



U.S. Department of Justice

Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

December 17, 2007

The Honorable Russell D. Feingold
Chairman
Subcommittee on the Constitution
Committee on the Judiciary
United States Senate
Washington, DC 20510

Dear Mr. Chairman:

Please find enclosed a response to questions arising from the appearance of Deputy Assistant Attorney General Barry Sabin before the Committee on June 27, 2007, at a hearing entitled "Oversight of the Federal Death Penalty".

We hope that this information is of assistance to the Committee. Please do not hesitate to call upon us if we may be of additional assistance. The Office of Management and Budget has advised us that from the perspective of the Administration's program, there is no objection to submission of this letter.

Sincerely,

Brian A. Benczkowski
Principal Deputy Assistant Attorney General

Cc: The Honorable Sam Brownback
Ranking Minority Member

“Oversight of the Federal Death Penalty”

June 27, 2007

**Questions for the Hearing Record
for
Barry Sabin
Deputy Assistant Attorney General
Criminal Division
United States Department of Justice**

QUESTION FROM SENATOR FEINGOLD:

- 1. In 2000, then-Attorney General Janet Reno voluntarily released a detailed report on the implementation of the federal death penalty from 1988 to 2000. This public report was nearly 400 pages long, and included detailed data about the handling of federal death-eligible cases, disaggregated down to the district level. During the hearing on June 27, 2007, you testified that the new Department death penalty protocols that went into effect on July 1, 2007—and specifically the new confidentiality rules contained in those protocols—would not have precluded former Attorney General Reno from issuing her 2000 report. I asked that the Department prepare a report, analogous to that provided by former Attorney General Reno, and you stated that the Department would respond in writing.**
 - a. Will the Department compile and publicly release such a report, presenting the information in the same format utilized by the Reno report?**
 - b. When will the Department release the report?**
 - c. What steps will the Department take to ensure that such a report is released prior to the close of this Administration’s tenure?**

RESPONSE:

The Department has not yet made a decision on this request, which is still under review and will require that the Department’s new leadership be briefed and advised. As with the question responses set forth below, such a report would require a large dedication of resources over an extended period, including substantial time commitments by senior Department personnel involved in compiling and reviewing responsive information.

- 2. The final Department death penalty protocols that went into effect on July 1, 2007, and were published on the Department’s website include a prohibition on threatening to seek the death penalty solely for negotiating purposes. That**

prohibition, which had been in the protocols in some form since they were first written in 1995, was not in the version of the revised protocols that the Department provided to the subcommittee on June 25, 2007.

- a. I was pleased to see that change had been made. Why was that prohibition reinserted in the final protocols?**

RESPONSE:

The Department has always and consistently adhered to the principle that a threat of a death penalty will not be used in negotiating a plea agreement. In our view, the prohibition against using a threat of a capital prosecution in negotiation is contained in other provisions of the United States Attorneys' Manual. In deleting the express language from the draft revised death penalty protocol, it was not our intent to alter existing practice. Nevertheless, we ultimately decided to include the express language in order to make our ongoing commitment to this principle abundantly clear.

- b. Were any other changes to the protocols made between the June 25, 2007, version provided to the subcommittee, and the final version published on the Department's website? If so, please identify the changes and explain why they were made.**

No other changes were made to the protocol between June 25 and July 1, 2007.

- 3. You stated in your testimony that the Department "aims to apply the most faithful reading of Federal law to cases" in its implementation of the federal death penalty. You also stated that if statutory requirements are not met, the Attorney General will not authorize a capital prosecution. However, the statute does not require that the death penalty be sought in any case or specify any process that must be used to decide whether to seek the death penalty; rather, it leaves a great deal of discretion to the Attorney General to decide when to seek the death penalty and for what reasons.**

- a. Does the Department agree with this characterization of the statute?**

Yes. The statutes merely establish who is eligible for the death penalty, not for whom the death penalty should be sought.

- b. Does the Review Committee, the Deputy Attorney General, or the Attorney General rely on a uniform set of factors for assessing whether to seek the death penalty in each case that is eligible under the statute? If so, what are they?**
- c. If a uniform set of factors is not relied on for assessing whether to seek the death penalty in each case that is eligible under the statute, what factors do**

the review Committee, the Deputy Attorney General, or the Attorney General consider?

Initially, the capital procedure statutes provide the parameters of the Department's review. The "circumstances of the offense [must be] such that a sentence of death is justified." 18 U.S.C. § 3593 (a). In determining whether a sentence of death is justified, the Review Committee, the Deputy Attorney General and the Attorney General make the same assessment that would be required of a jury: "whether all the aggravating factor or factors found to exist sufficiently outweigh all the mitigating factor or factors found to exist to justify a sentence of death, or in the absence of a mitigating factor, whether the aggravating factor or factors alone are sufficient to justify a sentence of death." 18 U.S.C. § 3593 (e). In making this assessment, reviewers must determine which, if any, of the statutory aggravating and mitigating factors are applicable to the particular offender and offense and whether there are any applicable non-statutory aggravating or mitigating factors.

Consistent with the parameters established by the Constitution for a capital jury's consideration, we consider the circumstances of the crime and the character and background, including criminal history, of the defendant. *See Penry v. Lynaugh*, 492 U.S. 302, 318 (1989)("[I]t was clear from *Lockett* [*v. Ohio*, 438 U.S. 586 (1978)] and *Eddings* [*v. Oklahoma*, 455 U.S. 104 (1982)], that a State could not, consistent with the Eighth and Fourteenth Amendments, prevent the sentencer from considering and giving effect to evidence relevant to the defendant's background or character or the circumstances of the offense that mitigate against imposing the death penalty."); *see also California v. Brown*, 479 U.S. 538, 544 (1987)(O'Connor, J., concurring)("In my view, evidence about the defendant's background and character is relevant because of the belief, long held by this society, that defendants who commit criminal acts that are attributable to a disadvantaged background, or to emotional and mental problems, may be less culpable than defendants who have no such excuse. This emphasis on culpability in sentencing decisions has long been reflected in Anglo-American jurisprudence."). There are obviously a wide range of factors relevant to a defendant's character and background and circumstances of the offense that could inform an assessment of a defendant's culpability and whether a the death penalty should be sought. Not every consideration is relevant in each case.

The factors considered by the Department include, but are not limited to, as relevant: (1) the facts and circumstances of the offense, including for example whether it involved multiple victims or witness elimination; (2) the quality and quantity of the evidence of guilt; (3) the defendant's criminal history, including whether it includes other acts of violence, particularly other homicides; (4) the defendant's likelihood of future dangerous conduct or capacity for rehabilitation, as demonstrated, for example, by his conduct in prison; and (5) factors that extenuate the gravity of the offense or the defendant's culpability, for example, provocation or mental disease or defect. *See, e.g.*, 18 U.S.C. § 3592(a), (c); U.S.A.M. 9-10.080.

The Department's review is informed by the extensive information and documentation expressly required by the protocol to be included in a district's capital case submission. The U.S. Attorney's memorandum includes the following information: (1) whether the case involves

specified “unusual circumstances” requiring special treatment, (2) any deadline or other consideration affecting the timing of the review process, (3) a narrative delineation of the facts and separate delineation of the supporting evidence, (4) a discussion of relevant prosecutorial considerations, (5) a death penalty analysis, including applicable aggravating and mitigating factors, (6) the background and criminal record of the capital defendant(s), (7) the background and criminal record of the victim(s), (8) victim impact evidence and the views of the victim’s family on seeking the death penalty, (9) a discussion of the federal interest in prosecuting the case, (10) a discussion on whether the defendant(s) are citizens of foreign countries, and if so, whether the requirements of the Vienna Convention on Consular Relations have been satisfied, and (11) the recommendation of the United States Attorney on whether the death penalty should be sought. In addition, the submitting district must provide copies of all existing and proposed superseding indictments, a draft notice of intention to seek the death penalty, the materials provided by defense counsel, and relevant court decisions in the case.

- 4. The form of the Department’s response to my April 19 oversight questions numbers 12 and 17 made it difficult to evaluate any potential disparities with regard to the race of the victims in death-eligible cases because the responses do not indicate in how many cases there were multiple victims of different races. Please provide answers to question numbers 12 and 17 of my April 19 letter, broken down to show how many defendants were prosecuted for crimes that included: (1) exclusively white homicide victim(s); (2) exclusively black homicide victim(s); (3) exclusively Hispanic homicide victim(s); (4) exclusively “other” homicide victim(s); (5) one or more white homicide victims in addition to one or more homicide victims of other races; (6) no white homicide victims and multiple homicide victims of more than one race. (Please note that “race” in this context refers to race or ethnicity.)**

Appendix A includes the data sought by this request. The April 19 questions requested numerical breakdowns of both defendants and victims, which were provided in our prior response. The present question, in contrast, requests numerical counts of defendants, broken down by race/ethnicity and categories of victims. The data contained in Appendix A and the responses to other questions herein do not reflect any changes occurring after October 9, 2007.

The Department evaluates potential capital cases without regard to the race of the defendant or the victim, and with the goal of applying the death penalty in a fair and consistent manner nationwide. Reviewers do not know the race of the defendant or victim, unless it is disclosed in the defense presentation or is intertwined with the facts of the case (*e.g.*, a racially-motivated killing).

- 5. In September 2000 and June 2001, the Justice Department released data regarding the implementation of the federal death penalty through 2000. The 2000 report contained information about 682 defendants whose cases were reviewed under the Department’s death penalty decision-making process from 1995 to 2000. However, according to the 2001 report, this number excluded a number of cases in which the facts would have supported a capital charge but**

that were not charged as capital crimes, and therefore, under pre-2001 protocols, did not go through the Main Justice review process. If these cases are included, the total number of death-eligible defendants from 1995 to 2000 was 973. Does the Department agree that this number – 973 defendants – is most comparable to the total number of death-eligible defendants considered by the Justice Department from 2001 to 2006, which you have stated is approximately 1,200 defendants?

The 973 figure, which includes nearly 400 defendants whose cases were not reviewed by the Attorney General during the prior period (1/27/1995 to 7/20/2000), does not constitute the comparable pool of offenders to the more than 1200 defendants actually reviewed by the Attorney General for the 2001-to-2006 period. For the prior period, the September 2000 survey reflects that the Attorney General actually reviewed and decided only 588 defendants' cases (not 682 as suggested in the above question). We do not know what the death penalty decisions would have been had the nearly 400 additional defendants been reviewed by the Attorney General. It cannot be assumed, had the Department reviewed and the Attorney General made a decision for all of them, that the decision in each instance would have been not to seek the death penalty. The Department sought the death penalty in numerous cases in which U.S. Attorneys requested authorization not to seek the death penalty between 1995 and 2000.

Further, even accepting the 973 defendants as an appropriate basis of comparison, the rate of decisions to seek the death penalty compared to the total number of defendants during the prior period was greater than the corresponding rate for the 2001-to-2006 period. The 148 defendants for whom the death penalty was sought during the prior period and not later withdrawn by the Attorney General represent 15% of the 973 defendants and 25% of the 588 defendants in whose cases a decision was actually reached during that period. In contrast, for the recent period (1/1/2001 to 12/31/2006), the 158 defendants for whom the death penalty was sought and not later withdrawn represent 13% of the more than 1200 defendants whose cases were reviewed and decided by the Attorney General.

- 6. According to the Department's response to my April 19 oversight questions, U.S. Attorneys recommended seeking the death penalty from 2001 to 2006 for a total of 156 defendants (see chart on page 4 of those responses). Those responses also stated that the Attorney General approved a recommendation to seek the death penalty for 142 defendants and overruled a recommendation to seek for 17 defendants (see charts on pages 6 and 7).**
 - a. Why do the numbers of approvals plus overrules (142 + 17) not equal the total number of cases (156) in which the U.S. Attorneys recommended seeking the death penalty?**
 - b. If the reason is that in some instances, certain defendants are counted more than once because there was agreement or disagreement with respect to different victims or counts, please indicate for how many defendants this occurred, in which racial categories, and in which years.**

c. Is it accurate to conclude that for any defendant counted twice in the responses referenced above, the Attorney General approved seeking the death penalty against that defendant for at least one count or victim?

The response to April 19 question 8 reflected that there were 142 approvals and 17 over-rulings by the Attorney General of U.S. Attorney requests to seek the death penalty. These 159 decisions exceeded the 156 total defendants submitted because the Attorney General's decision with regard to three particular defendants approved in part and denied in part the U.S. Attorney's request to seek the death penalty for the killings of multiple victims. Thus, for each of the three defendants, the decision was recorded in the Department's prior response as both agreement and disagreement with the U.S. Attorney's request to seek the death penalty. It is therefore accurate to say that, for each of the three defendants, the Attorney General approved seeking the death penalty against each defendant for at least one count or at least one victim.

