

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF KENTUCKY
SOUTHERN DIVISION
PIKEVILLE

UNITED STATES OF AMERICA)

Plaintiff,)

vs.)

JOHN TRAVIS MILLNER)

Defendant.)

Criminal No. 13-CR-15-ART

DEFENDANT'S MOTION TO DISMISS
PARTICULAR AGGRAVATING FACTORS
FROM THE INDICTMENT, AND TO
STRIKE PARTICULAR AGGRAVATING
FACTORS FROM THE NOTICE OF
INTENT TO SEEK THE DEATH PENALTY
AND FOR OTHER RELIEF

* * * * *

EXHIBIT A

DECLARATION OF KEVIN MCNALLY REGARDING
ALLEGATIONS OF VICTIM IMPACT

1. I currently serve as the Director of the Federal Death Penalty Resource Counsel Project, assisting court-appointed and defender attorneys charged with the defense of capital cases in the federal courts. I have served as Resource Counsel since the inception of the Resource Counsel Project (RCP) in January, 1992. The Project is funded and administered under the Criminal Justice Act by the Defender Services Office of the Administrative Office of the United States Courts.

2. My responsibilities as federal resource counsel include the monitoring of all federal capital prosecutions throughout the United States in order to assist in the delivery of adequate defense services to indigent capital defendants in such cases. This effort includes the collection of data on the initiation and prosecution of federal capital cases.¹

¹The work of the Federal Death Penalty Resource Counsel Project is described in a report prepared by the Subcommittee on Federal Death Penalty Cases, Committee on Defender Services, Judicial Conference of the United States, FEDERAL DEATH PENALTY CASES: RECOMMENDATIONS CONCERNING THE COST AND QUALITY OF DEFENSE REPRESENTATION (May, 1998), at 28-30. www.uscourts.gov/dpenalty/1COVER.htm. The Subcommittee report "urges the judiciary and counsel to maximize the benefits of the Federal Death Penalty Resource Counsel Project ..., which has become essential to the delivery of high quality, cost-effective representation in death penalty cases" *Id.* at 50. A recent update to the Report stated: "Many judges and defense counsel spoke with appreciation and admiration about the work of Resource Counsel. Judges emphasized their assistance in recruiting and recommending counsel for appointments and their availability to consult on matters relating to the defense, including case budgeting. Defense counsel found their knowledge, national perspective, and case-specific assistance invaluable."

3. In order to carry out the duties entrusted to me, I maintain a comprehensive list of federal death penalty prosecutions and information about these cases. I accomplish this by internet news searches, by reviewing dockets and by downloading and obtaining indictments, pleadings of substance, notices of intent to seek or not seek the death penalty, orders and opinions by the District Court and by telephonic or in-person interviews with defense counsel or consultation with chambers. The Project's information regarding federal capital prosecutions has been relied upon by the Administrative Office of the United States Courts, by the Federal Judicial Center and by various federal district courts.

4. The Attorney General has authorized a federal capital prosecution against 497 defendants to date. Of these, at least 379 defendants have faced an allegation of the aggravating circumstance of victim impact. The Government did not allege the aggravating circumstance of victim impact against another 92 defendants. We are uncertain regarding whether victim impact was alleged as to 8 of the 497 defendants, because we have not yet been able to obtain a copy of any notice of aggravating circumstances. According to the clerks of the various district courts, no notices of aggravating circumstances were ever filed against another 18 defendants. So, of the

[dateFederalDeathPenaltyCases.aspx](#)

known allegations of “victim impact,” it was alleged as to 379 defendants of 471 defendants or 80%.

5. The information detailed herein is maintained in the ordinary course of business of the Federal Death Penalty Resource Counsel Project and is accurate to the best of my knowledge, ability and belief.

I declare under the penalty of perjury under the laws of the United States of American, 28 U.S.C. §1746, that the foregoing is true and correct. Executed this 2nd day of April, 2015.

/s/ Kevin McNally
Kevin McNally