

Responses to Questions from Senator Specter

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1. There have actually been approximately 60 death sentences imposed under federal law since 1976 (not 36), and there are currently about 51 federal death row inmates. I agree that this is a small percentage of the more than 3000 inmates now on death row across the United States. My testimony, however, was not intended to suggest that the Department of Justice was on course to take over the nation's death penalty system if it was not "restrained." Rather, my point was that the current Justice Department's transfer of death penalty decision-making from local U.S. Attorneys' offices to Washington in pursuit of an unattainable goal of nationwide consistency has instead produced a scattershot, wasteful and increasingly unsuccessful record of death penalty prosecutions in the federal courts. The testimony of former United States Attorney Paul K. Charlton and of Secretary of Justice Roberto Sanchez Ramos provided telling examples of this.
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 - a. The Department of Justice has never made public a list of cases in which the Attorney General has authorized the government to seek the death penalty, and therefore I cannot provide a list of "all" such cases. The Federal Death Penalty Resource Counsel Project does maintain an unofficial listing, derived from press coverage, PACER federal court docket checks, and communications from defense counsel, which we post on our web site in a list which is organized by case outcome.¹ The very brief factual summaries accompanying these case citations are obviously incomplete, and are included simply to aid in identifying the cases.
 - b. and c. Neither the Federal Death Penalty Resource Counsel Project nor I personally categorize federal capital cases as "deserved" or "undeserved." I therefore cannot answer these questions. Whatever my personal opinions might be, federal law places this determination in the hands of juries, and it is surely significant that of the 72 cases that the Justice Department brought to

¹See www.capdefnet.org/fdprc/contents/summaries_of_cases/case_summ_frame.asp. Since a printout of this list would run close to 150 pages, I have not included one with this response, but I will be happy to do so upon request.

trial as death penalty prosecutions between the beginning of 2001 and the end of 2006, exactly two-thirds (48) have ended in acquittals, convictions of less offenses, or (for the most part) sentences of less than death. The most recent federal sentencing verdict is illustrative: on July 18, a jury in Akron, Ohio unanimously imposed a life sentence on Donna Moonda after convicting her of arranging the murder-for-hire of her husband. According to the Associated Press, the triggerman in the murder received a 17½ sentence after testifying against Moonda, and during deliberations the jury asked the judge whether a less-than-life sentence was available. Joe Milicia, "Wife of Murdered Doctor Sentenced to Life in Prison," Akron Beacon-Journal, July 19, 2007 (copy attached). This case appears to have been in federal court only because the murder plot traversed the state line between Ohio and Pennsylvania, and however blameworthy Ms. Moonda's conduct, it was surely predictable that no jury would sentence her to death given the relatively lenient sentence given to the actual killer. If this case reflects the Attorney General's current standard for death penalty decision-making, the Department's low capital case "success" rate is not surprising.

3. a. They are being tried for federal crimes.
- b. As I tried to explain in my testimony, I do not categorically object to the use of the death penalty in every instance where state or local law would forbid it (although I do categorically oppose the death penalty for other reasons). My point was simply that federal policy in favor of the death penalty should trump state law to the contrary only where there is a compelling *federal* interest in seeking the death penalty. The Oklahoma City Bombing, which Mr. Otis cited repeatedly in his testimony at the June 27 hearing, provides a clear example of a crime implicating such an over-arching federal interest. So do cases involving the murders of federal law enforcement or other federal government officials, murders by inmates in federal prisons, and murders committed in furtherance of international or multi-state criminal enterprises. Many other cases, however, that fall within an ever-expanding federal criminal jurisdiction (such as most kidnaping or carjacking cases, and murders in furtherance of relatively small-scale drug trafficking conspiracies) involve serious offenses against the local community, not the nation as a whole. It is these kinds of murders that should, as a general rule, be punished according to local rather than federal law.

I realize that like many legal dividing lines, the distinction between a national and a local crime will be easier to discern in some cases than in others. But the fact that some cases will always fall close to the line does not mean that the line should not be drawn. If a given murder's impact is primarily local, and if it could just as easily be tried and punished in the state's criminal justice system, it normally should be. And so long as the judgment of the local jurisdiction about how to punish such crimes falls within federal constitutional limitations, that judgment should be respected.