The explanatory notes to the Department's response to the April 19 oversight questions specifically cautioned that a small number of defendants were counted more than once, in the separate tables reflecting Attorney General *agreement* versus *disagreement* with the U.S. Attorney's recommendation. The prior response explained:

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

The race/ethnicity breakdowns for the three defendants are as follows. In 2004, for one black defendant who killed "exclusively black victim(s)" (using the nomenclature employed in Appendix A, *infra*), the Attorney General approved the U.S. Attorney's request to seek the death penalty for the murder of one of the victims but denied the request to seek the death penalty for the other victims. In 2005, for two white defendants who killed exclusively black victims, the Attorney General approved the U.S. Attorney's request to seek the death penalty for the murders of two of the victims but denied the request to seek the death penalty for the other victim.

The 159-defendant and 156-defendant figures also include three other particular defendants, all white, against whom two U.S. Attorneys' offices brought separate but related prosecutions, and submitted separate requests to seek the death penalty in different years (2001 and 2006). In light of the separate submissions, the three defendants are counted in the data for 2001 and also for 2006. The explanatory notes to the Department's prior response cautioned that a "particular defendant is not counted more than once *in a single year in a table*, despite the fact that permission to seek the death penalty against that defendant may have been requested in more

than one case or with respect to more than one victim.” Response to April 19 questions at 8 (emphasis added).

The 2001 request to seek the death penalty against the three defendants involved “exclusively black victim(s).” The 2006 request to seek the death penalty involved, for two of the defendants, the same “exclusively black victim(s)” identified in the 2001 submission. For the remaining defendant submitted in 2006, the victims included “persons of more than one race, including at least one white victim,” among them the black victim or victims identified in the 2001 submission. The Attorney General approved the 2001 and 2006 requests to seek the death penalty with regard to all three defendants.

Although the six defendants discussed above have been accounted in a way that the Department believes most accurately presents the actual decisions reached, we also note that, from a purely statistical point of view, the manner of inclusion of the six defendants does not appear to result in a statistically significant impact. The overall pool contains more than 150 defendants.

- 7. According to the Department’s response to my April 19 oversight questions, U.S. Attorneys recommended against seeking the death penalty from 2001 to 2006 for a total of 1084 defendants (see chart on pages 10-11 of those responses). Those responses also stated that the Attorney General approved a recommendation not to seek the death penalty for 1014 defendants, and overruled a recommendation not to seek for 73 defendants (see charts on pages 13-14).**
- a. Why do the numbers of approvals plus overrules (1014 + 73) not equal the total number of cases (1084) in which U.S. Attorneys recommended against seeking the death penalty?**
 - b. If the reason is that in some instances, certain defendants area counted more than once because there was agreement or disagreement with respect to different victims or counts, please indicate for how many defendants this occurred, in which racial categories, and in which years.**
 - c. Is it accurate to conclude that for any defendant counted twice in the responses referenced above, the Attorney General decided to seek the death penalty against that defendant for at least one count or victim?**

The response to April 19 question 9 reflected that there were 1014 approvals and 73 over-rulings by the Attorney General of U.S. Attorney requests not to seek the death penalty. These 1087 decisions exceeded the 1084 total defendants submitted because the Attorney General’s decision with regard to three particular defendants approved in part and denied in part the U.S. Attorney’s request not to seek the death penalty for the killings of multiple victims. Thus, for each of the three defendants, the decision was recorded in the Department’s prior response as both agreement and disagreement with the U.S. Attorney’s request not to seek the death penalty. It is therefore accurate to say that, for each of the three defendants, the Attorney General

approved seeking the death penalty against each defendant for at least one count or at least one victim.

As previously noted, the explanatory notes to the Department's response to the April 19 oversight questions specifically cautioned that a small number of defendants were counted more than once, in the separate tables reflecting Attorney General *agreement* versus *disagreement* with the U.S. Attorney's recommendation.

The race/ethnicity breakdowns for the three defendants are as follows. In 2001, for one Hispanic defendant who killed exclusively Hispanic victims, the Attorney General approved the U.S. Attorney's request not to seek the death penalty for the murder of one of the victims but directed that the death penalty be sought for the killings of the other victims. In 2003, for one black defendant who killed exclusively black victims, the Attorney General approved the U.S. Attorney's request not to seek the death penalty for the murder of one of the victims but directed that the death penalty be sought for the killing of the other victim. In 2004, for one black defendant who killed exclusively black victims, the Attorney General approved the U.S. Attorney's request not to seek the death penalty for the murder of two of the victims but directed that the death penalty be sought for the killings of the other two victims.

The 1087-defendant and 1084-defendant figures also include two other defendants for whom U.S. Attorneys' offices submitted separate requests not to seek the death penalty in different years. In light of the separate submissions, the two defendants are counted in the data for both of the years in which the separate submissions were made. The explanatory notes to the Department's prior response cautioned that a "particular defendant is not counted more than once *in a single year in a table*, despite the fact that permission to seek the death penalty against that defendant may have been requested in more than one case or with respect to more than one victim." Response to April 19 questions at 8 (emphasis added).

In both of the two cases, U.S. Attorneys submitted separate requests not to seek the death penalty in different years to address distinct victims killed by a single defendant. One case, submitted by the U.S. Attorney in 2003 and again in 2004, involved a defendant of "other" race/ethnicity who killed "exclusively 'other' victim(s)." The other case, submitted by the U.S. Attorney in 2003 and again in 2005, involved an Hispanic defendant who killed exclusively Hispanic victims. The Attorney General approved the requests not to seek the death penalty with regard to both defendants.

Although the five defendants discussed above have been accounted in a way that the Department believes most accurately presents the actual sequence of submissions and decisions, we also note that, from a purely statistical point of view, the manner of inclusion of the five defendants does not appear to result in a statistically significant impact. The overall pool contains more than 1,000 defendants.

- 8. According to the Department's responses to my April 19 oversight questions, U.S. Attorneys recommended seeking the death penalty from 2001 to 2006 for a total of 156 defendants (see chart on page 4) and recommended against seeking**

from 2001 to 2006 for a total of 1084 defendants (see chart on pages 10-11). The following is based on those charts:

Year	US Attorney Rec to Seek Death Penalty	US Attorney Rec Not to Seek Death Penalty	Total Defendants
2001	22	161	183
2002	21	180	201
2003	32	149	181
2004	31	179	210
2005	16	175	191
2006	34	240	274
Total	156	1084	1240

- a. Is it accurate to assume that U.S. Attorneys made recommendations, in total, with respect to 1240 defendants, or are some of these defendants counted more than once?
- b. If some defendants are counted twice, please provide the total number of defendants who were counted twice for each year and why.

It is not correct to assume that U.S. Attorneys made recommendations, in total, with respect to 1240 defendants. As discussed above, the explanatory notes to the Department's response to the April 19 oversight questions reflect that a small number of defendants were counted more than once based on differing U.S. Attorney recommendations and differing Attorney General decisions with regard to distinct homicides committed by the affected defendant.

The responses to April 19 questions 8 and 9 reflected that, by defendant, there were 156 U.S. Attorney requests to seek the death penalty and 1084 requests not to seek the death penalty. A small number of defendants (12 in all) were counted in the U.S. Attorney request tallies for both question 8 (requests to seek the death penalty) and question 9 (requests not to seek the death penalty). In all 12 instances, U.S. Attorneys requested to seek the death penalty for the killing of one or more victims and not to seek the death penalty for the killings of others. In seven of the 12 instances, the distinct requests occurred in separate death penalty submissions at different discrete points in time.

In addition to the foregoing 12 defendants, an additional defendant was counted under both questions 8 and 9 for killing a particular victim. In 2004, the U.S. Attorney requested and received authorization to enter into a plea agreement, but the defendant later backed out of the

proposed agreement. Later in 2004, the U.S. Attorney requested and received authorization to seek the death penalty. Thus, the decisions in that case were recorded in the Department's prior response as approving a request not to seek the death penalty and approving a request to seek the death penalty.

Finally, as noted in the responses to supplemental oversight questions 6 and 7 above, three particular defendants were the subject of distinct requests to seek the death penalty in separate years, and two defendants were the subject of distinct requests not to seek the death penalty in separate years. In light of the separate submissions, these defendants are counted in the data for each year in which a separate submission was made.

Although the defendants discussed above have all been accounted in a way that the Department believes most accurately presents the actual submissions and decisions, we also note that, from a purely statistical point of view, the manner of inclusion of the defendants does not appear to result in a statistically significant impact. The overall pool contains more than 1,000 defendants.

- 9. Based on the chart in the previous question, it appears that there were substantially more death-eligible federal cases that came through the DOJ review process in 2006 than in prior years. Why was that? Was there any change in policy with respect to prosecutorial priorities that would have led to more death-eligible federal cases being brought in 2006?**

The data reflects that in 2006, there was about a one-third increase in U.S. Attorneys' death penalty submissions over the preceding years' submissions. This increase cannot be directly linked to particular prosecutorial initiatives, especially given that the rate of capital case submissions varies from year to year, with a year of fewer submissions often being followed by a year with a greater number of submissions, and vice versa. However, historically, many of the Department's capital case submissions have involved gang- or drug-related homicides, or both. In light of the Department's strategic goal emphasizing aggressive prosecution of these types of offenses, the increase in submissions may reflect gang and/or drug enforcement related initiatives.

- 10. In cases in which DOJ pursued the death penalty from 2001 to 2006, based on the Department's responses to my April 19 oversight questions (see charts on pages 16 and 18 of those responses), the death penalty was imposed against 30 defendants, and was not imposed against 72 defendants. Of the 30 defendants against whom the death penalty was imposed, 16 were white, 14 were non-white. Of the 72 defendants against whom the death penalty was not imposed, 13 were white and 59 were non-white. Thus, the success rate for imposing the death sentence for non-whites was 14 out of 73, or 19 percent.**

- a. Does the Department agree that those numbers are correct?**
- b. Is this cause for concern?**

- c. **It is difficult to evaluate based on the data provided, whether the race of the victims reflected a similar disparity, because it is unclear in how many cases there were multiple victims of different races. The answer to Question 4, above, should shed some light on this issue. Based on the answer to Question 4, might this disparity be explained by the race of the victims in these cases?**

The foregoing figures appear to have been correct as of the April 19 responses, although a number of additional defendants falling within the scope of that response have subsequently been sentenced by juries. The correct figures are now as follows: The death penalty was imposed against 30 defendants, and was not imposed against 78 defendants. Of the 30 defendants sentenced to death, 16 were white, 14 were non-white. Of the 78 defendants not sentenced to death, 16 were white and 62 were non-white.

These figures strongly rebut any argument that juries are returning death sentences at a disproportionately higher rate against minority defendants. Most of the defendants sentenced to death have been white, whereas those who avoided the death penalty have mainly been minority defendants. During the period covered by the Department's September 2000 survey, minority defendants accounted for 16 of the 20 defendants sentenced to death.

The reasons why juries return death penalty verdicts in some cases and not others can vary widely and usually are not known, due in part to local rules generally restricting post-verdict contacts with jurors without court approval. Reliable evidence is therefore not readily available, and further study is unlikely to provide significant additional insight.

Statistics alone do not establish a link between death sentences and the races of victims. For 21 of the 30 defendants sentenced to death, the victims of the capital counts included at least one white victim, whereas the other nine defendants (30% of the total) killed exclusively minority victims. For 19 of the 78 defendants not sentenced to death, the victims of the capital counts included at least one white victim, whereas the other 59 defendants killed exclusively minority victims.

As noted, the Department evaluates potential capital cases without regard to the race of the defendant or the victim and with the goal of applying the death penalty in a fair and consistent manner nationwide.

- 11. The Department's responses to my April 19 oversight questions indicate that for a total of 5 defendants from 2001 to 2006, the Attorney General overruled an initial request by a U.S. Attorney for authorization of a plea agreement under which the government would not seek the death penalty (in instances where the U.S. Attorney filed a request for authorization of a plea agreement rather than a request for authorization not to seek, meaning that a notice to seek the death penalty had not been filed) (see chart on page 21). The Department's responses also indicate that for a total of 15 defendants, the Attorney General overruled a U.S. Attorney request to enter a plea agreement under which the government**

would not seek the death penalty after the notice of intention to seek the death penalty had already been filed (see chart on page 22).

- a. **Based on these charts, is it accurate that from 2001 to 2006, for at least 20 defendants, the Attorney General did not approve a plea agreement negotiated by the U.S. Attorney that would have taken the death penalty off the table?**

The foregoing figure appears to have been correct as of the April 19 responses, although a subsequent decision has reduced the number of defendants facing the possibility of the death penalty. The Attorney General recently authorized a U.S. Attorney to withdraw the death penalty notice against a defendant for whom a proposed plea agreement had previously been rejected. Also, two defendants who were inadvertently omitted from the prior response and thus not included in the above figure, but for whom death penalty notices were previously filed, no longer face the death penalty as a result of recent Attorney General decisions approving plea agreements with the defendants.

