



National Institute of Justice

S o l i c i t a t i o n

July 20, 2001

Research Into the Investigation and Prosecution of Homicide: Examining the Federal Death Penalty System

APPLICATION DEADLINE:

~~October 19, 2001~~

Revised Deadline: December 19, 2001

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Solicitation for Research

I. Introduction

The National Institute of Justice (NIJ) requests proposals to conduct research examining how homicide cases come into the Federal system. Of particular interest is the identification of factors that may help to explain the geographic distribution and racial/ethnic composition of cases covered by two U.S. Department of Justice (DOJ) reports dated September 12, 2000 and June 6, 2001 and discussed below. NIJ will make one to three awards of varying amounts up to a total of \$1,000,000 for a period of performance of up to 24 months. The investigation must be either national in scope or be a multijurisdictional design capable of answering a range of research questions discussed below.

NIJ is streamlining its process to accommodate the volume of proposals anticipated under this solicitation. Researchers can help in a significant way by sending NIJ a nonbinding letter of intent by **September 14, 2001**. The Institute will use these letters to forecast the numbers of peer panels it needs and to identify conflicts of interest among potential reviewers. There are two ways to send these letters. You can reach NIJ by Internet by sending e-mail to *tellnij@ncjrs.org* and identifying the solicitation you expect to apply for. You can write a letter with the same information to Research into the Investigation and Prosecution of Homicide: Examining the Federal Death Penalty System, 810 Seventh Street, NW., Washington, DC 20531.

II. Background

Historically, the majority of homicide and death penalty cases have been prosecuted at the State level with the Federal system playing a

limited role. The Supreme Court issued a ruling in 1972 that had the effect of invalidating capital punishment throughout the United States— at both the Federal and state levels. While many State legislatures revised their procedures relatively quickly to withstand constitutional scrutiny, the Federal Government did not do so until the Anti-Drug Abuse Act of 1988. A part of this law, known as the Drug Kingpin Act (DKA), made the death penalty available as a possible punishment for certain drug-related offenses. The availability of capital punishment in Federal criminal cases expanded significantly in 1994, when the President signed into law the Violent Crime Control and Law Enforcement Act. A part of this law, known as the Federal Death Penalty Act, provided that more than 40 Federal offenses could be punished as capital crimes. The Antiterrorism and Effective Death Penalty Act of 1996 added another four Federal offenses to the list of capital crimes. The Federal Government has exclusive jurisdiction over some of these offenses for which the death penalty is available; for most of the offenses, however, the Federal Government has concurrent jurisdiction with the States. Despite these developments, the number of cases in the Federal system remains small relative to the States.

The vast majority of homicides in the United States are investigated and prosecuted by local police and local prosecutors, who file charges against defendants in State courts, either as capital cases or noncapital cases. Some subset of homicide cases could be prosecuted in the Federal system if the U.S. Attorney determines there is a “substantial Federal interest” in doing so. In making this determination, U.S. Attorneys weigh a number of factors, including Federal law enforcement priorities, the relative strength of the State’s interest in prosecution, the extent to which the criminal activity reached beyond the local jurisdiction, and the relative ability and

willingness of the State to prosecute effectively.¹ Once the case is accepted for Federal prosecution, U.S. Attorneys must decide whether they can and should charge a capital offense and, if so, whether to recommend the death penalty.

As the law governing the Federal death penalty has changed, the Department of Justice has modified its internal decisionmaking processes in capital cases. With the enactment of the DKA in 1988, the Department instituted a policy that required U.S. Attorneys to submit to the Attorney General for review and approval any case in which the U.S. Attorney wished to seek the death penalty. Under this policy, the decision not to seek the death penalty was left to the U.S. Attorney's discretion. From 1988 through 1994, U.S. Attorneys sought approval from the Attorneys General to seek the death penalty 52 times and received it 47 times.

On January 27, 1995, DOJ adopted a policy, referred to as the "death penalty protocol," that requires U.S. Attorneys to submit for review to the Attorney General all cases in which a defendant is charged with a capital eligible offense, regardless of whether they recommend seeking the death penalty (unless prior to submitting the case for review, the U.S. Attorney enters into a plea bargain with a defendant for a non-capital crime). *Note: This protocol was changed on June 6, 2001. These changes are discussed below.*

On September 12, 2000, DOJ released a report examining the data collected as part of this protocol to better understand the administration of the Federal death penalty.² The report showed that since 1995, when the protocol was implemented, the cases of 682 defendants had been submitted for Attorney General review under the Department's death penalty protocol. Of the 682 defendants whose cases were submitted for review, 20% were white, 48% were black, and 29% were Hispanic.³ This representation of racial and ethnic minorities in submitted cases was larger than their representation in the general population. The report also showed considerable differences in the geographic distribution of the submitted cases across Federal districts.

