

National Institute of Justice  
**Strategic Planning Meeting On Research Involving  
The Federal Death Penalty System**

January 10, 2001

**Summary of Proceedings**

On January 10, 2001, the National Institute of Justice (NIJ) convened a meeting in response to a request made by former Attorney General Janet Reno when she released the September 12, 2000, Department of Justice (DOJ) report entitled the *Federal Death Penalty System: A Statistical Survey*. The Attorney General requested that NIJ solicit research to examine how State versus Federal jurisdiction is determined in homicide cases, to examine how decisions are made regarding charging Federal cases as eligible or non-eligible for the death penalty, and to attempt to explain geographic and racial/ethnic differences in the submission of Federal death penalty cases.

In cooperation with the Criminal Division and the Executive Office for U.S. Attorneys, NIJ invited preeminent researchers and practitioners (see participant list) to attend a one-day meeting to discuss the DOJ report and the questions raised by the Attorney General and to discuss issues relevant to the development of a research agenda. This was the first time individuals researching the death penalty and those prosecuting and defending capital cases were brought together for such a discussion.

Acting NIJ Director Julie Samuels welcomed participants and observers, and thanked them for their assistance and for taking part in the meeting. She explained that NIJ utilizes this type of meeting to discuss potential research questions, elicit a broad spectrum of input, and learn from research, practice, and policy perspectives on a particular topic, such as the Federal death penalty. She said that NIJ would consider options for possible future research regarding this important issue with the benefit of input from meeting participants.

Sally Hillsman, Deputy Director of NIJ, also welcomed everyone and reviewed NIJ's history conducting research on important policy and practice issues in the criminal justice system. Deputy Director Hillsman described processes used by NIJ to formulate and carry out research agendas (including strategic planning meetings such as this one), writing solicitations, accepting proposals, conducting independent peer review of proposals, making award decisions, monitoring grant activity, conducting peer review of final reports, and making decisions to publish.

Chris Stone, Director of the Vera Institute of Justice in New York City, facilitated the meeting. He began by reviewing the agenda and asking participants and observers to introduce themselves. Mr. Stone then stated that a goal of the meeting was to develop ideas for research in response to questions raised by the Attorney General. In order to begin building a research agenda and a body of public research on the Federal death penalty process, he suggested that discussion encompass a range of issues and conclude with formulation of relevant research ideas and strategies. He asked that the day's discussion include researchable issues regarding decisionmaking processes leading to determination of Federal versus State jurisdiction, pretrial charging, plea and sentence negotiations, and submission of potential death penalty cases to the Attorney General for review according to established protocols. He suggested that the agenda also include comments regarding the DOJ study, suggestions regarding research methodology,

and discussion regarding potential sources of, and access to, data.

The morning's discussion included a range of comments concerning disparities apparent in the results of the DOJ study. It was clear that there were different interpretations as to the extent of, and reasons for disparity depending upon point of view or respective role of individuals in the criminal justice system. Discussion also revealed that many factors independent of the criminal justice process may contribute to apparent racial/ethnic disparity. With regard to geographic disparity, there was consensus among practitioners that a number of attributes or characteristics make Federal jurisdictions/districts unique and distinct from one another; some of these are subtle and not easily captured in an empirical study. These include issues involving the practices of individual U.S. Attorneys, the varying interpretations of "Federal interest," the relationship of Federal and State prosecutors, the existence of special task forces, the local public opinion regarding capital punishment, the local jury pools, and even the outside attention of the media. Any of these factors may serve to make jurisdictions unique and difficult to describe. Also noted was the fact that even a fair and efficient system of justice, with policies and procedures consistently applied across numerous jurisdictions, may produce disparities apparent in the results of the DOJ study.

Participants doing empirical research on the death penalty suggested that there are many aspects, attributes, and characteristics that can be quantified to describe local jurisdictions and decisionmaking processes within jurisdictions, and that these attributes may be studied across jurisdictions. Discussants also observed that studying Federal districts may not be much different from examining differences among county jurisdictions within States.

There was general consensus that racial/ethnic and geographic disparity evident in the DOJ report was not adequately analyzed or explained with the limited number of data items or variables collected as a part of the study. Participants agreed that further study would require collection of more comprehensive information to better describe local jurisdictions, policies and practices, and case characteristics. It was suggested that in order to fully study disparity among cases within the Federal system, it would be necessary to identify the "universe" or complete pool of cases that could be charged with capital offenses, and to collect comprehensive, detailed, and fact-based data on each case. Participant researchers also noted the necessity to develop valid measures concerning the severity of individual cases and to apply these measures consistently in order to compare similarly situated cases on extra-legal factors. Participants also suggested that research into the universe of State as well as Federal homicide cases would be necessary to analyze and fully understand decisionmaking processes involved in all stages of a capital case system. Ideally, the pool of potential Federal cases would be defined and followed through the system.