- b. **Please provide examples of reasons that the Attorney General would overrule a U.S. Attorney recommendation to enter into a plea agreement that takes the death penalty off the table.**
- c. **At the hearing, David Bruck testified that overruling U.S. Attorney recommendations to enter a plea agreement taking the death penalty off the table makes it less likely that defendants will proffer cooperative testimony in exchange for a plea agreement because of the risk that the Attorney General will not approve the agreement. How does the Department respond to the argument that this practice ultimately results in less cooperation and therefore fewer convictions?**

Each case is evaluated on its own facts, and it would be difficult, if not impossible, to identify “examples of reasons that the Attorney General would overrule a U.S. Attorney recommendation” without revealing the rationales for case-specific charging decisions, which we decline to do. In addition, while there is a record of the recommendations of the U.S. Attorney, the Committee and, in the case of a request for authorization to withdraw a notice of intent to seek the death penalty, the Assistant Attorney General for the Criminal Division, there is no record of the bases for the Attorney General’s decisions, except to the extent they can be inferred from the underlying recommendations.

The consequence predicted by Mr. Bruck has not resulted in practice. Indeed, the Department continues to receive death penalty submissions for defendants who have provided protected proffers as an indication of the value of their cooperation if the death penalty is not sought.

12. **According to numerous former U.S. Attorneys and other former DOJ officials, former Attorney General Janet Reno was personally engaged in each decision whether to authorize seeking the death penalty. In fact, former U.S. Attorneys**

have indicated they came to expect substantial direct communication with Attorney General Reno about their recommendations. Has former Attorney General Reno's hands-on approach to these very serious decisions carried over to the Justice Department under Attorney General Ashcroft and Attorney General Gonzales? Why or Why not?

The "hands-on approach" continues under this administration. If anything, the overall consideration, review, and exchange of viewpoints has expanded over that which occurred under Attorney General Reno in that the Office of the Deputy Attorney General now independently reviews each case and the Deputy Attorney General makes a recommendation independent from that of the Review Committee. This did not occur prior to 2001. The Attorney General's briefing book contains input from each of these individuals or entities. Recent Attorneys General have taken very seriously their responsibilities as the individuals who ultimately decide whether the death penalty will be sought and have spent extensive time acquainting themselves with the facts and issues adherent to all cases for which it could be appropriate to seek the death penalty.

- 13. Based on the Department's responses to my April 19 oversight questions, it appears that in 70 percent of the cases where U.S. Attorneys sought approval for the death penalty from 2001 to 2006, the defendants were minorities. In cases where the Attorney General overruled the U.S. Attorney's recommendation against death, 81 percent of the defendants were minorities. (See chart below.) Given the Department's race-blind policy for death penalty review, what explains these disparities? What will the Department do going forward to monitor and evaluate these disparities?**

We understand this question to solicit the Department's comment on the perceived disparity between the identified percentages and the representation of minority individuals in the population at large, rather than the difference between the identified 70 and 81 percent numbers. These statistics are misleading if not viewed in context. The relevant context includes the corresponding data concerning requests and decisions *not* to seek the death penalty, and also the well-accepted statistical evidence concerning the racial breakdowns for homicide victims and offenders on a nationwide basis, not limited to federal capital homicides. The percentages in this question also do not account for requests and decisions to seek the death penalty that were later withdrawn by the Attorney General.

As noted, many of the Department's capital case submissions have involved gang- or drug-related homicides, or both. According to national statistics maintained for homicides nationwide, not limited to federal capital homicides, non-white offenders committed 66% of all drug-related homicides, and 46% of all gang-related homicides. U.S. Department of Justice, Bureau of Justice Statistics, *Homicide Trends in the United States* 27 (July 11, 2007). Further, these percentages appear not to include a significant number of Hispanic offenders, because the homicide trend statistics are broken down by race but not ethnicity. *See id.*; U.S. Department of Justice, *The Federal Death Penalty System: A Statistical Survey* xv, xvi (Sept. 12, 2000). The Department's June 2001 study noted the impact of the racial composition of various drug gangs

on the racial breakdowns for defendants submitted for the Department's death penalty review. See U.S. Department of Justice, *The Federal Death Penalty System: Supplementary Data, Analysis and Revised Protocols for Capital Case Review* 14-15 (June 6, 2001).

The data from the April 19 oversight response also show that minority defendants accounted for 86% of the 1084 defendants for whom U.S. Attorneys requested not to seek the death penalty – 16% higher than the 70% figure cited above. Thus, minority defendants have a much greater representation among requests not to seek the death penalty than among requests to seek the death penalty.

The data show in addition that minority defendants accounted for 87% of the defendants for whom the Attorney General agreed with a U.S. Attorney's request not to seek the death penalty – 11% more than the 76% minority representation of defendants for whom the Attorney General rejected a U.S. Attorney's request not to seek the death penalty (the 76% figure excludes defendants for whom decisions to seek the death penalty were later withdrawn, who were included in the cited 70%).

In light of all of the foregoing, it is incorrect to conclude that the Department's decision-making process for capital cases has disproportionately focused or impacted on minority offenders.

14. Federal Judge John Gleeson, of the Eastern District of New York, wrote a 2003 law review article expressing his view that the Attorney General should overrule U.S. Attorneys to require them to seek the death penalty only in exceptional circumstances and that the best way to achieve uniformity in the federal death penalty is to specifically define the types of particularly federal interests that will justify bringing a federal capital case.

a. Does the Review Committee, the Deputy Attorney General, or the Attorney General give any deference to a U.S. Attorney's recommendation? Is there a different standard of review when U.S. Attorneys have recommended seeking the death penalty than when they have recommended against it?

In evaluating the evidence and issues relevant to a decision whether to seek the death penalty, reviewers at all levels give significant weight to the recommendation of the U.S. Attorney, as he or she and the line prosecutors are the ones with first-hand knowledge of the case. However, Federal laws must be enforced consistently, irrespective of geography and local predisposition for or against the death penalty. Thus, the standard applied in each case is the same irrespective of the U.S. Attorney's recommendation.

Under the capital sentencing provisions enacted by Congress, a notice of intent to seek the death penalty is only filed when the Attorney General, as the "attorney for the government," believes that "the circumstances of the offense are such that . . . a sentence of death is justified." 18 U.S.C. § 3593 (a). In determining whether a sentence of death is justified, the Department's reviewers make the same assessment that would be required of a jury: "whether all the

aggravating factor or factors found to exist sufficiently outweigh all the mitigating factor or factors found to exist to justify a sentence of death, or in the absence of a mitigating factor, whether the aggravating factor or factors alone are sufficient to justify a sentence of death.” 18 U.S.C. § 3593 (e).

- b. Judge Gleeson’s article also contended that seeking the death penalty could, in some instances, jeopardize prosecutors’ ability to secure a conviction, because jurors hold them to a higher standard in capital cases. Does the Review Committee or the Attorney General give any weight to this consideration in their decision-making?**

Department reviewers do not consider or give weight to the unsubstantiated premise that a decision to seek the death penalty may “in some instances, jeopardize prosecutors’ ability to secure a conviction.” Considering the effect on local jury pools of a decision to seek the death penalty runs counter to the Department’s goal of nationwide consistency in the fair and even-handed application of federal capital sentencing laws, irrespective of geography or local predisposition for or against the death penalty. Further, the Department assumes that jurors follow their instructions, that federal prosecutors are fully capable of making it clear to jurors that the determinations of guilt and punishment are two distinct determinations and that the determination of guilt does not require them to impose a death sentence. Accordingly, reviewers do not weigh the possibility that jurors will fail to follow the law and impose a higher burden of proof than beyond a reasonable doubt.

- 15. Another possible relevant consideration in the decision to authorize seeking the death penalty is the possible incentives and disincentives it might create for future cases. The local community or cooperating witnesses may be less willing to help the government in the future if they think prosecutors are likely to seek capital punishment. Does the review committee or the Attorney General give weight to this consideration in their decision-making?**

This is another argument for disparate application of the federal capital statutes based on geography or local predisposition, albeit one that is couched in terms of a hypothetical reaction by citizens to a capital prosecution in their community. We know of no evidence that, where death is a possible punishment for highly aggravated offenses, citizens will condone criminal conduct by failing to report crime or assist investigators.

- 16. The Secretary of Justice for Puerto Rico testified that many people believe the jury may have acquitted the defendants in the Acosta Martinez case to protest the federal government’s insistence on seeking the death penalty in a jurisdiction that has explicitly renounced capital punishment. Does the Review Committee or the Attorney General give weight to this consideration in their decision-making?**

The goal of the Department’s death penalty review and decision-making process is nationwide consistency in the fair and even-handed application of federal capital sentencing laws

in appropriate cases, irrespective of geography or local predisposition for or against the death penalty. The reviewers and the Attorney General assume that jurors will follow their oaths and duties as jurors.

- 17. The 2006 RAND study of the federal death penalty from 1995 to 2000 provided some information about the implementation of the federal death penalty, but as several of the hearing witnesses testified, it was a limited picture. Crucially, the study failed to examine the decision to bring homicide cases into the federal system in the first place. In an October 2006 letter, five expert consultants hired to conduct the peer review of the study prior to its release sent a letter to RAND and likened drawing conclusions from the RAND study to “‘studying’ the effects of income and religion on acceptance to Harvard by looking only at the ten percent who were accepted.” In light of these critiques, has the Department of Justice taken any steps to track or otherwise collect data on the intake decisions of the U.S. Attorneys and the race of defendants selected or rejected for federal prosecution?**

The NORC (National Opinion Research Center) study, which was commissioned and released by NIJ simultaneously with the RAND study, looked at the factors that resulted in federal versus state prosecution. One of the principal findings of the NORC study was that the selection of cases for federal prosecution was dependent on the relationships between federal and local investigators and prosecutors within each jurisdiction. The NORC researchers also found that, in the districts studied, the proportion of minority defendants in potential federal homicide cases varied from 80% to 88%, whereas the proportion of minority offenders in those cases that it classified as unlikely federal homicide cases, with one exception, varied from 62% to 74% (for one district the representation of minority offenders in the unlikely federal cases was 82%). According to the NORC study, “The federal laws that brought homicide cases to the federal system primarily targeted drug, gang, and firearm activity; activity that [NORC survey] respondents indicated was likely to involve more minority participants.”

The NORC study sufficiently investigated and addressed the issue of why cases are prosecuted by the state or federal governments and the reasons why minorities are represented at a higher rate in the pool of offenders prosecuted federally for capital offenses than they are in the general population.

18. The 2006 RAND study covered data from 1995 to 2000. It did not include any analysis of implementation of the death penalty under this Administration.

a. Has DOJ taken any steps to review potential racial disparities from 2001 to 2006, beyond responding to my April 19 oversight questions?

No.

b. Would the Department consider another NIJ study of this Administration’s implementation of the federal death penalty?

The new leadership of the Department must be briefed and advised on all issues relevant to an NIJ-sponsored study of this Administration’s implementation of the federal death penalty before a decision could be made to proceed with such a project.

19. In the Department’s responses to my April 19 oversight question number 14, the Department stated that it would be difficult to provide information about how many federal capital cases brought charges for crimes that had already been prosecuted at the state or local level. According to that same DOJ response, however, federal prosecutors must seek a special waiver to bring federal charges in such cases. If that is true, while it may be time-consuming, it should be possible to compile this information.

- a. What office or individual at the Department is responsible for processing the waiver requests to bring federal charges after a state or local prosecution has already occurred?**

Office of Enforcement Operations (OEO), Criminal Division

- b. Is this process documented? Are the waivers retained? Does the documentation indicate whether the crime is death eligible?**

OEO retains each Petite waiver request and decision. (The decision is made by Deputy Assistant Attorney General Jack Keeney.) A computer database tracks these decisions, but does not necessarily contain information about whether a federal prosecution could expose the defendant to the death penalty.

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

We have been able to identify the following cases in which a federal capital prosecution was preceded by a state or local prosecution.

Bryant Wilson and Ramon Shorter faced federal capital charges relating to the shooting death of a elderly bank customer during a robbery. In November 2001, the Attorney General authorized the U.S. Attorney for the Western District of Tennessee to seek the death penalty for both men. In January 2002, however, they both pled guilty in state court and received life sentences. Authorization to seek the death penalty was withdrawn and the defendants entered guilty pleas to the capital counts in federal court, receiving life sentences there as well.

Brent Simmons murdered two James Madison students. Following a 1998 state trial that resulted in a hung jury, Simmons entered an Alford plea in state court and received two 20 year sentences for second degree murder. In December 2003, a Petite waiver was granted and, in 2004, the Attorney General authorized the U.S. Attorney for the Western District of Virginia to seek the death penalty for Simmons, who had been indicted for two counts of using a firearm during a crime of violence (interstate stalking) resulting in death, 18 U.S.C. § 924(j). Simmons was convicted by the jury and received two sentences of life without the possibility of release.

