

## **DECLARATION OF KEVIN McNALLY REGARDING JURY EXPERTS**

1. I currently serve with 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. I was the Director of the Project between 2007 and 2018. 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.<sup>1</sup>

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<sup>1</sup>The 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](http://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. An update to the Report states: “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.” <http://www.uscourts.gov/FederalCourts/AppointmentOfCounsel/Publications/UpdateFederalD>

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, 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 courts have appointed jury experts on numerous occasions pursuant to 18 U.S.C. § 3006(A) in non-capital cases.<sup>2</sup>

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<sup>2</sup>See, e.g., *United States v. Ackerman* (Consolidated Wounded Knee cases), CR 73-5017 (S.D.S.D. 1974); *United States v. Butler and Robideau*, CR 76-11 (N.D. Iowa, Cedar Rapids Div. 1975); *United States v. Escamillo*, CR 73-5138 (S.D.S.D. 1975); *United States v. Crowdog, Holder and Camp*, CR 75-18, 75-19, 75-20 (N.D. Iowa, Cedar Rapids Div. 1976); *United States v. Soliah*, CR S-75-523 (E.D. Cal. 1976); *United States v. Gullion*, CR 77-17 (D. Me. 1977); *United States v. Haley*, CR 81-09A (N.D. Ga. 1981); *United States v. Layton*, CR 80-416-RFP (N.D. Cal. 1981); *United States v. Barrett*, CR-77-15-SD (D. Me. 1984); *United States v. Layton*, CR 80-416-RFP (N.D. Cal. 1985); *United States v. Noriega*, CR 88-0079 (S.D. Fla. 1988) and *United States v. Gerald Rubalcaba, et al.* (N.D. CA CR No. 00-0654-CRB).

5. Additionally, jury experts have been authorized in numerous federal capital cases.<sup>3</sup>

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<sup>3</sup>See, e.g., *United States v. Alex Cooper*, (N.D. IL No. 89-CR-580) [Hans Zeisel]; *United States v. Bilal Pretlow* (D. NJ No. 90-CR-238) [Andre Long-pre]; *United States v. Mathis*, (M.D. FL No. 91-CR-301) [Rebecca Lynn]; *United States v. Oliver Brown and William Green* (E.D. LA No. 92-CR-468) [Bernadette Grant]; *United States v. George Travis Williams* (M.D. GA No. 1:92-CR-142); *United States v. Arleigh Carrington* (M.D. GA No. 92-CR-82-MAC(WDO)) [James O'Reilly]; *United States v. Michael Murray*, (M.D. PA No. 1-CR-92-200) [Andre Long-pre]; *United States v. Stacey Culbert* (E.D. MI No. 92-CR-81127); *United States v. Edward Alexander Mack, et al.* (M.D. FL No. 93-252-CR-UUB) [Robert Hirschhorn]; *United States v. Paul Hardy and Len Davis* (E.D. LA No. 94-CR-381) [Bernadette Grant]; *United States v. Tyrone Walker and Walter Diaz* (N.D. NY No. 94-CR-328) [Andre Long-pre]; *United States v. Kevin Wyrick and Dennis Moore* (W.D. MO No. 94-00194-01-12-CR-W-9) [Denise de la Rue]; *United States v. Everett Spivey* (D. NM No. 95-CR-491 LH) [Robert Hirschhorn]; *United States v. Richard Haworth* (D. NM No. 95-CR-491 LH) [Lin Lilley]; *United States v. Jason De la Torre* (D. NM No. 95-CR-538-MV) [Eda Gordon]; *United States v. Donald Ferebee* (D. MD No. 96-96-CR-2273) [Beth Bochnak]; *United States v. Timothy McVeigh and Terry Nichols* (W.D. OK No. M-95-CR-98-H) on change of venue to (D. CO No. 96-CR-68-M) [Ann Cole, Sandy Marks and Julie Howe for McVeigh -- Robert Hirschhorn for Nichols]; *United States v. David Paul Hammer* (M.D. PA No. 4-96-CR-239) [Andre Long-pre and Julie Howe]; *United States v. Tahn Lam* (N.D. GA No. 1:96-CR 161) [Maureen McGinley]; *United States v. Felix Ortiz-Velez and Julio Otero* (M.D. PA No. 3:CR-96-005) [Patterson]; *United States v. Donnie Cable and Tim Holloway* (M.D. TN No. 3:96-CR-00004) [Marjorie Fargo]; *United States v. Aquila Barnette* (W.D. NC No. 3:97 CR 23-P) [David Ball and Debra Miller]; *United States v. Chevy Kehoe* (E.D. AR CR No. LR-CR-97-243) [Bob Berry]; *United States v. John Bass* (E.D. MI No. 97-CR-80235) [Robert Hirschhorn]; *United States v. Peter Rollack* (S.D. NY No. S4 97 CR 1293) [Ann Cole]; *United States v. Kristin Gilbert* (D. MA No. 98-CR-30044-MAP) [Beth Bochnak]; *United States v. Richard Lee Tuck Chong* (D. HI No. 98-CR-00416ACK) [Lois Heaney]; *United States v. Thomas Edelin* (D. DC No. 98-CR-264) [Marjorie Fargo]; *United States v. Rashed Al-Ow'hali and Khalfan Khamis Mohamed* (S.D. NY No. S6 98 CR 1023) [Robert Hirschhorn and Joseph Guastaferro]; *United States v. Jamal Shakir* (M.D. TN CR No. 3:98-00038 (NIXON)) [Lisa Dahl]; *United States v. Richard Stitt* (E.D. VA No. 2:98CR47); *United States v. Carl Derick Cooper* (D. DC No. 99-CR-0266) [Marjorie Fargo]; *United States v. Joseph Miner* (W.D. PA No. 99-CR-215) [Robert Hirschhorn]; *United States v. Antonio and Robert Carpenter* (W.D. TN No. 99-CR-20155) [Marjorie Fargo and Julia Cade]; *United States v. Jose Denis* (S.D. FL No. 99-00714 CR (KING)) [Beth Bochnak]; *United States v. Hector Acosta Martinez and Joel Rivera Alejandro* (D. PR No. 99-CR-044 (SEC)) [Robert Hirschhorn]; *United States v. Christopher Wills* (E.D. VA No. 99-CR-00396) [Jeffrey Fredericks]; *United States v. Donald Fell* (D. VT 00-M-66-ALL) [Beth Bochnak #1; Julie Howe #2]; *United States v. Alan Quinones and Diego Rodrigues* (S.D. NY No. 00 CR 761 (JSR)) [Beth Bochnak]; *United States v. Karl Waldon* (M.D. FL No. 3:00-CR-436-J25-TJC) [Robert Hirschhorn]; *United States v. Coleman Johnson* (W.D. VA No. 3:00CR00026) [Jeff Fredericks]; *United States v. Kevin Gray* (D.