Generally speaking, once submitted for review, minorities proceeded to the next stages in the death penalty process at lower rates than whites. The Attorney General considered 588 defendants and authorized the U.S. Attorneys to seek the death penalty against 159 of them. The Attorney General authorized the death penalty for 38% of the white defendants considered, 25% of the black defendants, and 20% of the Hispanic defendants.⁴ Of the 159 defendants for whom the Attorney General authorized the death penalty, 28% were white, 45% were black, and 20% were Hispanic.⁵

¹ 9-10.070 "Substantial Federal Interest. United States Attorneys' Manual." Washington, D.C.: U.S. Department of Justice. See: http://www.usdoj.gov/usao/eousa/foia_reading_room/usam/title9/10mcrm.htm#9-10.070.

See also: 9-27.000 "Principles of Federal Prosecution. United States Attorneys' Manual." Washington, D.C.: U. S. Department of Justice. See: http://www.usdoj.gov/usao/eousa/foia_reading_room/usam/title9/27mcrm.htm.

² "The Federal Death Penalty System: A Statistical Survey (1988-2000)." Washington, D.C.: U.S. Department of Justice, September 12, 2000. See: <http://www.usdoj.gov/dag/pubdoc/dpsurvey.html>.

³ Ibid., Table 1A.

⁴ Ibid., Table 2A.

⁵ Ibid., Table 1A.

On June 6, 2001, DOJ released a second report on the Federal death penalty system.⁶ This report analyzed information submitted by the U.S. Attorneys about capital or potential capital cases that had not been submitted for Department review under the death penalty protocol because either a capital crime was not charged, a plea agreement was reached prior to submission, or the case was not submitted but should have been. Findings from the analysis of this additional information were similar to the findings of the September 12, 2000 report. The June 6, 2001 report also provided information about the reasons for the exercise of Federal jurisdiction in potential capital cases by more closely examining the cases in selected U.S. Attorneys' offices. The report concluded that the racial and ethnic proportions found in the pool of potential Federal capital cases and differences among the racial and ethnic proportions in different districts resulted from noninvidious causes.⁷ Some of these causes were general in nature and applied in many districts; others reflected unique conditions in particular districts and the relationship between Federal and State authorities in those districts.⁸

The June 6, 2001, report also noted changes Attorney General Ashcroft made to the death penalty protocol: (1) broadening the scope of the death penalty review process to require U.S. Attorneys to submit information to the Attorney General about potential capital cases, as well as those in which a capital offense is

actually being charged; (2) abbreviating the review process in cases in which the U.S. Attorney does not wish to recommend seeking a capital sentence; and, (3) requiring approval of plea agreements with defendants who face possible death sentences.

These two studies provided insights into certain aspects of the Federal death penalty system. To more fully understand the composition of Federal homicide cases, however, further research should examine the broader pool of homicide cases from which the Federal caseload of capital eligible cases arises.

Recognizing the need for additional work in this area, both former Attorney General Reno and Attorney General Ashcroft asked NIJ to sponsor research related to the operation of the Federal death penalty system.

On January 10, 2001, NIJ convened researchers and practitioners, including Federal and State prosecutors and defense attorneys, to discuss research questions, research methods, data sources, and data access issues related to further research into the Federal death penalty system.⁹ This meeting helped explore a variety of relevant issues and concerns related to research in this area.

A limited number of other reports have reviewed the consequences of the statutory changes on the number and characteristics of Federal homicide cases and on the operation of the Federal death penalty.¹⁰

⁶ "The Federal Death Penalty System: Supplementary Data, Analysis and Revised Protocols for Capital Case Review." Washington, D.C.: U.S. Department of Justice, June 6, 2001. See: <http://www.usdoj.gov/dag/pubdoc/deathpenaltystudy.htm>.

⁷ The Federal Death Penalty System: Supplementary Data, Analysis and Revised Protocols for Capital Case Review. Washington, D.C.: U. S. Department of Justice, June 6, 2001, page 10. See: <http://www.usdoj.gov/dag/pubdoc/deathpenaltystudy.htm>.

⁸ Ibid., Page 10.

⁹ Summary of Proceedings of the "Strategic Planning Meeting on Research Involving the Federal Death Penalty System." See: <http://www.ojp.usdoj.gov/nij/new.htm#FedDeathSol>.

