/2010	3/9/2010	3/24/2010	1451	1380	400	980	5
3	Duong, Anh The	CA N.D. CA	9th	Life	A M	H	5/13/2004	9/26/2001	2/23/2010	6/7/2010	9/22/2010	10/12/2010	12/15/2010	3367	3072	960	2112	20
4	Umana, Alejandro E.	NC W.D. NC	4th	Death	H M	H	9/23/2008	6/23/2008	3/22/2010	4/12/2010	4/19/2010	4/20/2010	4/28/2010	674	637	92	545	1
5	Snarr, Mark	TX E.D. TX	5th	Death	W M	B	2/13/2009	1/21/2009	5/3/2010	5/3/2010	5/7/2010	5/10/2010	5/24/2010	488	467	23	444	3
6	Garcia, Edgar B.	TX E.D. TX	5th	Death	H M	B	2/13/2009	1/21/2009	5/3/2010	5/3/2010	5/7/2010	5/10/2010	5/24/2010	488	467	23	444	3
7	O'Reilly, Timothy	MI E.D. MI	6th	Life	W M	B	11/1/2006	3/3/2005	6/8/2010	7/21/2010	8/3/2010	8/9/2010	8/25/2010	2001	1923	608	1315	6
8	Basciano, Vincent	NY E.D. NY	2nd	Life	W M	W	4/2/2007	1/26/2005	3/2/2011	4/12/2011	5/16/2011	5/23/2011	6/1/2011	2317	2226	796	1430	7
9	Lujan, Larry	NM D. NM	10th	Life	H M	W	7/12/2007	4/27/2005	6/20/2011	7/18/2011	8/9/2011	8/29/2011	10/5/2011	2352	2245	806	1439	20
10	Richardson, Brian	GA N.D. GA	11th	Life	W M	W	12/2/2008	4/15/2008	2/27/2012	3/14/2012	3/22/2012	3/27/2012	4/26/2012	1472	1413	231	1182	5
11	Burgos-Montes, Edison	PR D. PR	1st	Life	H M	W	6/27/2007	1/12/2006	4/16/2012	6/25/2012	8/30/2012	9/10/2012	9/27/2012	2450	2286	531	1755	11
12	Merritt, Robert	PA E.D. PA	3rd	Acquittal	B M	B	3/14/2011	4/8/2009	11/5/2012	2/4/2013	5/13/2013				1307	705	602	
13	Savage, Kaboni	PA E.D. PA	3rd	Death	B M	B	3/14/2011	4/8/2009	11/5/2012	2/4/2013	5/13/2013	5/20/2013	5/31/2013	1514	1307	705	602	7
14	Northington, Steven	PA E.D. PA	3rd	Life	B M	B	3/14/2011	4/8/2009	11/5/2012	2/4/2013	5/13/2013	6/5/2013	6/13/2013	1527	1307	705	602	23
15	Casey, Lashaun	PR D. PR	1st	Life	B M	H	7/17/2007	8/17/2005	2/4/2013	3/1/2013	3/19/2013	4/8/2013	4/11/2013	2794	2728	699	2029	20
16	Jimenez-Bencevi, Xavier	PR D. PR	1st	Life	H M	H	12/7/2012	3/23/2012	4/15/2013	4/24/2013	4/30/2013	5/1/2013	5/7/2013	410	388	259	129	1
17	Salad, Ahmed Muse	VA E.D. VA	4th	Life	B M	W	4/17/2012	3/8/2011	6/4/2013	6/7/2013	7/8/2013	7/16/2013	8/2/2013	878	819	406	413	8
18	Beyle, Abukar Osman	VA E.D. VA	4th	Life	B M	W	4/17/2012	3/8/2011	6/4/2013	6/7/2013	7/8/2013	7/16/2013	8/2/2013	878	819	406	413	8
19	Abrar, Shani Nurani	VA E.D. VA	4th	Life	B M	W	4/17/2012	3/8/2011	6/4/2013	6/7/2013	7/8/2013	7/16/2013	8/2/2013	878	819	406	413	8
