

**DECLARATION OF KEVIN McNALLY REGARDING FEDERAL JURIES WHICH
HAVE CONSIDERED OR FOUND THE EXISTENCE OF LINGERING
OR RESIDUAL DOUBT AS A MITIGATING CIRCUMSTANCE**

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 in January, 1992. The Project is funded and administered under the Criminal Justice Act by the Office of Defender Services 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

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, the court's instructions, the jury findings and by telephonic or in-person interviews with defense counsel or consultation with chambers. This information is regularly updated and is checked for accuracy by consulting with defense counsel. 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. Federal capital juries have considered and/or found residual doubt as a mitigating circumstance in at least the following cases: *United States v. Dean Anthony Beckford and Leonel Cazaco* (E.D. VA No. 3:95CR00087) (resulted in life sentences at a joint trial); *United States v. Kristin Gilbert* (D. MA No. 98-CR-30044-MAP) (resulted

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."

<http://www.uscourts.gov/FederalCourts/AppointmentOfCounsel/Publications/UpdateFederalDeathPenaltyCases.aspx>

in a life sentence); *United States v. Julius Robinson* (N.D. TX No. 00-CR-260-ALL) (resulted in a death sentence); *United States v. L.J. Britt* (N.D. TX No. 00-CR-260-ALL) (resulted in a life sentence); *United States v. Jay Lentz* (E.D. VA No. 01-CR-150-ALL) (resulted in a life sentence); *United States v. Dustin Honken and Angela Johnson* (N.D. IA No. 00-CR-3034 MWB) (resulted in death sentences at separate trials); *United States v. Johnny Davis* (E.D. LA No. 2:01-CR-282-ALL) (resulted in a life sentence); *United States v. Hernaldo Medina-Villegas* (D. PR No. 3:02-CR-117-ALL) (resulted in a life sentence); *United States v. Fausto Gonzalez and Wilfredo Perez* (D. CT No. 02-CR-7-ALL) (resulted in life sentences at separate trials); *United States v. Petro Krylov* (C.D. CA No. 02-CR-220 (A)-NM) (resulted in a life sentence); *United States v. Shawn Arnette Breeden* (W.D. VA No. 03-CR-13-ALL) (resulted in a life sentence); *United States v. Demetrius Hargrove* (D. KS No. 2:03-CR-20192-CM-DJW-ALL) (resulted in a life sentence); *United States v. William Baskerville* (D. NJ No. 03-386 (JAP)) (resulted in a life sentence); *United States v. Kenneth McGriff* (E.D. NY No. 04-CR-966 (ERK) (VVP)) (resulted in a life sentence); *United States v. Eric Preston Hans* (D. SC No. 6:05-CR-01227-HMH) (resulted in a life sentence); *United States v. Timothy O'Reilly* (E.D. MI No. 05-CR-80025) (resulted in a life sentence); *United States v. Thomas Henderson* (S.D. OH No. 2:06-CR-00039) (resulted in a life sentence); *United States v. Jermaine*

Michael Julian (M.D. FL No. 8:07-CR-9-T-27TGW) (resulted in a life sentence) and *United States v. Edison Burgos-Montes* (D. PR No. 06-CR-009-JAG) (resulted in a life sentence).

5. The information detailed herein is maintained in the ordinary course of business of the Federal Death Penalty Resource Counsel Project, was not prepared in anticipation of its being used in litigation, 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 14th day of February, 2014.

/s/ Kevin McNally
Kevin McNally