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PRESERVATION

Death Penalty Talking Points

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DEATH Row

1994 Crime Act

- The 1994 Crime Act significantly expanded the number of crimes for which the death penalty can be imposed to nearly 60 federal crimes. Among the new capital offenses in the Crime Act were: murder by a federal prisoner serving a life sentence; murder of a federal law enforcement official; drive by shooting for certain drug offenses; car jacking resulting in death; foreign murder of U.S. nationals; and murder by escaped federal prisoners.
- The 1994 Crime Act also established constitutional procedures for the imposition of the death penalty for federal crimes. The new procedures included a special sentencing hearing to consider the imposition of the death penalty based upon findings of aggravating and mitigating circumstances.
- The Racial Justice Act, which would have permitted convictions to be challenged based on the racial mix of defendants, was ultimately dropped from the Crime Bill prior to passage.

1996 Antiterrorism Act

- The 1996 Antiterrorism Act extended the death penalty to two additional federal crimes involving extraterritorial terrorism.
- The Act also contained significant reforms to habeas corpus. The Act generally limited prisoners to one habeas challenge within two years of final judgement. The law also makes it more difficult for prisoners to get an evidentiary hearing in Federal habeas corpus cases. Prior to the Act, prisoners could bring a relatively unlimited number of habeas challenges, and there was no real time limit.

Current Federal Procedures on Death Penalty

- In order to seek the federal death penalty, the recommendation must come from the U.S. Attorney him or herself. The U.S. Attorney's recommendation goes to a committee of senior Justice Department lawyers. Defense attorneys are invited to meet with the U.S. Attorney and the senior attorney committee to provide input prior to the AG decision on whether the death penalty should be sought. The senior attorney committee recommendation and the U.S. Attorney recommendation then goes to the Attorney General who then must make the final decision.
- For federal death penalty cases, defendants are entitled to 2 counsels, at least one of whom has experience in capital cases. There are additional standards in place that assure that attorneys representing federal defendants have a certain number of years of legal experience (NB: these standards are minimal). The Federal death penalty resource center provides support for defense lawyers that defend individuals in capital cases.