Kenneth Eugene Barrett, a methamphetamine manufacturer, killed an Oklahoma Highway Patrolman and wounded another officer who were attempting to execute a search warrant on his property. His first state trial in 2002 resulted in a hung jury. In a second state trial, he was convicted of first degree manslaughter and assault and battery

with a dangerous weapon and received consecutive sentences of 20 and 10 years. He would have been eligible for parole in 10 years. A Petite waiver was approved, and Barrett was charged with three capital offenses: using or carrying a gun during and in relation to a crime of violence with death resulting, 18 U.S.C. § 924 (c)(1)(a) and (j); and intentionally killing a law enforcement officer engaged in the performance of his official duties during a drug trafficking crime, 21 U.S.C. § 848 (e)(1)(B). The U.S. Attorney for the Eastern District of Oklahoma was authorized to seek the death penalty. In accordance with the jury verdict, on December 29, 2005, Barrett received two sentences of life without the possibility of parole and a death sentence.

Shawn Gardner was charged with the racketeering murder of Tanya Jones Spence. Subsequent to the submission of the case to the Department but before the Attorney General had reached a decision on whether to seek the death penalty, Gardner was convicted in state court and was eligible for a parolable sentence. A Petite waiver was obtained and, in December 2004, the Attorney General authorized the U.S. Attorney for the District of Maryland to seek the death penalty against Gardner. On August 30, 2007, the Attorney General authorized withdrawal of the death penalty notices against Gardner and the other capital defendants in the case.

20. Zachary Carter, former U.S. attorney for the Eastern District of New York, has argued that any committee, either at DOJ or in individual U.S. Attorney's offices, that is making death penalty-related decisions should have ideological or philosophical diversity, including individuals who are not avid proponents of capital punishment. He argues that this is necessary to ensure a robust debate, in which all sides of the issue are fully considered.

- a. Has the Department ever analyzed ideological or philosophical diversity on the Review committee? Are there differing views among committee members about how widely and aggressively the death penalty should be pursued, or how often and for what reasons U.S. Attorneys should be overruled?**
- b. Has the Department attempted to ensure any measure of ideological or philosophical diversity on the existing Review Committee?**
- c. Would someone who did not support capital punishment be allowed to sit on the Review Committee?**

While there is no litmus test for Committee service, differing viewpoints are often expressed among Committee members on whether a particular case is an appropriate one in which to seek the death penalty and on the degree of deference to be given a U.S. Attorney's recommendation. Debate is robust and all viewpoints are considered.

In identifying Committee members, the focus has been on identifying individuals with significant prosecutorial experience, particularly in capital litigation, as well as

strong analytical abilities. It would not make sense to have someone sit on the Committee who is opposed to capital punishment in all instances. For example, individuals who are unable to follow the law and consider assessment of a capital sentence in appropriate circumstances are not eligible to sit on a capital jury. A debate whether capital punishment is ever appropriate is different from consideration of whether, under the current laws providing for capital punishment, a certain offender and offense are appropriate for capital punishment. Someone who uniformly opposes capital punishment would be unable to effectively contribute to considerations about whether it is appropriate under existing laws in a specific case to seek a death sentence.

21. In the Department's responses to my April 19 oversight questions number 6, DOJ asserted that its death penalty review procedure is an open process. According to the Department's response, the Review Committee informs the U.S. Attorney directly if it disagrees with his or her recommendation; the Attorney General's reasons for overruling of a recommendation are conveyed to the U.S. Attorney; and there is ongoing discussion and dialogue among all parties involved.

a. Is this an accurate portrayal of the process for the entire time period from 2001 to 2006?

Yes. If the Committee's recommendation is contrary to that of the U.S. Attorney, that information is conveyed to the U.S. Attorney and/or the prosecuting Assistant U.S. Attorney by the Committee or a Capital Case Unit attorney acting on behalf of the Committee. In addition, there are typically one or more contacts between high level officials in the Offices of the Deputy Attorney General and the Attorney General if strong consideration is being given to seeking the death penalty against the U.S. Attorney's recommendation. Of course, with the July 2007 revisions to the protocol, the U.S. Attorney now receives a copy of the Committee's memorandum if the recommendation is contrary to that of the U.S. Attorney.

b. In what form are the Committee's recommendation and the reasons for its disagreement with the U.S. attorney communicated?

The U.S. Attorney or prosecuting Assistant U.S. Attorneys in attendance at a Committee conference are informed of the Committee's recommendation following a closed caucus of Committee members at the conclusion of the Committee meeting—unless the Committee postpones a vote in order to wait for additional information from either the defense or prosecution. If the Committee vote occurs at a later point, then the Committee recommendation is normally communicated by a Capital Case Unit trial attorney or chief to the prosecuting Assistant U.S. Attorney or U.S. Attorney.

c. In what form are the Attorney General's decisions and the reasons for any disagreement with the U.S. Attorney communicated?

The reasons for the Attorney General's decision are contained in Departmental memoranda. With the institution of the July 1, 2007 protocol provisions, the U.S. Attorney now receives a copy of the Committee's memorandum. Prior to the implementation of that practice, the rationale for the Committee recommendation was conveyed to the U.S. Attorney or prosecuting Assistant U.S. Attorney in attendance at the conclusion of the Committee meeting, or if a decision was reached at a later point, by a Capital Case Unit attorney.

- d. **Was the handling of Paul Charlton's recommendation in the Rios Rico case typical or atypical of the process? How does the Department explain the failure to communicate with Charlton prior to the Attorney General overruling his recommendation against seeking the capital punishment in that case? Did the Attorney General ever convey to Charlton in that case why he was overruled, and if so, in what form?**

The standard Department practice for notifying a prosecuting district of a Committee recommendation adverse to a U.S. Attorney's recommendation was followed in the Rios Rico case. What was atypical was former U.S. Attorney Paul Charlton's failure to file the notice of intent to seek the death penalty once a decision had been made.

May 31, 2006 was the Court-imposed deadline for filing a notice of intent to seek the death penalty, and on that day, the Attorney General signed a letter addressed to former U.S. Attorney Paul Charlton directing him to seek the death penalty for Jose Rios Rico, but not to seek the death penalty for the other two defendants in the case. Prior to this time, the Capital Case Unit attorney assigned to the case had been working with the prosecuting Assistant U.S. Attorneys in Arizona to draft the notice of intent to seek the death penalty. Although prosecuting attorneys in Arizona had previously represented to Capital Case Unit attorneys that May 31 was a hard and fast deadline, which the Court would not consider extending, the U.S. Attorney's Office did not file the notice of intent to seek the death penalty, but instead moved to extend the deadline for the notice of intent to seek the death penalty by a month, citing an "ongoing dialog" the office was having with the Department of Justice in Washington.

On June 28, 2006, then United States Attorney Paul Charlton made a Supplemental Submission to the Assistant Attorney General, requesting reconsideration of the decision to seek the death penalty. Because the Supplemental Submission was not based on a material change in facts or circumstances in accordance with established Department practice, the Assistant Attorney General made no recommendation regarding former U.S. Attorney Charlton's request for reconsideration. Mr. Charlton continued to press his case for reversal of the decision to seek the death penalty with the Offices of the Deputy Attorney General and Attorney General. While officials at each level considered his arguments, review was denied at each level based on the lack of changed circumstances. A notice of intent to seek the death penalty for Rios Rico was filed on August 16, 2006. Former U.S. Attorney Charlton was informed that the Department

would consider any subsequent request for reconsideration based on changed circumstances, and Mr. Charlton informed the Department that he would not pursue the issue further.

22. You testified that the preparation and review of data on death-eligible cases for the hearing was “helpful,” allowing the Department to become “more informed.” You also agreed with the suggestion that the compilation and analysis of statistics such as those I requested prior to the hearing were necessary components of any thoughtful determination of federal death penalty cases.

a. What step is the Department planning to take to make review of the statistics regarding its implementation of the federal death penalty a more regular part of its overall implementation strategy?

b. How frequently will such a review take place?

The death penalty decisions to date have been extensively reviewed and analyzed. The Department will conduct a further review after sufficient time has passed resulting in a new pool of cases.

23. According to your testimony, the Department seeks to maintain consistent and uniform application of the federal death penalty at the national level. According to the Department’s statistics, the Attorney General has overruled U.S. Attorneys far more often to require capital prosecutions than to limit them. In fact, one third of all cases in which the Attorney General has authorized seeking the death penalty under this administration have been the result of overruling a U.S. Attorney recommendation not to seek the death penalty.

a. Based upon these statistics, is it fair to conclude that the Department is attempting to create national consistency by increasing the rate of death prosecutions in jurisdictions where they have been less common?

Each case is judged on its individual merits and the jurisdiction in which the prosecution arises simply does not figure into the review or decision-making process.

b. The Attorney General overruled the U.S. Attorney recommendations not to seek the death penalty 21 times in 2006, as compared to 3 times in 2005. What is the reason for the dramatic increase in overrules between 2005 and 2006?

The data reflecting an increase in the number of “overrule” decisions in 2006 is misleading if not viewed in context. In 2004 and 2005, for example, the number of “overrule” decisions were unusually low when compared to both preceding and

subsequent years. The average of the override decisions for 2005 and 2006 is actually the same as the average for 2001, 2002, and 2003. Further, the increase in the number of override decisions for 2006 appears to be partly attributable to the one-third increase in the total number of death penalty submissions for 2006, discussed in the response to Question 9, *supra*.

24. Former U.S. Attorney Paul Charlton testified that the decision of the Attorney General to force a U.S. Attorney's office to pursue the death sentence where that office does not believe it is appropriate is qualitatively different from other directives from the Attorney General and can have a significant demoralizing effect on that office. Mr. Charlton also testified that line prosecutors who are forced to seek the death penalty against their judgment lose credibility with jurors. Does the Department consider the effect that a decision to overrule the U.S. Attorney may have on the morale and credibility of line prosecutors? Should it?

The goal of the Department's death penalty review and decision-making process is nationwide consistency in the fair and even-handed application of federal capital sentencing laws in appropriate cases, irrespective of geography or local predisposition for or against the death penalty. Consistent and appropriate application of the Federal capital sentencing laws would be undermined if, rather than basing a decision on the circumstances of the offense and the character and background of the offender, a decision were based on its hypothetical emotional impact on the prosecutor.

In any event, it is unlikely that, knowing from the outset that the decision whether to seek the death penalty belongs to the Attorney General, an Assistant U.S. Attorney will be significantly demoralized by the Attorney General's decision. The Assistant U.S. Attorney may not agree with a particular decision, but that does not translate to significant demoralization. Further, it would be inappropriate for a prosecutor to inform jurors that he had been "forced" to seek the death penalty, so it would be difficult to understand how a decision contrary to the U.S. Attorney's recommendation could undermine the prosecutor's credibility with jurors.

25. During the hearing, you testified that the Department does not currently track the costs of pursuing the death penalty in particular cases, even in cases where the U.S. Attorney's recommendation not to seek the death penalty is overruled or where the Petite Policy has been waived. You also testified that the Department would work to gather that information to the extent that it can be captured.

- a. Does the Department currently possess the capability to gather and report such information?**
- b. The federal government is expected to monitor and report its spending on a range of activities. If the Department currently does**

not have policies and procedures in place that would enable it to track the additional cost of seeking the death penalty, will it develop and implement such a monitoring system?

The Department does not have the capability to gather and report the requested information. Costs for capital prosecutions fall within the budgets of several agencies and branches of government, including: the United States Attorney's Offices (attorney hours in investigation, grand jury, Department's decision-making process, trial preparation, trial etc., expert witness expenses); Department of Justice (attorney hours in the protocol review process, assisting the prosecution, training); U.S. Administrative Office of the U.S. Courts (costs of providing defense for indigent defendants, including trial preparation and representation by defense counsel, expert assistance and witnesses); U.S. Marshal Service (witness and court security); FBI, DEA and other Federal investigative agencies (particularly investigation relating to punishment issues), as well as state investigative agencies (cost of investigation); and U.S. Courts (expenses involved trying capital case). Assuming *arguendo* that the Department had access to the relevant budgetary information of these agencies and branches of government, there would be the issue of whether the budget of each entity is accounted for in a manner that allows expenses attributable to a capital case to be identified.

A second, but no less difficult endeavor, would be to define what expenses are properly attributable to a capital case. For example, the subsection (a) inquiry calls for the "costs of pursuing the death penalty," whereas the subsection (b) inquiry is limited to the additional cost of seeking the death penalty. While the additional costs over those of a non-capital prosecution may be most relevant to some ends, they are also the most difficult to define. For example, while it might be thought that mental health experts or jury selection experts are more likely to be employed by the defense in a capital case, this does not mean that they would not be employed in the same case if the defendant faced exposure to a life sentence.