In any event, the issues of federalism that surround the death penalty cannot be analogized to those involved in the abortion controversy. No private individual has any enforceable legal right to have anyone else executed, while the Supreme Court has held that women do normally have a constitutional right to choose whether to carry a non-viable unborn child to term. Furthermore, I neither testified nor meant to suggest that the federal government lacks the constitutional authority to impose the death penalty in state and local jurisdictions that have rejected it. I simply suggested, and still believe, that this authority should be exercised sparingly, and only when the interests of the United States clearly require it. Were the Justice Department to adopt such a federalism-based approach, I suspect it would find that juries would impose the death penalty in a much higher proportion of the cases in which was sought, the persistent question of racial disparity would disappear, and the death penalty would no longer exact such a disproportionate toll on the time, resources and morale of the federal judicial and criminal justice systems.

Wife of murdered doctor sentenced to life in prison

Jury spares Donna Moonda, 48, from death penalty for hiring lover to kill husband on Ohio Turnpike

By Joe Milicia

Associated Press

Thursday, July 19, 2007

A federal court jury on Wednesday spared a woman the death sentence for hiring her lover to kill her wealthy husband on the Ohio Turnpike two years ago and instead said she should spend the rest of her life in prison.

Donna Moonda, 48, who was convicted of murder-for-hire this month, quietly cried upon learning her sentence.

Moonda's attorney David Grant had asked the jury in U.S. District Court in Akron not to sentence her to death because she suffers from a personality disorder and because the shooter, Damian Bradford, 26, was sentenced to just 17 ½ years in prison.

Prosecutors said she had promised her drug dealer boyfriend half of Dr. Gulam Moonda's multimillion-dollar estate in return for the killing.

Assistant U.S. Attorney Linda Barr said Moonda deserved a death sentence because she had her husband killed for the worst possible reason -- money.

Moonda was given a private moment with her tearful 77-year-old mother after the jury gave its sentence. Dorothy Smouse was sitting in the back seat of the car when the 69-year-old doctor was shot May 13, 2005, along the turnpike south of Cleveland.

"This might be the last opportunity for Donna and her mother to hug," Grant said.

About three hours into their deliberations, jurors asked Judge David D. Dowd Jr. if there was any other sentence they could consider on the charge of murder-for-hire.

Dowd told them there was no other option. Several jurors nodded their heads in understanding. They returned a decision about an hour later.

"Had they had the option, she probably would have been sentenced to less than life without parole," Grant said.

U.S. Attorney Greg White said afterward that he was pleased with the outcome.

White believed the jury's decision was influenced by Bradford's sentence and that he will be out of prison sometime around his 40th birthday.

``Some things are distasteful in law enforcement," he said of the deal with Bradford.

Bradford, of Monaca, Pa., who met Moonda in drug rehab, testified during Moonda's trial that he followed the couple from their Hermitage, Pa., home near the Ohio state line and shot the doctor in the side of the head after she pulled over on the turnpike, supposedly to let her husband take the wheel.

Grant said his client was holding up well.

``She's ready for the next fight," Grant said of Moonda, who maintains her innocence and will appeal after she is sentenced Sept. 17. Dowd can't change the jury's sentence.

A longtime colleague of Gulam Moonda's said he was satisfied with the jury's decision.

``Life in prison without parole is a pretty severe sentence," said Dr. Ravi Sachdeva, a surgeon who worked with the late doctor at Sharon Regional Health System in Sharon, Pa. ``I feel sorry for her family. I hope they can get over what she did."

Sachdeva said the estate that Moonda and Bradford plotted to obtain will go to the doctor's family and charity.

Dr. Moonda, one of only two urologists in Sharon, still is missed by those who were under his care, Sachdeva said.

``Even now, patients come to the office and they have nothing but contempt for her," he said of Donna Moonda.

In pushing for the death sentence, Barr told the jury that Moonda was more culpable in the crime than Bradford because she came from a better upbringing than the convicted drug dealer. She also helped plan the killing, knowing her husband's schedule and what he was worth financially.

Grant called Barr's suggestion that Moonda is more culpable ridiculous, noting Barr's own words from the trial that ``two fingers were on the trigger."

He noted psychologist Robert Kaplan's testimony that she has dependent personality disorder as a factor to consider in sparing her the death penalty.

Moonda feared displeasing her father in childhood and that pattern continued with her husband, Kaplan said. The disorder could lead her to act against her own best judgment.

Barr dismissed that argument, saying the disorder wouldn't cause someone to plot their husband's murder. Nor was she a ``robot carrying out the commands of her lover," Barr said.

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