¹⁰ In 1994, the House Subcommittee on Civil and Constitutional Rights issued a staff report on racial disparity in Federal death penalty prosecutions. See: "Racial Disparities in Federal Death Penalty Prosecutions 1988-1994," Staff Report for the Subcommittee on Civil and Constitutional Rights, Committee on the Judiciary. March 1994.

III. Research Issues

A successful application should consider, but need not be limited to, the areas of study discussed below. To investigate the relevant universe of homicide cases, the research design should examine how homicide cases are investigated and how and why some of those cases enter the Federal system and others enter the State system. Research should also examine those cases that never enter the State or Federal system to understand why they remain uncleared by arrest. Research should also address issues of race/ethnicity and geography. Relevant questions include:

- What are the characteristics of homicide cases and offenders indicted in State systems as compared to those indicted in the Federal system?
- What is the role of Federal law enforcement and its interaction with local and State law enforcement in these cases?
- What are the significant decision-making factors that determine whether a case is prosecuted in the Federal or State system and whether a capital offense is charged?
- What are the significant geographic, case, or other factors that help explain the resulting distribution of homicide cases prosecuted in the Federal and State systems and indicted on capital or noncapital charges?

Possible factors influencing or correlating with prosecutorial decision-making could include but are not limited to: the nature of the offense and offender, perceived Federal interest, district priorities, organizational resources, relationships among local/Federal prosecutors, caseload, legal structure, community attitudes and norms, and demographic and socioeconomic characteristics of the victim and offender.

See also: Capital Punishment Statistical Series. Washington, D.C.: U.S. Department of Justice, Bureau of Justice Statistics. See: <http://www.ojp.usdoj.gov/bjs/cp.htm#publications>.

The design must be national in scope or a multijurisdictional design capable of answering the range of research issues presented above.

Multijurisdictional designs must provide substantial justification for site selection by discussing the feasibility of design, as well as the relationship among site characteristics and the specific research questions to be addressed.

Research designs may consider ongoing State death penalty studies and/or existing State-level death penalty data in formulating the overall research strategy.

Applicants may want to consider the utility a scientific advisory group would bring to their research study.

DOJ is committed to providing NIJ - funded researchers access to the data underlying the September 12, 2000 and June 6, 2001 reports, and to DOJ personnel, consistent with legal restrictions and confidentiality requirements. DOJ will work with NIJ and the NIJ-funded grantee to develop data access plans that are acceptable to all parties.

In their proposals, applicants should describe how they will access local-level data and decisionmakers.

IV. Disclosure of Prior Death Penalty Research, Advocacy, and/or Expert Testimony

To the extent that applicants or their sponsoring organizations have done or are now doing research, advocacy, and/or providing expert testimony on the death penalty, they must disclose this work in their proposals. Drafting legislation, writing editorials or opinion articles, and other policy work should also be disclosed in the application. For those applicants with previously funded disclosed work, the funding source, end-dates, and an abstract of the work must be appended. Also, complete citations to all published work should be provided from

those applicants with previously published articles or books on the death penalty.

V. Selection Criteria

NIJ will make this award using a competitive process described below. External peer review panelists will consider both technical and programmatic merits. Successful applicants must demonstrate to an independent peer review panel that: (1) the proposal addresses the identified research questions; (2) the proposed research design is rigorous, feasible, and appropriate to posited research questions; and (3) principal investigators are highly qualified to execute the design within the proposed budget. Following the peer review, NIJ staff will make recommendations to the NIJ Director based on the results of the independent reviews. Final decisions will be made by the NIJ Director. Reviews of grant applications will be based upon the following criteria:

●Impact of the Project

- Enhanced public understanding of the racial/ethnic and geographic pattern(s) in the administration of the Federal death penalty.
- Potential for significant advances in scientific understanding about prosecutorial discretion, Federal/State interaction, role of race/ethnicity and geographic pattern(s) in the administration of the Federal death penalty.
- Relevance to improving the policy and practice of the Federal system and for improving public trust and confidence in the criminal justice system.

●Quality and Technical Merit

- Awareness of existing research;
- Soundness of methodology and analytic or technical approach;
- Innovation and creativity, where appropriate;
- Feasibility of proposed project and awareness of pitfalls.

●Capabilities, Demonstrated Productivity, and Experience of Applicants

- Qualifications and experience of personnel to proposed project;
- Demonstrated ability to manage proposed effort;
- Adequacy of proposed budget, including time and personnel;
- Past performance on NIJ grants and contracts.