In short, there are two significant impediments to calculating the costs of capital prosecutions: (1) lack of access to many of the budgetary figures, and (2) difficulty defining what expenses should be attributed to the capital prosecution.

- c. In particular, would it make sense for the Department – at least initially – to prioritize monitoring the costs of capital prosecutions in special circumstances, such as when the U.S. Attorney's recommendation not to seek the death penalty has been overruled or when the Petite Policy has been waived?**

As previously stated, the Department's goal is nationwide consistency in seeking the death penalty in appropriate cases. To that end, the Review Committee and others involved in the review process consider the circumstances of the offense and the personal culpability of the offender (including his or her prior criminal history) against the backdrop, or in the context of, the other federal cases submitted for review and a death

penalty decision. The cost of a capital prosecution cannot influence the decision making in individual cases without undermining the goal of uniform application.

- d. Should the additional costs of seeking the death penalty ever be a factor in the analysis of whether to seek the death penalty? Should it be given any additional weight where the Attorney General is overruling the U.S. Attorney's recommendation not to seek the death penalty or where the Petite Policy is waived? Should it be given any additional weight where the local jurisdiction does not have capital punishment?**

As previously stated, the goal of the Department's death penalty review and decision-making process is nationwide consistency in the fair and even-handed application of federal capital sentencing laws in appropriate cases, irrespective of geography or local predisposition for or against the death penalty. Also as previously indicated, while the recommendation of the U.S. Attorney and the information and understanding of the case provided by his or her office is invaluable to the review and decision-making process, they principally serve to aid reviewers in placing the case within the context of capital cases nationwide. To propose that the costs of a capital prosecution should mitigate against seeking the death penalty whenever the U.S. Attorney's recommendation is against seeking is to apply federal capital sentencing laws using factors irrelevant to the appropriateness of the death penalty for the individual offense and offender. Congress has enacted federal capital sentencing provisions, and there is no principled basis for rationalizing cost as a basis for unevenly applying those laws.

- 26. You testified that the confidentiality rules in the new death penalty protocols were designed to ensure that robust and informed debate about death-eligible cases within the Department is not chilled. Yet no evidence or testimony has been presented to demonstrate that the lack of such formalized confidentiality rules has chilled such debate. In fact, former U.S. Attorney Charlton testified that he "cannot think of a reason why it is that transparency would not be beneficial to the federal death penalty process. And Mr. Bruck testified that he believes the new confidentiality rules are designed to "create an airtight regime of secrecy" around the process that is unprecedented.**

- a. From what individual or office did the new confidentiality provision originate?**

The confidentiality provisions set forth at U.S.A.M. 9-10.040 were the result of a collaborative effort by a number of components within the Department, including the Criminal Division, U.S. Attorneys, the Office of the Deputy Attorney General, and the Office of the Attorney General. These provisions merely restate the long-standing principle that the decision-making process preliminary to the Attorney General's final

decision is confidential. One goal behind the revised protocol was to codify existing practice.

- b. Please list all individuals who were directly involved in drafting or revising the confidentiality language.**

The confidentiality provisions were widely discussed throughout the Department prior to their incorporation into the protocol.

- c. What prompted the development of the new confidentiality language? Have there been any reports or evidence that the sort of transparency allowed under previous protocols, or the 2000 report released by former Attorney General Reno, in any way inhibited the deliberation process and the fair and just implementation of the federal death penalty?**

As previously stated, the confidentiality provision does not constitute a change in Department policy or practice. The long-held and well-founded view of the Department is that the U.S. Attorney's recommendation, the Committee's recommendation, and any other aspect of the internal department considerations are privileged as part of the deliberative process and as advice to the Attorney General. The confidentiality provision is essential to preserve free and candid discussions about the merits of a potential capital prosecution, which are essential to a reasoned decision. The privilege underlying the confidentiality could be waived to allow disclosure of certain statistical information if that was deemed in the best interest of law enforcement and public interest.

- 27. The federal government often alleges, as a non-statutory factor, that a defendant should be sentenced to death because he poses an unacceptable risk of committing additional violent crimes if allowed to live.**
 - a. After arguing for capital punishment based on this type of "future dangerousness" allegation, does the Department of Justice track the subsequent conduct of convicted federal capital offenders sentenced to a term of years, life imprisonment, or death?**
 - b. From 2001 to 2006, against how many defendants did the government allege, in its notice or amended notice of intent to seek the death penalty, some form of "future dangerousness" as a non-statutory aggravating factor?**
 - c. From 2001 to 2006, in how many instances has an inmate borne out government predictions of "future dangerousness" by committing serious physical violence against other persons after the conclusion of the capital sentencing proceeding? Please specify the particular types of observed inmate behavior that the Department believes to have borne out or validated its pretrial allegations of "future**

dangerousness.” Also please break down the answer according to whether “future dangerousness” was (i) alleged in the notice or amended notice of intent to seek the death penalty, and/or (ii) submitted to the sentencing jury or judge as part of a contested capital sentencing hearing.

- d. From 2001 to 2006, in how many instances where the government has alleged “future dangerousness” as a reason to impose the death penalty has the inmate not committed any acts of serious physical violence against other persons after the conclusion of the capital sentencing proceeding? Please break down the answer according to whether “future dangerousness” was (i) alleged in the notice or amended notice of intent to seek the death penalty, and/or (ii) submitted to the sentencing jury or judge as part of a contested capital sentencing hearing.

This information is unavailable and not readily obtainable.

QUESTION FROM SENATOR SPECTER:

1. Why does the death penalty protocol advise the United States Attorney to consult with the family of the victim regarding the decision to seek the death penalty and to include the views of the victim’s family concerning the death penalty in any submission made to the Department?

This practice is consistent with the Justice for All Act and long-standing prosecution practice to consult with any victims and/or their family and keep them fully informed regarding a prosecution related to the offense against them.

2. Despite what you note as an “absence of discrimination,” the Department nonetheless adopted additional procedural safeguards in 2001.
 - a. What prompted the Department to institute these new safeguards?

In June 2001, the provisions of the United States Attorneys’ Manual, USAM 9-10.000 et seq., were amended to ensure that the centralized death penalty decision-making process was applicable to all capital offenses charged, or that could be charged, for conduct prosecuted in federal court. Specifically, the revised protocol requires a U.S. Attorney to obtain authorization not to seek the death penalty or for a plea agreement before entering into an agreement that eliminates death as a potential punishment. It also requires a U.S. Attorney to obtain the Attorney General’s authorization for a plea agreement in those cases in which there has been a preceding decision to seek the death penalty.

b. To what extent did these new safeguards change and/or improve the process?

Under the prior protocol, a plea agreement eliminating death as a potential punishment could be entered into at any time, including before the case was submitted for a death penalty decision by the Attorney General and after the Attorney General had decided to seek the death penalty. The new safeguards ensure that the same centralized review and decision-making process is applicable to all capital offenses that are charged or could be charged for conduct being prosecuted in federal court. This enhances the goal of consistent and fair application of the death penalty. As a practical matter, it has meant that the number of cases submitted annually for review and a decision has approximately doubled from that under the prior protocol.

3. In your testimony, you note that the Attorney General, the Committee and other Department personnel involved in reviewing protocol submissions are not advised of the race or ethnicity of defendants, and that clerical staff sanitizes the submissions of any references to the races of victims or defendants. Aside from defense counsel choosing to submit race-identifying information about a client, is there any other way for individuals involved in the review process to find out the race or ethnicity of victims or defendants?

No.

QUESTION FROM SENATOR KENNEDY:

The death penalty is the most extreme form of punishment we have. Once administered, it cannot be undone, so we must be absolutely certain that it is applied in a fair and consistent manner under a transparent process. We know that since 1993, 120 people convicted and sentenced to death have been exonerated and released from state death rows prior to execution. We also know that minority defendants are disproportionately sentenced to death compared to whites. The reason for this discrepancy is not clear and a recent study from the National Institute of Justice has not provided adequate answers.

The possibility that innocent people are being executed or that the death penalty is being applied in a discriminatory manner makes it essential for the decision to execute a defendant to be open and transparent. Unfortunately, the administration has been reviewing capital cases in a non-transparent manner by creating protocols that require the decision-making process to be performed in a confidential manner. In addition, the line prosecutors who are most familiar with their cases have little input in the decision whether to pursue the death penalty in a particular case.

1. What steps is the Department of Justice taking to make the deliberations on application of the death penalty more transparent?

The prosecuting U.S. Attorney and Assistant U.S. Attorneys are the principal sources of the information regarding the cases submitted for Department review and they are the people to whom the Department turns whenever there are questions concerning the evidence or any other issue related to the case. The U.S. Attorney and/or the prosecuting Assistant U.S. Attorneys are consulted at each stage of review: by the Committee, the Office of the Deputy Attorney General and the Office of the Attorney General if a recommendation or decision could be contrary to the U.S. Attorney's recommendation. Under the revised protocol effective July 1, 2007, if the Committee's recommendation is contrary to that of the U.S. Attorney, then a copy of the Committee's memorandum is provided to the U.S. Attorney, who is informed that he may address a memo in opposition to the Committee's position to the Deputy Attorney General.

Although the Department views the deliberations underlying a decision to seek or not to seek the death penalty as privileged and confidential, within the Department the decision-making process is extremely transparent. It would, however, be inappropriate for the transparency of the Department's decision-making process to extend outside the Department. The Attorney General and United States Attorneys retain "broad discretion" to enforce the Nation's criminal laws, *United States v. Armstrong*, 517 U.S. 456, 464 (1996) (internal quotations omitted), discretion that is subject to judicial oversight only when it has been exercised in violation of the Constitution. Moreover, the Department has consistently adhered to a policy of declining to discuss ongoing prosecutions, a policy that promotes a fair trial, prevents prejudicing the jury pool, and generally protects the defendant's interests.

2. Are you familiar with the death penalty study conducted under former Attorney General Janet Reno? Will the findings from that study be made available to the public?

The findings of Attorney General Reno's death penalty study have been available since their release in September 2000. <http://www.usdoj.gov/dag/pubdoc/dpsurvey.html>.

3. The NIJ study conducted by RAND on racial bias and the death penalty examined data from 1995-2000 concluded that there was no racial bias at the federal level, yet the next 6 individuals facing the death penalty at the federal level are all African American males. In light of this fact, is the Department prepared to make more recent data available for analysis of the impact of race on the death penalty?

You have not identified the next six individuals who in your view will face imposition of the death penalty. However, assuming it to be the six known individuals who have concluded, or are near to concluding, their direct appeals and post conviction review, the authorization to seek the death penalty for those individuals either preceded 1995 or occurred between 1995 and 2000, the period of the Attorney General Reno's study. More recent data would have no relevance to the fact that these individuals face imposition of their death sentences.

Appendix A
Response to Supplemental Oversight Question 4

Supplemental Oversight Question 4 requests that the Department amplify its responses to April 19 Oversight Questions 12 and 17. April 19 Questions 12 and 17 requested that the Department provide race and ethnicity breakdowns on the capital defendant and victim data provided in response to April 19 Oversight Questions 8 to 11, 15, and 16. The following tables are provided in response to Supplemental Oversight Question 4.

8. On an aggregate and annual basis covering 2001 to 2006, in how many death-eligible cases did U.S. Attorneys request authorization to seek the death penalty? Of those, in how many cases did the review committee agree or disagree with a U.S. Attorney's recommendation? In how many of these cases did the Attorney General follow the U.S. Attorney's recommendation and/or the review committee's recommendation?

12. With respect to Questions 8 through 11, please also provide a breakdown of the race/ethnicity of the defendants and the race/ethnicity of the victims.