These suggestions regarding different approaches to researching the death penalty prompted substantial discussion of differences between State and Federal systems of prosecution in death penalty cases. Practitioners shared their knowledge and experiences concerning the various protocols under which criminal cases become capital matters in Federal and State prosecutions. There was much discussion on the topic of "Federal interest" as a criterion in decisionmaking about capital eligible cases entering Federal jurisdiction. Practitioners suggested that "Federal interest" as a criterion in decisionmaking may involve a number of specific factors, including exclusive jurisdiction as a result of criminal statutes, and jurisdiction as a result of ongoing investigations. Other "Federal interest" factors in decisionmaking are Federal investment of

resources; lack of investigative resources at the State level; or preexisting agreements or memoranda of understanding among local, State, and Federal agencies. Some participants noted that these criteria may be interpreted differently in different jurisdictions.

A number of participants suggested that research on the Federal death penalty might include an examination of changes in the size and composition of the Federal capital caseload, since passage of the Anti-Drug Abuse Act, in 1988. It was this law that made the death penalty available in Federal criminal cases, and legislation in 1994 and 1996 further expanded jurisdiction of Federal prosecutors. There was agreement among participants that these changes in Federal policy are an important context for understanding volume and types of cases entering the Federal system. Policy changes are, therefore, important to understanding the availability and similarity of death penalty caseloads at State and Federal levels.

Participants discussed many issues related to methodology in studying the use of the death penalty and racial/ethnic disparity. They noted that research focusing on cases within Federal jurisdiction should draw upon all potential capital cases coming to Federal prosecutors, not just those submitted for death penalty review. It was emphasized that both informal and formal processes leading to State or Federal jurisdiction over capital-eligible cases should be a priority subject of further study. Participants further suggested that an ideal study would include decisionmaking at every juncture in the case process leading to a death sentence. It was noted that all State and Federal capital-eligible cases should be combined for analysis in order to more fully understand whether race/ethnicity is a neutral factor, and whether cases are being treated fairly with regard to the death penalty. Participant researchers agreed that issues concerning racial/ethnic and geographic disparity could best be understood with a comprehensive approach to studying these decisionmaking processes. One approach would include a comprehensive review of homicide and other crimes that might be subject to the Federal death penalty; decisions regarding jurisdiction in investigation, arrest and indictment, charging, plea and sentence negotiations; and appellate court decisionmaking.

Participants discussed and expressed a variety of opinions regarding the appropriate unit of analysis for study, including the individual defendant and victim, individual cases and case characteristics, as well as jurisdictions and associated geographical/ecological characteristics. Although there were varied opinions about the benefit of specific approaches, such as structured interviews with key decisionmakers about selection and charging practices, fact-based analysis of cases, and decisionmaking simulations, participants also emphasized the need for a range of methods and use of multiple methods in a program of research. Additional concern was expressed about whether there are a sufficient number of Federal cases to conduct some of the analyses necessary to adequately explain the extent of racial/ethnic and geographic disparity after including and controlling for the wide range of numerous other factors.

Discussion also explored issues involving access to information and data necessary to study the universe of State as well as Federal capital eligible cases. The extent to which access to relevant data can be provided will affect the quality of any research involving the Federal death penalty system. Data or information for study could come from prosecution case files and other sources that would normally be protected in the criminal justice process. NIJ Deputy Director Sally Hillsman reviewed NIJ's grant-related legal provisions regarding confidentiality, privacy, and human subjects protections. She reported that personally-identifiable data collected from casefiles and other data collected from individuals, including public officials, is protected under

these laws. For some practitioners, however, questions remain about how release of such data, even if protected, might otherwise affect the status of the information held by prosecutors, as well as discovery of information collected for the purpose of research involving ongoing litigation in death penalty cases. There also were concerns expressed about setting a precedent in allowing access to case-based information which has traditionally been protected from public disclosure. Other legal and security limitations were identified regarding access to information from grand jury investigations and ongoing investigations involving conspiracy and criminal enterprises. Some expressed the view that the need to prevent disclosure would continue to outweigh the need for research on the issue.

Practitioners also noted that some people might have reservations about cooperating with research that might have the unanticipated consequence of prompting further litigation on the fairness of the criminal justice process leading to the death penalty. Since findings from social science research have influenced litigation in the past, practitioners might be apprehensive about cooperating with any research that involves them and the criminal justice process. It was noted, however, that with the change in administration some former U.S. Attorneys might be willing to discuss their experiences and past practices with decisionmaking in death penalty cases.