●Budget Considerations

- Total cost relative to perceived benefit;
- Budget appropriate to level of effort;
- Use of existing resources to conserve costs.

VI. How to Apply

Individuals interested in submitting proposals in response to this solicitation must complete the required application forms and related documents (see below for how to obtain application forms and guides for completing proposals). Applicants must include all of the following information and completed forms to qualify for consideration:

PART A:

- Standard Form (SF 424) - Application for Federal assistance.
- **Proposal abstract.**
- Table of contents.
- Budget detail worksheet.
- Budget narrative.
- Negotiated indirect rate agreement (if appropriate).
- **Program narrative (maximum 40 pages).**
- References.
- Names and affiliations of all key persons including applicants and subcontractor(s), advisors, consultants, and advisory board members. Include name of principal investigator, title, organizational affiliation, department (if institution of higher

education), address, phone, fax, and e-mail address.

- List of previous NIH awards, their status, and products (especially those written, due, or already submitted to NIH) and publications by NIH or elsewhere.
- List of any other funded research relevant to the topic area.

PART B:

- Privacy certificate.
- Protection of Human Subjects Assurance Identification/Certification/Declaration (Form 310).
- Environmental assessment (if required).
- Geographic areas affected worksheet.
- Assurances.
- Certifications Regarding Lobbying, Debarment, Suspension, and Other Responsibility Matters; and Drug-Free Workplace Requirements (one form).
- Disclosure of Lobbying Activities.
- Appendixes:
 - Letters of cooperation from organizations collaborating in the research project.
 - Résumés.
 - Other materials.

The author(s) of the proposal should be clearly identified. Proposals that are incorrectly collated, incomplete, or handwritten may not be considered as submitted or, at NIH's discretion, will be returned without further review.

Proposals exceeding the page limit may not be reviewed. No additions to the original submission will be allowed. Applicants should address the questions, issues, and requirements set forth below when preparing an application.

Proposal abstract. The proposal abstract is a very important part of the application. Once an award has been granted, the abstract is computerized and serves as a summary available to all interested parties. When read separately from the rest of the application, the abstract should serve as a succinct and accurate description

of the proposed work. Applicants should concisely describe research goals and objectives, research design, and methods for achieving the goals and objectives. Length is not to exceed 400 words. Use the following two headers and instructions to assist in developing the abstract.

Research Goals and Objectives:

Statement of Purpose. State the problem under investigation including goals and objectives of the proposed research project, and anticipated relevance of the project to public policy and/or practice.

Research Subjects. If applicable, describe subjects who will be involved in the proposed project including the number of participants, age, gender, race/ethnicity, and other pertinent characteristics such as how researchers will gain access to participants.

Proposed Research Design & Methodology:

Methods. Describe the research method and/or design, including data to be used, data collection procedures and instrumentation, secondary data analysis methods, and other methods or procedures unique to the proposed study.

Data Analysis and Products. Describe proposed techniques for data analysis and all expected products, including final reports, data to be archived, and instrumentation.

Program Narrative. The program narrative should provide information and detail to adequately describe the proposed project and should include:

- Purpose, goals, and objectives.
- Review of relevant literature.
- Methodology.
- Anticipated results and products.
- Staff/Management plan.
- Tables, charts, figures and research time -line.

Page limit. The number of pages included in the “Program Narrative” section of the application must not exceed forty(40), double-spaced pages in 12-point font with 1-inch margins. Tables, charts, and figures are encouraged and will not be counted in the 30-page limitation.

Due date. To assist us in preparation for review of applications, interested applicants should submit by mail or fax (202/305-8626) a nonbinding letter of intent by September 14, 2001. One unbound original and 9 copies of the completed proposals **must be received** at the National Institute of Justice by 5:00 p.m. on **December 19, 2001**. Extensions to this deadline will not be permitted. Faxed or electronically transmitted copies will not be accepted.

Application Materials. Applicants should obtain two packets: (1) application forms (including a sample budget worksheet) and (2) guidelines for submitting proposals (including requirements for proposal writers and requirements for grant recipients). To receive them, applicants can:

- Access the National Criminal Justice Reference Service (NCJRS) on the Web (<http://www.ncjrs.org>), or NIJ Web site (<http://www.ojp.usdoj.gov/nij/funding.htm>). These Web sites provide NIJ application forms and guidelines.
- Request hard copies of the forms and guidelines by mail from the NCJRS at 800–851–3420 or from the Department of Justice Response Center at 800–421–6770 (in the Washington, D.C., area, at 202–307–1480).
- Request copies by fax. Call 800–851–3420 and select option 1, then option 1 again for NIJ. Code is 1023.
- **Please note that instructions provided in this announcement supersede those outlined in the document: *Guidelines for Submitting Proposals for National Institute of Justice-Sponsored Research*.**

VII. Guidelines for Grantees

NIJ has established guidelines for grantees regarding deliverables such as final reports and data sets. **Ninety (90) days prior to the completion of the grant period**, grantees are expected to submit in draft form: a 400-word abstract, a 2,500-word executive summary, and a technical research report.