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

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

U.S. Attorney Requests for Authorization to Seek the Death Penalty
Defendant Race/Ethnicity – Exclusively White Victim(s)

	White	Black	Hispanic	Other	Total
2001	4	5	0	0	9
2002	4	1	0	0	5
2003	9	6	0	0	15
2004	5	7	1	0	13
2005	6	1	0	0	7
2006	2	3	0	0	5

U.S. Attorney Requests for Authorization to Seek the Death Penalty
Defendant Race/Ethnicity – Exclusively Black Victim(s)

	White	Black	Hispanic	Other	Total
2001	3	5	0	0	8

2002	0	7	0	0	7
2003	0	7	0	0	7
2004	2	7	0	0	9
2005	2	4	0	0	6
2006	5	12	0	0	17

U.S. Attorney Requests for Authorization to Seek the Death Penalty
Defendant Race/Ethnicity – Exclusively Hispanic Victim(s)

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

U.S. Attorney Requests for Authorization to Seek the Death Penalty
Defendant Race/Ethnicity – Exclusively “Other” Victim(s)

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

U.S. Attorney Requests for Authorization to Seek the Death Penalty
Defendant Race/Ethnicity – Multiple Victims of More than One Race/Ethnicity,
Including at Least One White Victim

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

2003	0	0	0	0	0
2004	0	0	0	0	0
2005	1	0	0	0	1
2006	2	0	0	0	2

U.S. Attorney Requests for Authorization to Seek the Death Penalty
Defendant Race/Ethnicity – Multiple Victims of More than One Race/Ethnicity, But
Without Any White Victims

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

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

Attorney General's Review Committee Recommendations
Concurring with a U.S. Attorney Request for Authorization to Seek the Death Penalty
Defendant Race/Ethnicity – Exclusively White Victim(s)

	White	Black	Hispanic	Other	Total
2001	4	3	0	0	7
2002	4	1	0	0	5
2003	9	6	0	0	15
2004	4	7	1	0	12
2005	6	1	0	0	7
2006	2	3	0	0	5

Attorney General's Review Committee Recommendations
Concurring with a U.S. Attorney Request for Authorization to Seek the Death Penalty
Defendant Race/Ethnicity – Exclusively Black Victim(s)

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

Attorney General's Review Committee Recommendations
Concurring with a U.S. Attorney Request for Authorization to Seek the Death Penalty
Defendant Race/Ethnicity – Exclusively Hispanic Victim(s)

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

Attorney General's Review Committee Recommendations
Concurring with a U.S. Attorney Request for Authorization to Seek the Death Penalty
Defendant Race/Ethnicity – Exclusively "Other" Victim(s)

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

Attorney General's Review Committee Recommendations
Concurring with a U.S. Attorney Request for Authorization to Seek the Death Penalty

Defendant Race/Ethnicity – Multiple Victims of More than One Race/Ethnicity,
Including at Least One White Victim

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

Attorney General's Review Committee Recommendations
Concurring with a U.S. Attorney Request for Authorization to Seek the Death Penalty
Defendant Race/Ethnicity – Multiple Victims of More than One Race/Ethnicity, But
Without Any White Victims

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

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

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

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

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

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

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

Attorney General's Review Committee Recommendations
Disagreement with a U.S. Attorney Request for Authorization to Seek the Death Penalty
Defendant Race/Ethnicity – Exclusively "Other" Victim(s)

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

Attorney General's Review Committee Recommendations
Disagreement with a U.S. Attorney Request for Authorization to Seek the Death Penalty
Defendant Race/Ethnicity – Multiple Victims of More than One Race/Ethnicity,
Including at Least One White Victim

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

Attorney General's Review Committee Recommendations
Disagreement with a U.S. Attorney Request for Authorization to Seek the Death Penalty
Defendant Race/Ethnicity – Multiple Victims of More than One Race/Ethnicity, But
Without Any White Victims

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

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

Attorney General Decision
Approving a U.S. Attorney Request for Authorization to Seek the Death Penalty
Defendant Race/Ethnicity – Exclusively White Victim(s)

	White	Black	Hispanic	Other	Total
2001	4	3	0	0	7
2002	4	1	0	0	5
2003	8	6	0	0	14

2004	4	6	1	0	11
2005	6	1	0	0	7
2006	2	3	0	0	5

Attorney General Decision

Approving a U.S. Attorney Request for Authorization to Seek the Death Penalty

Defendant Race/Ethnicity – Exclusively Black Victim(s)

	White	Black	Hispanic	Other	Total
2001	3	3	0	0	6
2002	0	6	0	0	6
2003	0	7	0	0	7
2004	2	7	0	0	9
2005	2	4	0	0	6
2006	5	8	0	0	13

Attorney General Decision

Approving a U.S. Attorney Request for Authorization to Seek the Death Penalty

Defendant Race/Ethnicity – Exclusively Hispanic Victim(s)

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

Attorney General Decision

Approving a U.S. Attorney Request for Authorization to Seek the Death Penalty

Defendant Race/Ethnicity – Exclusively “Other” Victim(s)

	White	Black	Hispanic	Other	Total
2001	0	0	0	0	0
2002	0	0	0	1	1
2003	0	1	0	3	4

2004	0	0	0	1	1
2005	0	0	0	0	0
2006	1	0	0	0	1

Attorney General Decision

Approving a U.S. Attorney Request for Authorization to Seek the Death Penalty
Defendant Race/Ethnicity – Multiple Victims of More than One Race/Ethnicity,
Including at Least One White Victim

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

Attorney General Decision

Approving a U.S. Attorney Request for Authorization to Seek the Death Penalty
Defendant Race/Ethnicity – Multiple Victims of More than One Race/Ethnicity, But
Without Any White Victims

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

Attorney General Decision

Overruling a U.S. Attorney Request for Authorization to Seek the Death Penalty
Defendant Race/Ethnicity – Exclusively White Victim(s)

	White	Black	Hispanic	Other	Total
2001	0	2	0	0	2

2002	0	0	0	0	0
2003	1	0	0	0	1
2004	1	1	0	0	2
2005	0	0	0	0	0
2006	0	0	0	0	0

Attorney General Decision

Overruling a U.S. Attorney Request for Authorization to Seek the Death Penalty

Defendant Race/Ethnicity – Exclusively Black Victim(s)

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

Attorney General Decision

Overruling a U.S. Attorney Request for Authorization to Seek the Death Penalty

Defendant Race/Ethnicity – Exclusively Hispanic Victim(s)

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

Attorney General Decision

Overruling a U.S. Attorney Request for Authorization to Seek the Death Penalty

Defendant Race/Ethnicity – Exclusively “Other” Victim(s)

	White	Black	Hispanic	Other	Total
2001	0	0	0	0	0

2002	0	0	0	0	0
2003	0	0	0	0	0
2004	0	0	0	0	0
2005	0	0	0	0	0
2006	0	0	0	0	0

Attorney General Decision

Overruling a U.S. Attorney Request for Authorization to Seek the Death Penalty
Defendant Race/Ethnicity – Multiple Victims of More than One Race/Ethnicity,
Including at Least One White Victim

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

Attorney General Decision

Overruling a U.S. Attorney Request for Authorization to Seek the Death Penalty
Defendant Race/Ethnicity – Multiple Victims of More than One Race/Ethnicity, But
Without Any White Victims

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

Explanatory notes:

- i. Defendants are categorized by year based on the date of the U.S. Attorney's initial submission to the Department for a decision concerning that defendant and victim.

ii. Race and ethnicity designations are made using the same methodology followed in the Department's September 2000 survey. See U.S. Department of Justice, *The Federal Death Penalty System: A Statistical Survey*, at T-xv, T-xvi (Sept. 12, 2000).

iii. In cases involving multiple defendants and victims, a defendant is not necessarily linked to all victims killed by other defendants in the same case. Rather, a particular defendant is linked to a victim in the foregoing data if he was charged with that victim's murder or, if no charges had been filed, the facts showed that the defendant participated in that murder.

iv. Where a defendant has killed more than one victim of "other" race/ethnicity, those victims are categorized as having an "exclusively 'other'" race/ethnicity, although decedents may not have shared a common race/ethnicity within "other" (e.g., Asian, Native American, or Pacific Islander).

v. Consistent with the methodology applied in the 2006 Rand study and the Bureau of Justice Statistics's annual *Homicide Trends* reports, the responses to the April 19 questions responses do not include data on victims of mass killings by acts of terrorism. The defendants in such cases are, however, counted in both the April 19 questions responses and in the present response.

vi. A 2001 white defendant included in the response to April 19 question 8 is not included in the present response because that defendant was charged with a capital espionage offense that did not result in the death of an identified victim.

vii. After the April 19 question responses were submitted, the Attorney General approved a U.S. Attorney's 2006 recommendation, endorsed by the Committee, that the death penalty be sought against a Hispanic defendant for killing exclusively Hispanic victims. Accordingly, that information is newly included in the present response.

viii. The April 19 question responses counted a few defendants under the incorrect race category due to inadvertent clerical errors in entering information provided by U.S. Attorneys' offices into the Capital Case Unit's database. That information has been corrected in the present response. A 2005 white defendant who killed exclusively white victims was incorrectly counted as Hispanic. The Attorney General approved the U.S. Attorney's and the Committee's recommendation that the death penalty be sought, and later approved the U.S. Attorney's subsequent request to withdraw the death penalty notice. Further, a 2005 white defendant who killed victims of more than one race including a white victim was incorrectly counted as Hispanic. The Attorney General approved the U.S. Attorney's and the Committee's recommendation that the death penalty be sought.

ix. A particular defendant is not counted more than once within a single year in a table, despite the fact that permission to seek the death penalty against that defendant may have been requested in more than one case or with respect to more than one victim.

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

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

Data concerning the defendants who are thus counted more than once over successive tables are contained in the Department's responses to the Committee's July 16 oversight questions 6 through 8.

- x. The foregoing data do not include cases in which the Attorney General has not made a decision (*e.g.*, cases in which a decision has been deferred because the defendant is a fugitive or for other reasons, and cases still under review).
- xi. In a small number of cases, the review committee did not make a death penalty recommendation because it was evenly divided or because it recommended that a decision be deferred. As a result, the number of cases in which the committee made a recommendation is slightly lower than the number of cases that were submitted for review and decided by the Attorney General.
- xii. The foregoing data reflect initial requests and decisions to seek the death penalty, and not subsequent requests and decisions to withdraw a death penalty notice following an initial decision to seek the death penalty. That information, however, is provided separately below.

In some of the cases included in the foregoing data as instances where the U.S. Attorney requested and received authorization to seek the death penalty, the U.S. Attorney later sought and received permission to withdraw the death penalty notice. The race/ethnicity breakdowns for these cases are as follows; defendants are categorized by the year of the U.S. Attorney's initial request to seek the death penalty:

Attorney General Decision Withdrawing a Prior Decision

Approving a U.S. Attorney Request for Authorization to Seek the Death Penalty
Defendant Race/Ethnicity – Exclusively White Victim(s)

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

Attorney General Decision Withdrawing a Prior Decision
Approving a U.S. Attorney Request for Authorization to Seek the Death Penalty
Defendant Race/Ethnicity – Exclusively Black Victim(s)

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

Attorney General Decision Withdrawing a Prior Decision
Approving a U.S. Attorney Request for Authorization to Seek the Death Penalty
Defendant Race/Ethnicity – Exclusively Hispanic Victim(s)

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

Attorney General Decision Withdrawing a Prior Decision

Approving a U.S. Attorney Request for Authorization to Seek the Death Penalty
Defendant Race/Ethnicity – Exclusively “Other” Victim(s)

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

Attorney General Decision Withdrawing a Prior Decision
Approving a U.S. Attorney Request for Authorization to Seek the Death Penalty
Defendant Race/Ethnicity – Multiple Victims of More than One Race/Ethnicity,
Including at Least One White Victim

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

Attorney General Decision Withdrawing a Prior Decision
Approving a U.S. Attorney Request for Authorization to Seek the Death Penalty
Defendant Race/Ethnicity – Multiple Victims of More than One Race/Ethnicity, But
Without Any White Victims

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

xiii. The foregoing tables of withdrawal decisions include five defendants for whom the Attorney General approved withdrawing death penalty notices after the Department's responses to the April 19 questions.

xiv. The tables of withdrawal decisions in the response to April 19 question 8 counted one defendant and a few victims under the incorrect race category due to inadvertent clerical errors. For 2001, one Hispanic victim was incorrectly counted as white, one Hispanic victim was omitted, and one black victim was incorrectly counted as white. Two 2002 "other" victims were incorrectly counted for 2001. For 2004, the tables incorrectly counted an "other" victim where there were none. For 2003, the tables omitted a black defendant who killed exclusively black victims.

xv. In a few instances where the U.S. Attorney requested and received authorization to seek the death penalty, the U.S. Attorney later sought, but was denied, permission to withdraw the death penalty notice. Data concerning these defendants are contained in the Department's response to the Committee's April 19 oversight questions.

9. On an aggregate and annual basis covering 2001 to 2006, in how many death-eligible cases did U.S. Attorneys not recommend seeking the death penalty? Of those, in how many cases did the review committee agree or disagree with the recommendation? In how many cases did the Attorney General follow the U.S. Attorney's recommendation and/or the review committee's recommendation?

12. With respect to Questions 8 through 11, please also provide a breakdown of the race/ethnicity of the defendants and the race/ethnicity of the victims.