There was general consensus among participants that a great deal of information may be readily accessible to begin the process of developing a base of knowledge and systematic research regarding the Federal death penalty system. A variety of methods for collecting data were discussed including participant observation, ethnographic field research, focus groups, surveys and structured interviews of decisionmakers and Federal prosecutors, document review of extant data from court case files and sentencing memoranda, the U.S. Sentencing Commission, the Uniform Crime Reporting and Supplemental Homicide Reporting systems, and the National Incident-Based Reporting System. It was noted that a number of States already have ongoing research concerning the death penalty that may contribute or provide input to a program of research regarding the Federal death penalty system.

Issues regarding the scope of research were discussed, and a range of suggestions were made such as purposeful sampling of selected jurisdictions, a cross-sectional sampling of jurisdictions, and a national sampling to compare and contrast jurisdictions. Participants suggested that a comprehensive prospective study should involve analysis of all homicides occurring in a number of States and districts in order to examine State and Federal case processing from beginning to end within and between both levels of jurisdiction (although the size of such a study would make it a relatively long-term research effort). Such a prospective approach might also include a State by State, district by district survey to determine characteristics specific to individual jurisdictions, and to document similarities and differences in policy, politics, and local culture. It also was suggested that comprehensive data collection efforts should include multiple variables or factors, such as severity of the offense, culpability of the defendant, resources for defense and quality of defense counsel, jury pools and characteristics of jurors, involvement of victim's family, attitude of the defendant, and media involvement.

In summary, the strategic planning meeting provided an opportunity for candid and open discussion between practitioners and researchers on research into the death penalty. The meeting also resulted in a number of ideas and suggestions for the development of a research agenda and a program of research on the Federal death penalty system. A variety of approaches and methods were suggested and discussed to address outstanding questions concerning jurisdiction, charging,

and disparity. There was consensus that a program of research should involve multiple methods and multi-level approaches to building knowledge about the Federal death penalty system.

A necessary step for any further study would be resolving, in a mutually acceptable way, data access issues integral to further study of the Federal death penalty system. For DOJ, this would require the commitment and cooperation of the Criminal Divisions's Capital Case Unit, the Executive Office for U.S. Attorneys, as well as the U.S. Attorney's Offices. Further study would also depend on the willing participation of local prosecutors and investigators, and State officials who may currently maintain data systems on relevant homicides.

National Institute of Justice  
**Federal Death Penalty System**  
**Meeting**  
**Washington, DC**  
January 10, 2001  
**Participants & Observers**

**Participants**

James Acker, School of Criminal Justice, The University at Albany  
Jay Albanese, Department of Criminal Justice, Virginia Commonwealth University  
William Bailey, Department of Sociology, Cleveland State University  
David Baldus, College of Law, University of Iowa  
William Bowers, College of Criminal Justice, Northeastern University.  
David Bruck, Defense Attorney, South Carolina  
Donna Bucella, U.S. Attorney, Middle District of Florida  
Mark Calloway, Executive Office for U.S. Attorneys/U.S. Attorney, Western District of North Carolina  
Kevin DiGregory, Criminal Division, U.S. Department of Justice  
Samuel Gross, Law School, University of Michigan (Visiting Columbia Law School Faculty)  
Sally Hillsman, National Institute of Justice  
Todd Jones, U.S. Attorney, Minnesota  
Steve Klein, RAND Corporation  
Richard Lempart, Law School, University of Michigan  
Rory Little, Hastings College of Law, University of California  
Robert S. Mueller III, U. S. Attorney Northern District of California  
Ray Paternoster, School of Criminal Justice, University of Maryland.  
Ruth Peterson, Department of Sociology, Ohio State University  
William Ritter, District Attorney, Denver County, Colorado  
Julie Samuels, National Institute of Justice  
Chris Stone, VERA Institute

**Observers**

Phil Baridon, Office of Policy and Legislation, Criminal Division, U.S. Department of Justice  
Pam Cammarata, Office of Community Oriented Policing Services  
Patrick Clark, National Institute of Justice  
Ronald Everett, National Institute of Justice  
Thomas Feucht, National Institute of Justice  
Richard Filkins, Judiciary Committee, U.S. House of Representatives  
Margaret Griffey, Criminal Division, U. S. Department of Justice  
Laural Hooper, Federal Judicial Center  
Jordan Leiter, Office of Policy and Legislation, Criminal Division, U.S. Department of Justice  
Jamie Orenstein, Office of the Deputy Attorney General, U.S. Department of Justice  
Paul Ridge, Criminal Case Unit, Criminal Division, U.S. Department of Justice  
James Santelle, Executive Office of U.S. Attorneys  
Tracy Snell, Bureau of Justice Statistics