20	McCluskey, John C.	NM D. NM	10th	Life	W M	W	1/26/2012	9/29/2010	7/22/2013	8/19/2013	10/7/2013	10/21/2013	12/11/2013	1169	1027	484	543	14
21	Williams, Naeem	HI D. HI	9th	Life	B M	B	9/8/2006	2/15/2006	1/28/2014	3/11/2014	4/24/2014	4/29/2014	6/27/2014	3054	2904	205	2699	5
22	Torrez, Jorge Avila	VA E.D. VA	4th	Death	H M	W	2/9/2012	5/26/2011	3/11/2014	3/31/2014	4/8/2014	4/21/2014	4/24/2014	1064	1020	259	761	13
23	Coonce, Wesley Paul	MO W.D. MO	8th	Death	W M	H	7/22/2011	4/7/2010	4/28/2014	5/1/2014	5/7/2014	5/8/2014	6/2/2014	1517	1482	471	1011	1
24	Hall, Charles Michael	MO W.D. MO	8th	Death	W M	H	7/22/2011	4/7/2010	4/28/2014	5/1/2014	5/7/2014	5/8/2014	6/2/2014	1517	1482	471	1011	1
25	Sanders, Thomas S.	LA W.D. LA	5th	Death	W M	W	8/1/2012	11/18/2010	8/18/2014	9/3/2014	9/8/2014	9/16/2014	9/26/2014	1408	1369	622	747	8
26	Tsarnaev, Dzhokhar	MA D. MA	1st	Death	W M	W	1/30/2014	6/27/2013	1/5/2015	3/4/2015	4/8/2015	4/21/2015	5/15/2015	687	557	217	340	13

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<b>27</b>	Briseno, Juan	IN N.D. IN	7th	Life	H M	H	3/6/2013	6/2/2011	1/12/2015	2/3/2015	2/27/2015	3/3/2015	3/6/2015	1373	1320	643	677	4	
<b>28</b>	Roof, Dylann Storm	SC D. SC	4th	Death	W M	B	5/24/2016	7/22/2015	11/28/2016	12/7/2016	12/15/2016	1/4/2017	1/10/2017	538	495	307	188	20	
<b>29</b>	Con-ui, Jessie	PA M.D. PA	3rd	Life	PI M	W	10/2/2014	6/25/2013	4/24/2017	6/5/2017	6/7/2017	6/19/2017	7/10/2017	1476	1399	464	935	12	
<b>30</b>	Jones, Ulysses	MO W.D. MO	8th	Life	B M	W	10/4/2012	10/3/2012	9/25/2017	9/28/2017	10/4/2017	10/10/2017	10/16/2017	1839	1818	1	1817	6	
<b>31</b>	Cramer, Christopher	TX E.D. TX	5th	Death	W M	W	3/4/2016	3/3/2016	4/2/2018	4/30/2018	5/9/2018	5/10/2018	6/13/2018	832	760	1	759	1	
<b>32</b>	Fackrell, Ricky Allen	TX E.D. TX	5th	Death	W M	W	3/4/2016	3/3/2016	4/2/2018	4/30/2018	5/9/2018	5/10/2018	6/13/2018	832	760	1	759	1	
<b>33</b>	Christensen, Brendt A.	IL C.D. IL	7th	Life	W M	A	1/19/2018	10/3/2017	6/3/2019	6/12/2019	6/24/2019	7/8/2019	7/18/2019	653	608	108	500	14	
<b>34</b>	Council, Brandon Michael	SC D. SC	4th	Death	B M	W	3/21/2018	9/20/2017	9/9/2019	9/17/2019	9/24/2019	9/24/2019	10/3/2019	743	719	182	537	0	
	<b>AVERAGE</b>													1382	1299	406	893	8.3	