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

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

U.S. Attorney Requests for Authorization Not to Seek the Death Penalty
Defendant Race/Ethnicity – Exclusively White Victim(s)

	White	Black	Hispanic	Other	Total
2001	21	5	3	3	32
2002	23	10	1	0	34
2003	19	8	4	1	32
2004	9	9	1	0	19
2005	14	6	2	0	22

2006	23	8	1	1	33
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U.S. Attorney Requests for Authorization Not to Seek the Death Penalty
Defendant Race/Ethnicity – Exclusively Black Victim(s)

	White	Black	Hispanic	Other	Total
2001	2	45	3	1	51
2002	0	53	3	0	56
2003	2	38	0	1	41
2004	5	54	1	1	61
2005	3	60	7	0	70
2006	6	77	1	1	85

U.S. Attorney Requests for Authorization Not to Seek the Death Penalty
Defendant Race/Ethnicity – Exclusively Hispanic Victim(s)

	White	Black	Hispanic	Other	Total
2001	1	6	53	0	60
2002	5	6	57	0	68
2003	2	8	51	0	61
2004	0	8	60	1	69
2005	0	4	67	0	71
2006	2	8	101	1	112

U.S. Attorney Requests for Authorization Not to Seek the Death Penalty
Defendant Race/Ethnicity – Exclusively “Other” Victim(s)

	White	Black	Hispanic	Other	Total
2001	0	2	0	8	10
2002	0	0	0	12	12
2003	0	3	2	8	13
2004	0	1	2	18	21
2005	0	1	2	7	10
2006	0	1	0	9	10

U.S. Attorney Requests for Authorization Not to Seek the Death Penalty
Defendant Race/Ethnicity – Multiple Victims of More than One Race/Ethnicity,
Including at Least One White Victim

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

U.S. Attorney Requests for Authorization Not to Seek the Death Penalty
Defendant Race/Ethnicity – Multiple Victims of More than One Race/Ethnicity, But
Without Any White Victims

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

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

Attorney General’s Review Committee Recommendations
Concurring with a U.S. Attorney Request for Authorization Not to Seek the Death
Penalty
Defendant Race/Ethnicity – Exclusively White Victim(s)

	White	Black	Hispanic	Other	Total
2001	17	5	3	3	28
2002	21	9	1	0	31
2003	16	7	4	1	28

2004	7	9	1	0	17
2005	14	6	1	0	21
2006	18	7	1	1	27

Attorney General's Review Committee Recommendations
Concurring with a U.S. Attorney Request for Authorization Not to Seek the Death
Penalty

Defendant Race/Ethnicity – Exclusively Black Victim(s)

	White	Black	Hispanic	Other	Total
2001	2	39	3	1	45
2002	0	47	3	0	50
2003	2	35	0	1	38
2004	5	52	1	1	59
2005	3	55	7	0	65
2006	5	66	1	0	72

Attorney General's Review Committee Recommendations
Concurring with a U.S. Attorney Request for Authorization Not to Seek the Death
Penalty

Defendant Race/Ethnicity – Exclusively Hispanic Victim(s)

	White	Black	Hispanic	Other	Total
2001	1	6	53	0	60
2002	5	6	57	0	68
2003	2	7	48	0	57
2004	0	8	60	1	69
2005	0	3	67	0	70
2006	2	8	92	1	103

Attorney General's Review Committee Recommendations
Concurring with a U.S. Attorney Request for Authorization Not to Seek the Death
Penalty

Defendant Race/Ethnicity – Exclusively "Other" Victim(s)

	White	Black	Hispanic	Other	Total
2001	0	1	0	8	9

2002	0	0	0	10	10
2003	0	1	2	8	11
2004	0	1	1	17	19
2005	0	1	2	7	10
2006	0	1	0	8	9

Attorney General's Review Committee Recommendations
Concurring with a U.S. Attorney Request for Authorization Not to Seek the Death
Penalty

Defendant Race/Ethnicity – Multiple Victims of More than One Race/Ethnicity,
Including at Least One White Victim

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

Attorney General's Review Committee Recommendations
Concurring with a U.S. Attorney Request for Authorization Not to Seek the Death
Penalty

Defendant Race/Ethnicity – Multiple Victims of More than One Race/Ethnicity, But
Without Any White Victims

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

Attorney General's Review Committee Recommendations

Disagreement with a U.S. Attorney Request for Authorization Not to Seek the Death
Penalty

Defendant Race/Ethnicity – Exclusively White Victim(s)

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

Attorney General's Review Committee Recommendations

Disagreement with a U.S. Attorney Request for Authorization Not to Seek the Death
Penalty

Defendant Race/Ethnicity – Exclusively Black Victim(s)

	White	Black	Hispanic	Other	Total
2001	0	6	0	0	6
2002	0	6	0	0	6
2003	0	4	0	0	4
2004	0	3	0	0	3
2005	0	3	0	0	3
2006	1	11	0	1	13

Attorney General's Review Committee Recommendations

Disagreement with a U.S. Attorney Request for Authorization Not to Seek the Death
Penalty

Defendant Race/Ethnicity – Exclusively Hispanic Victim(s)

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

2006	0	0	8	0	8
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Attorney General's Review Committee Recommendations
Disagreement with a U.S. Attorney Request for Authorization Not to Seek the Death
Penalty
Defendant Race/Ethnicity – Exclusively “Other” Victim(s)

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

Attorney General's Review Committee Recommendations
Disagreement with a U.S. Attorney Request for Authorization Not to Seek the Death
Penalty
Defendant Race/Ethnicity – Multiple Victims of More than One Race/Ethnicity,
Including at Least One White Victim

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

Attorney General's Review Committee Recommendations
Disagreement with a U.S. Attorney Request for Authorization Not to Seek the Death
Penalty
Defendant Race/Ethnicity – Multiple Victims of More than One Race/Ethnicity, But
Without Any White Victims

	White	Black	Hispanic	Other	Total
2001	0	2	0	0	2

2002	0	0	0	0	0
2003	0	0	0	0	0
2004	0	0	0	0	0
2005	0	0	0	0	0
2006	0	0	1	2	3

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

Attorney General Decision

Approving a U.S. Attorney Request for Authorization Not to Seek the Death Penalty

Defendant Race/Ethnicity – Exclusively White Victim(s)

	White	Black	Hispanic	Other	Total
2001	20	3	3	3	29
2002	21	9	1	0	31
2003	17	8	4	1	30
2004	8	9	1	0	18
2005	14	6	1	0	21
2006	18	7	1	1	27

Attorney General Decision

Approving a U.S. Attorney Request for Authorization Not to Seek the Death Penalty

Defendant Race/Ethnicity – Exclusively Black Victim(s)

	White	Black	Hispanic	Other	Total
2001	2	40	3	1	46
2002	0	46	3	0	49
2003	2	34	0	1	37
2004	5	52	1	1	59
2005	3	59	7	0	69
2006	5	70	1	0	76

Attorney General Decision

Approving a U.S. Attorney Request for Authorization Not to Seek the Death Penalty

Defendant Race/Ethnicity – Exclusively Hispanic Victim(s)

	White	Black	Hispanic	Other	Total
2001	1	6	51	0	58
2002	3	6	54	0	63
2003	2	7	48	0	57
2004	0	8	60	1	69
2005	0	3	67	0	70
2006	2	8	95	1	106

Attorney General Decision

Approving a U.S. Attorney Request for Authorization Not to Seek the Death Penalty

Defendant Race/Ethnicity – Exclusively “Other” Victim(s)

	White	Black	Hispanic	Other	Total
2001	0	1	0	8	9
2002	0	0	0	10	10
2003	0	1	2	8	11
2004	0	1	2	18	21
2005	0	1	2	7	10
2006	0	1	0	9	10

Attorney General Decision

Approving a U.S. Attorney Request for Authorization Not to Seek the Death Penalty

Defendant Race/Ethnicity – Multiple Victims of More than One Race/Ethnicity,

Including at Least One White Victim

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

Attorney General Decision

Approving a U.S. Attorney Request for Authorization Not to Seek the Death Penalty

Defendant Race/Ethnicity – Multiple Victims of More than One Race/Ethnicity, But Without Any White Victims

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

Attorney General Decision

Overruling a U.S. Attorney Request for Authorization Not to Seek the Death Penalty

Defendant Race/Ethnicity – Exclusively White Victim(s)

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

Attorney General Decision

Overruling a U.S. Attorney Request for Authorization Not to Seek the Death Penalty

Defendant Race/Ethnicity – Exclusively Black Victim(s)

	White	Black	Hispanic	Other	Total
2001	0	5	0	0	5
2002	0	7	0	0	7
2003	0	5	0	0	5
2004	0	3	0	0	3
2005	0	1	0	0	1
2006	1	7	0	1	9

Attorney General Decision

Overruling a U.S. Attorney Request for Authorization Not to Seek the Death Penalty
Defendant Race/Ethnicity – Exclusively Hispanic Victim(s)

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

Attorney General Decision

Overruling a U.S. Attorney Request for Authorization Not to Seek the Death Penalty
Defendant Race/Ethnicity – Exclusively “Other” Victim(s)

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

Attorney General Decision

Overruling a U.S. Attorney Request for Authorization Not to Seek the Death Penalty
Defendant Race/Ethnicity – Multiple Victims of More than One Race/Ethnicity,
Including at Least One White Victim

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

Attorney General Decision

Overruling a U.S. Attorney Request for Authorization Not to Seek the Death Penalty
Defendant Race/Ethnicity – Multiple Victims of More than One Race/Ethnicity, But
Without Any White Victims

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

Explanatory notes:

- i. The explanatory notes to Question 8 apply to this response.
- ii. The foregoing data do not include cases in which the U.S. Attorney was authorized not to seek the death penalty without referral to the Attorney General for a decision (*e.g.*, cases in which the only evidence of guilt was the defendant's protected proffer).
- iii. A U.S. Attorney's initial request to accept a plea agreement under which the government would agree not to seek the death penalty, and any decision approving such a request, are counted as recommendations and decisions not to seek the death penalty within this response. The response to Question 15 separately addresses instances in which the Attorney General approved or overruled a U.S. Attorney's request to enter into such a plea agreement.
- iv. A 2002 Hispanic defendant and two 2003 white defendants included in the response to April 19 question 8 are not included in the present response because those defendants were charged with capital espionage offenses that did not result in the death of an identified victim. Additionally, a 2004 Hispanic defendant included in the response to April 19 question 8 is not included in the present response because that defendant was charged with capital drug offense that did not result in the death of an identified victim. A 2005 Hispanic defendant included in the response to April 19 question 8 are not included in the present response because the races/ethnicities of the three victims were unknown.
- v. After the April 19 question responses were submitted, the Attorney General approved a U.S. Attorney's 2006 recommendation, endorsed by the Committee, that the death penalty not be sought against two black defendants for killing exclusively black victims. Also, the Attorney General approved a U.S. Attorney's 2006 recommendation, opposed

by the Committee, that the death penalty not be sought against two “other” defendants and one Hispanic defendant for killing victims of more than one race but not any white victims. Accordingly, that information is newly included in the present response.

vi. The April 19 question responses counted a few defendants under the incorrect race category due to inadvertent clerical errors in entering information provided by U.S. Attorneys’ offices into the Capital Case Unit’s database. That information has been corrected in the present response. For 2004 and 2005, two black defendants (one each year) who killed exclusively black victims were incorrectly counted as Hispanic. The Attorney General approved the U.S. Attorneys’ and the Committee’s recommendations that the death penalty not be sought for both defendants. A 2006 Hispanic defendant who killed exclusively Hispanic victims was incorrectly counted as white. The Attorney General approved the U.S. Attorney’s and the Committee’s recommendation that the death penalty not be sought.

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

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

Attorney General Decision Withdrawing a Prior Decision
Approving a U.S. Attorney Request for Authorization to Seek the Death Penalty
Defendant Race/Ethnicity – Exclusively White Victim(s)

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

Attorney General Decision Withdrawing a Prior Decision
Approving a U.S. Attorney Request for Authorization to Seek the Death Penalty
Defendant Race/Ethnicity – Exclusively Black Victim(s)

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

Attorney General Decision Withdrawing a Prior Decision
Approving a U.S. Attorney Request for Authorization to Seek the Death Penalty
Defendant Race/Ethnicity – Exclusively Hispanic Victim(s)

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

Attorney General Decision Withdrawing a Prior Decision
Approving a U.S. Attorney Request for Authorization to Seek the Death Penalty
Defendant Race/Ethnicity – Exclusively “Other” Victim(s)

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

Attorney General Decision Withdrawing a Prior Decision
Approving a U.S. Attorney Request for Authorization to Seek the Death Penalty

Defendant Race/Ethnicity – Multiple Victims of More than One Race/Ethnicity,
Including at Least One White Victim

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

Attorney General Decision Withdrawing a Prior Decision
Approving a U.S. Attorney Request for Authorization to Seek the Death Penalty
Defendant Race/Ethnicity – Multiple Victims of More than One Race/Ethnicity, But
Without Any White Victims

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

viii. The foregoing tables include two defendants for whom the Attorney General approved withdrawing death penalty notices after the Department's responses to the April 19 questions.

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

10. On an aggregate and annual basis covering 2001 to 2006, in how many cases in which the Attorney General agreed with the U.S. Attorney's recommendation to seek the death penalty was a death sentence imposed?

12. With respect to Questions 8 through 11, please also provide a breakdown of the race/ethnicity of the defendants and the race/ethnicity of the victims.

