

No Decrease In Death Penalty Approval Rate

by [Ari Shapiro](#)

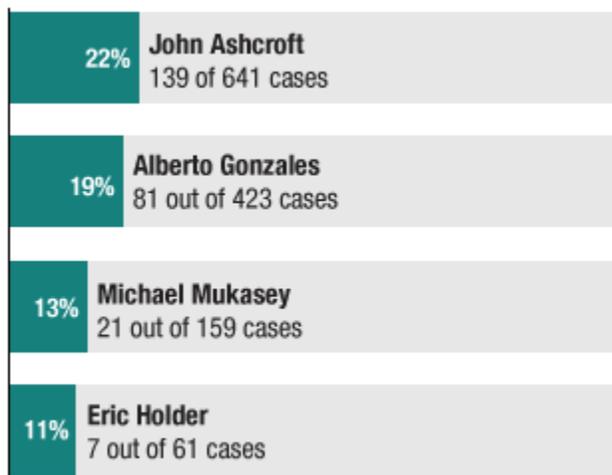
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During the Bush administration, opponents of capital punishment criticized the Justice Department for bringing federal death penalty cases too often and in states that have outlawed execution as a form of punishment.

With Attorney General Eric Holder running the department, many people expected to see a more limited use of the tactic.

Seeking The Death Penalty

Attorney General Eric Holder has instructed prosecutors to seek the death penalty at about the same rate as Michael Mukasey, President Bush's last attorney general.



Source: Federal Death Penalty Resource Center

Credit: Robert Benincasa and Nelson Hsu/NPR

But so far, Holder is instructing prosecutors to seek the death penalty at roughly the same rate as President Bush's last attorney general.

Death Penalty Approval Rate

Holder said at his confirmation hearing that he is not a proponent of the death penalty. In March, he told reporters, "I think that's the toughest decision that an attorney general has to make: When do you authorize the seeking of the death penalty?"

But he quickly proved he is not afraid to instruct prosecutors to seek the death penalty in court.

"I've had to sign a few of those already during the course of these six weeks," Holder said in his first briefing with the media.

Several months later, Holder has authorized death penalty prosecutions at a pace comparable to that of his immediate predecessor, according to the Federal Death Penalty Resource Center. The center helps defense lawyers in capital cases, and it also tracks how often an attorney general authorizes prosecutors to seek the death penalty.

According to the Federal Death Penalty Resource Center, President Bush's first attorney general, John Ashcroft, greenlighted 139 federal death penalty prosecutions out of 641 cases that might have been eligible for capital punishment. That's a 22 percent approval rate. Ashcroft's successor, Alberto Gonzales, authorized prosecutors to seek the death penalty in 81 out of 423 possible cases, for a 19 percent approval rate.

Michael Mukasey approved 21 out of 159 cases, so his approval rate was 13 percent. Holder's approval rate is almost identical to Mukasey's.

'Nothing Has Really Changed'

As of Oct. 3, capital defense lawyers say, Holder had authorized prosecutors to seek the death penalty in 7 cases out of 61 that might have been eligible for capital punishment. That's an 11 percent approval rate.

If you include the five alleged Sept. 11 conspirators headed to New York from Guantanamo for a federal death penalty trial, the rate climbs higher. And Thanksgiving week, Holder instructed prosecutors to seek the death penalty in another four cases.

The Justice Department said it could not confirm the Federal Death Penalty Resource Center's numbers.

"The federal death penalty is not on hold in the sense of prosecutions," says Richard Dieter, who directs the nonpartisan Death Penalty Information Center. "Eric Holder's stamp of approval and signature is now on a number of federal prosecutions that are being carried on, and yet we don't know if there's going to be a change in policy."

Holder has not made any sweeping pronouncements about the death penalty. And sources who have met with senior Justice Department officials on this issue say there is no policy review on the horizon.

So, as multiple people who've worked with the Justice Department on the death penalty put it, "Nothing has really changed."

Defer To States?

But this debate is about more than the number of prosecutions. It is also about how, and where, the decision to seek the death penalty is made.

Paul Charlton was President Bush's U.S. attorney in Arizona. He advised against seeking the death penalty for a drug dealer accused of killing his supplier, and Gonzales overruled Charlton's recommendation.

"What was of great disappointment to me in that instance was that the attorney general refused to hear from me personally," Charlton said in a phone interview.

Speaking to reporters last month, the new attorney general said he won't make that mistake.

"Based on my experience having been a United States attorney, and given the respect that I have for the career people who handle these kinds of matters, the recommendation that I get from the field carries a great deal of weight with me," Holder said.

There is also a question of local standards in death penalty enforcement. Many states have outlawed the death penalty, but even in those states, federal prosecutors can still bring capital charges.

As Dieter explains, the Clinton administration deferred to local norms. "That is to say, you don't ordinarily seek the death penalty where voters have rejected it. President Bush and John Ashcroft were upfront. They said, 'We're changing the policy.' "

Ashcroft brought federal death penalty cases in states that have outlawed capital punishment.

When asked for his view on bringing federal death penalty cases in states that have outlawed capital punishment, Holder said, "I wouldn't say that there's a policy where we're doing it on a state-by-state basis. It really is a case-by-case basis."

A few months after Holder made that statement, he authorized a capital prosecution in Vermont, a state that does not have the death penalty. When Ashcroft brought a federal death penalty case in Vermont seven years ago, the mayor of Burlington called it "an affront to states' rights" and "not consistent with the values of a majority of Vermonters." But this time, there was hardly any outcry.

There is also an international element to some death penalty cases. Europe has outlawed capital punishment. When the United States announced it would seek the death penalty against alleged Sept.11 mastermind Khalid Sheikh Mohammed, Germany said it would not let German evidence be used against him at trial.

That could be significant, because Mohammed spent time in Germany before the Sept. 11 terrorist attacks.