Final Deliverables

- Abstract (400 words).
- Executive Summary (2,500 words).
- Technical Report.
- Data and supporting documentation.

All NIJ draft research reports are peer reviewed upon submission. The reviews are forwarded to the principal investigator with suggestions for revisions. The principal investigator is then required to submit the revised final report, abstract, executive summary, final data set, and codebook/data dictionary. The abstract, executive summary, and final report are to be submitted in both paper and electronic/diskette versions. The data set and codebook/dictionary are also to be submitted in electronic form.

Data sets must be received by the grant end date. Grant applicants should ensure that the proposed time line accommodates these requirements. Further, the proposed budget should adequately address these requirements.

In addition to the abstract, executive summary, technical report, and data set, grantees are required to submit quarterly financial status reports and semiannual progress reports.

Financial Status Report

Financial status reports (SF 269-A) are to be submitted quarterly no later than 45 days

following the end of each calendar quarter. Two copies of the financial status report must be submitted to the Office of the Comptroller every quarter during which the award is active even if there has been no financial activity during the reporting period.

Additionally, a final financial report is due 120 days after the end date of the award. Future awards and fund drawdowns will be withheld if financial status reports are delinquent.

Semiannual Progress Report

Recipients of funding are also required to submit semiannual Categorical Assistance Progress Reports. Two copies of the progress report must be submitted to the Office of the Comptroller twice a year even no substantive activity has occurred during the reporting period. The progress report should describe activities during the reporting period and status or accomplishment of objectives as set forth in the approved application for funding. For the duration of the award, progress reports must be submitted within 30 days after the end of the reporting periods (January 1 through June 30 and July 1 through December 31).

Additionally, a final progress report providing a summary of achievement of the goals and objectives of the award, significant results, and any products developed under the award, is due 90 days after the end date of the award. Future awards and fund drawdowns may be withheld if progress reports are delinquent.

Forms for submitting financial and progress reports are available at the NIJ Web site. Report formats will also be provided by the Office of Justice Programs at the time of the grant award.

CONFIDENTIALITY OF INFORMATION AND HUMAN SUBJECT PROTECTION

NIJ has adopted new policies and procedures regarding the confidentiality of information and human subjects protection.

The Department of Justice (DOJ) regulations at 28 Code of Federal Regulations (CFR) Part 22 require recipients of NIJ research funds to protect personally identifiable information that is collected from all research participants. The regulations at 28 CFR Part 22 require applicants for NIJ funding to outline specific procedures for protection of private information about individuals as part of the Privacy Certificate submitted with the application package.

In addition to the regulations in Part 22, DOJ has adopted policies concerning protection of human subjects that are the same as those established by the Department of Health and Human Services in 45 CFR Part 46, Subpart A, also known as the "Common Rule."

The DOJ regulations are set forth in 28 CFR Part 46. In general, 28 CFR Part 46 requires that all research involving human subjects conducted or supported by a Federal department or agency be reviewed and approved by an Institutional Review Board (IRB) before Federal funds are expended for that research. If IRB approval is required for this project, a copy of the IRB's approval as well as supporting documentation concerning the IRB's institutional affiliation, its policies and procedures, and necessary assurances must be submitted to the National Institute of Justice prior to the initiation of any research activities that are not exempt from the provisions of 28 CFR Part 46.

Further information regarding Confidentiality and Human Subjects Protections may be found in *Guidelines for Submitting Proposals for National Institute of Justice-Sponsored Research*.

Guidance and information. Applicants who wish to receive additional guidance and information may contact the U.S. Department of Justice Response Center at 800-421-6770.

Applicants may also contact:

Ronald S. Everett
National Institute of Justice
810 Seventh Street N.W., Rm. 7320
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everettr@ojp.usdoj.gov

Send applications to:

Solicitation for Death Penalty Research
National Institute of Justice
810 Seventh Street N.W., Rm. 7324
Washington, DC 20531
[overnight couriers should use ZIP code 20001]

For more information on the National Institute of Justice, please contact:

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