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

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

Defendant Race/Ethnicity – Exclusively White Victim(s)

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

Defendant Race/Ethnicity – Exclusively Black Victim(s)

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

Defendant Race/Ethnicity – Exclusively Hispanic Victim(s)

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

2006	0	0	0	0	0
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Defendant Race/Ethnicity – Exclusively “Other” Victim(s)

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

Defendant Race/Ethnicity – Multiple Victims of More than One Race/Ethnicity,
Including at Least One White Victim

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

Defendant Race/Ethnicity – Multiple Victims of More than One Race/Ethnicity, But
Without Any White Victims

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

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

Defendant Race/Ethnicity – Exclusively White Victim(s)

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

Defendant Race/Ethnicity – Exclusively Black Victim(s)

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

Defendant Race/Ethnicity – Exclusively Hispanic Victim(s)

	White	Black	Hispanic	Other	Total
2001	0	0	0	0	0
2002	0	0	4	0	4
2003	0	0	1	0	1
2004	1	0	4	0	5
2005	0	0	0	0	0
2006	0	0	0	0	0

Defendant Race/Ethnicity – Exclusively “Other” Victim(s)

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

**Defendant Race/Ethnicity – Multiple Victims of More than One Race/Ethnicity,
Including at Least One White Victim**

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

**Defendant Race/Ethnicity – Multiple Victims of More than One Race/Ethnicity, But
Without Any White Victims**

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

Explanatory notes:

- i. The explanatory notes to Questions 8 and 9 apply to this response.

ii. The response to Question 8 provides data on defendants and victims for whom the Attorney General approved seeking the death penalty, and also provides data on defendants and victims for whom the Attorney General later authorized the U.S. Attorney to withdraw the death penalty notice. Those data, however, do not correlate in all instances to the data provided in the present response, for several reasons. For a number of defendants and victims, the trial has not occurred; the present response is limited to cases in which the trial-level litigation has concluded. Additionally, defendants and victims in cases involving multiple defendants or victims may be counted more than once over the successive tables contained in the response to Question 8 and the present response. The Attorney General in some instances allowed the U.S. Attorney to withdraw a death penalty notice with respect to some but not all defendants involved in killing the same victim or victims, or allowed the U.S. Attorney to withdraw a death penalty notice with respect to some but not all victims killed by the same defendant or defendants. In such instances, the defendants or victims may be counted in Question 8 as ones for whom the death penalty notice was withdrawn, but also counted as individuals for whom the death penalty was sought in the present response.

iii. In particular, in 2004, two U.S. Attorneys submitted separate requests to seek the death penalty against two particular white defendants for the murders of discrete white victims. The Attorney General approved both requests and subsequently, the defendants received the death penalty in the one the two cases. The Attorney General then granted the other U.S. Attorney permission to accept a guilt plea from the defendants in the prosecution awaiting trial. As a result, the defendants, who were counted only once in the death penalty authorizations in question 8 because they were submitted in the same year, are counted both as defendants for whom death penalty notices were withdrawn (in the explanatory notes to question 8) and as defendants who were sentenced to death (in the present response).

iv. The defendants counted above as having received the death penalty include one 2005 white defendant whose death sentence was later set aside by the district court. The government has appealed from the district court's order vacating the death sentence. The defendants' victim(s) were exclusively white.

v. The foregoing tables include six defendants who were sentenced to life imprisonment after the Department's responses to the April 19 questions.

11. On an aggregate and annual basis covering 2001 to 2006, in how many cases in which the Attorney General overruled the U.S. Attorney's recommendation not to seek the death penalty, was a death sentence imposed?

12. With respect to Questions 8 through 11, please also provide a breakdown of the race/ethnicity of the defendants and the race/ethnicity of the victims.

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

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

Defendant Race/Ethnicity – Exclusively White Victim(s)

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

Defendant Race/Ethnicity – Exclusively Black Victim(s)

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

Defendant Race/Ethnicity – Exclusively Hispanic Victim(s)

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

Defendant Race/Ethnicity – Exclusively “Other” Victim(s)

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

Defendant Race/Ethnicity – Multiple Victims of More than One Race/Ethnicity,
Including at Least One White Victim

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

Defendant Race/Ethnicity – Multiple Victims of More than One Race/Ethnicity, But
Without Any White Victims

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

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

Defendant Race/Ethnicity – Exclusively White Victim(s)

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

Defendant Race/Ethnicity – Exclusively Black Victim(s)

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

Defendant Race/Ethnicity – Exclusively Hispanic Victim(s)

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

Defendant Race/Ethnicity – Exclusively “Other” Victim(s)

	White	Black	Hispanic	Other	Total
2001	0	1	0	0	1
2002	0	0	0	0	0

2003	0	1	0	0	1
2004	0	0	0	0	0
2005	0	0	0	0	0
2006	0	0	0	0	0

**Defendant Race/Ethnicity – Multiple Victims of More than One Race/Ethnicity,
Including at Least One White Victim**

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

**Defendant Race/Ethnicity – Multiple Victims of More than One Race/Ethnicity, But
Without Any White Victims**

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

Explanatory notes:

- i. The explanatory notes to Questions 8, 9, and 10 apply to this response.
- ii. The response to Question 9 provides data on defendants and victims for whom the Attorney General overruled a U.S. Attorney's request not to seek the death penalty, and also provides data on defendants and victims for whom the Attorney General later authorized the U.S. Attorney to withdraw the death penalty notice. Those data, however, do not correlate in all instances to the data provided in the present response, for several reasons. For a number of defendants and victims, the trial has not occurred; the present

response is limited to cases in which the trial-level litigation has concluded. Additionally, defendants and victims in cases involving multiple defendants or victims may be counted more than once over the successive tables contained in the response to Question 9 and the present response. The Attorney General in some instances allowed the U.S. Attorney to withdraw a death penalty notice with respect to some but not all defendants involved in killing the same victim or victims, or allowed the U.S. Attorney to withdraw a death penalty notice with respect to some but not all victims killed by the same defendant or defendants. In such instances, the defendants or victims may be counted in Question 9 as ones for whom the death penalty notice was withdrawn, but also counted as individuals for whom the death penalty was sought in the present response.

iii. In particular, in 2001, a U.S. Attorney submitted a request not to seek the death penalty against a black defendant for the murders of a white victim or victims. The Attorney General directed the U.S. Attorney to seek the death penalty, but later granted the other U.S. Attorney permission to accept a guilt plea from the defendant. The defendant then refused to plead guilty as his counsel had proposed and the case proceeded to trial and a capital sentencing hearing, resulting in imposition of a life sentence. Accordingly, the defendant is counted both as a defendant for whom the death penalty notice was withdrawn (in the explanatory notes to question 9) and as a defendant sentenced to a life term (in the present response).

15. On an aggregate and annual basis covering 2001 to 2006, in how many cases in which the Attorney General overruled the U.S. Attorney's recommendation not to seek the death penalty, did the Attorney General's decision effectively negate a negotiated plea agreement between the defendant and U.S. Attorney's office?

17. With respect to questions 15 through 16, please provide a break down of the race ethnicity of the defendants and the race/ethnicity of the victims.

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

Attorney General Decisions

Overruling an Initial Request by a U.S. Attorney for Authorization of a Plea Agreement Under Which the Government Would Agree Not to Seek the Death Penalty
Defendant Race/Ethnicity – Exclusively White Victim(s)

	White	Black	Hispanic	Other	Total
2001	0	0	0	0	0

2002	0	0	0	0	0
2003	0	0	0	0	0
2004	0	0	0	0	0
2005	0	0	0	0	0
2006	1	0	0	0	1

Attorney General Decisions

Overruling an Initial Request by a U.S. Attorney for Authorization of a Plea Agreement
Under Which the Government Would Agree Not to Seek the Death Penalty

Defendant Race/Ethnicity – Exclusively Black Victim(s)

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

Attorney General Decisions

Overruling an Initial Request by a U.S. Attorney for Authorization of a Plea Agreement
Under Which the Government Would Agree Not to Seek the Death Penalty

Defendant Race/Ethnicity – Exclusively Hispanic Victim(s)

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

Attorney General Decisions

Overruling an Initial Request by a U.S. Attorney for Authorization of a Plea Agreement
Under Which the Government Would Agree Not to Seek the Death Penalty

Defendant Race/Ethnicity – Exclusively “Other” Victim(s)

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

Attorney General Decisions

Overruling an Initial Request by a U.S. Attorney for Authorization of a Plea Agreement
Under Which the Government Would Agree Not to Seek the Death Penalty

Defendant Race/Ethnicity – Multiple Victims of More than One Race/Ethnicity,
Including at Least One White Victim

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

Attorney General Decisions

Overruling an Initial Request by a U.S. Attorney for Authorization of a Plea Agreement
Under Which the Government Would Agree Not to Seek the Death Penalty

Defendant Race/Ethnicity – Multiple Victims of More than One Race/Ethnicity, But
Without Any White Victims

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

Explanatory notes:

- i. The explanatory notes to Questions 8, 9, 10, and 11 apply to this response.
- 16. In how many cases has the Attorney General approved a plea agreement that takes capital punishment off the table? In how many instances has the Attorney General refused to approve a plea agreement that takes capital punishment off the table? In each instance in which the Attorney General refused to approve such a plea agreement, why did he make that decision?**
- 17. With respect to questions 15 through 16, please provide a break down of the race ethnicity of the defendants and the race/ethnicity of the victims.**

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

Decisions by the Attorney General

Approving a U.S. Attorney Request to Enter a Plea Agreement Under Which the Government Would Withdraw a Previously-filed Notice of Intention to Seek the Death Penalty

Defendant Race/Ethnicity – Exclusively White Victim(s)

White	Black	Hispanic	Other	Total
4	5	0	0	8

Decisions by the Attorney General

Approving a U.S. Attorney Request to Enter a Plea Agreement Under Which the Government Would Withdraw a Previously-filed Notice of Intention to Seek the Death Penalty

Defendant Race/Ethnicity – Exclusively Black Victim(s)

White	Black	Hispanic	Other	Total
0	3	0	0	3

Decisions by the Attorney General

Approving a U.S. Attorney Request to Enter a Plea Agreement Under Which the Government Would Withdraw a Previously-filed Notice of Intention to Seek the Death Penalty

Defendant Race/Ethnicity – Exclusively Hispanic Victim(s)

White	Black	Hispanic	Other	Total
0	0	10	0	10

Decisions by the Attorney General

Approving a U.S. Attorney Request to Enter a Plea Agreement Under Which the Government Would Withdraw a Previously-filed Notice of Intention to Seek the Death Penalty

Defendant Race/Ethnicity – Exclusively “Other” Victim(s)

White	Black	Hispanic	Other	Total
0	0	0	2	2

Decisions by the Attorney General

Approving a U.S. Attorney Request to Enter a Plea Agreement Under Which the Government Would Withdraw a Previously-filed Notice of Intention to Seek the Death Penalty

Defendant Race/Ethnicity – Multiple Victims of More than One Race/Ethnicity, Including at Least One White Victim

White	Black	Hispanic	Other	Total
0	1	0	0	1

Decisions by the Attorney General

Approving a U.S. Attorney Request to Enter a Plea Agreement Under Which the Government Would Withdraw a Previously-filed Notice of Intention to Seek the Death Penalty

Defendant Race/Ethnicity – Multiple Victims of More than One Race/Ethnicity, But Without Any White Victims

White	Black	Hispanic	Other	Total
0	0	0	0	0

Decisions by the Attorney General

Overruling a U.S. Attorney Request to Enter a Plea Agreement Under Which the Government Would Withdraw a Previously-filed Notice of Intention to Seek the Death Penalty

Defendant Race/Ethnicity – Exclusively White Victim(s)

White	Black	Hispanic	Other	Total
3	0	0	0	3

Decisions by the Attorney General

Overruling a U.S. Attorney Request to Enter a Plea Agreement Under Which the Government Would Withdraw a Previously-filed Notice of Intention to Seek the Death Penalty

Defendant Race/Ethnicity – Exclusively Black Victim(s)

White	Black	Hispanic	Other	Total
0	6	0	0	6

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

Defendant Race/Ethnicity – Exclusively Hispanic Victim(s)

White	Black	Hispanic	Other	Total
1	0	2	0	3

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

Defendant Race/Ethnicity – Exclusively “Other” Victim(s)

White	Black	Hispanic	Other	Total
0	0	1	0	1

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

Defendant Race/Ethnicity – Multiple Victims of More than One Race/Ethnicity,
Including at Least One White Victim

White	Black	Hispanic	Other	Total
0	1	0	0	1

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

Defendant Race/Ethnicity – Multiple Victims of More than One Race/Ethnicity, But
Without Any White Victims

White	Black	Hispanic	Other	Total
0	1	0	0	1

Explanatory notes:

- i. The explanatory notes to Questions 8, 9, 10, 11, and 15 apply to this response.