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DC No. 1:00CR00157) [Marjorie Fargo]; *United States v. Xavier, Elijah and Michael Williams* (S.D. NY No. 00-CR-1008) [Beth Bochnak]; *United States v. Eric Rudolph* (N.D. AL No. 00-CR-422-ALL) [Denise de la Rue]; *United States v. Dustin Honken* (N.D. IA No. 00 CR 3034-MWB) [Lara Dolnik] and *United States v. Angela Johnson* (N.D. IA No. 00 CR 3034-MWB) [Lisa Dahl]; *United States v. Michael J. O'Driscoll* (M.D. PA No. 4:CR-01-277) [4/8/02 order approving budget for jury expert and appointing Beth Bochnak]; *United States v. Aaron Haynes* (W.D. TN No. 01-20247-D-ALL) [Jeffrey Frederick and Julia Cade]; *United States v. Cornell Winfrei McClure* (D. MD No. 01-CR 0367) [Marjorie Fargo]; *United States v. Gary Sampson* (D. MA No. 01-CR-10384-ALL) [Robert Hirschorn and Julie Howe]; *United States v. Jairo Zapata* (E.D. NY No. 01-516) [Beth Bochnak]; *United States v. Gilberto Caraballo* (E.D. NY CR No. 01-CR-1367) [Brett Dillingham]; *United States v. Anh The Duong* (N.D. CA No. 5:01CR20154 JF) [Amber Watkins]; *United States v. Fausto Gonzalez and Wilfredo Perez* (D. CT No. 02-CR-7-ALL) [Beth Bochnak]; *United States v. Aaron Foster, Keon Moses and Michael Lafayette Taylor* (D. MD No. 02-CR-0410) [Marjorie Fargo]; *United States v. Robert Bolden* (E.D. MO No. 4:02-CR-00557-CEF-AGF) [Julie Howe]; *United States v. William Baskerville* (D. NJ No. 3:03-CR-00836-JAP) [Julie Howe]; *United States v. Terrance Benjamin* (E.D. LA No. 03-CR-274) [Beth Bochnak]; *United States v. Edward Fields* (E.D. OK No. 6:03-CR-00073) [Beth Bochnak]; *United States v. Luis Cisneros, Felipe Cisneros, Paul Eppinger and Angel Rivera* (D. AZ No. 03-CR-730-PHX-SRB) [Joseph Guastafarro]; *United States v. Carlos Ayala-Lopez* (D. PR No. 03-CR-55-ALL) [Robert Hirschhorn]; *United States v. Terrance Benjamin* (E.D. LA No. 03-CR-274) [Beth Bochnak]; *United States v. Shawn Breeden and Michael Carpenter* (W.D. VA No. 3:03CR000013-001 (Wilson)) [Jeffrey T. Frederick]; *United States v. Humberto Pepin-Tavares* (E.D. NY CR No. 04-CR-0156) [Brett Dillingham and Ann Cole]; *United States v. Khalid Barnes* (E.D. NY CR No. 7:04-CR-00186-SCR) [Julie Howe]; *United States v. John Johnson* (E.D. LA No. 2:04-CR-00017-HGB-SS) [Beth Bochnak]; *United States v. Kenneth McGriff* (E.D. NY No. 1:04-CR-00966-ERK-VVP) [Julie Howe]; *United States v. Vertis Clay* (E.D. AR CR No. 4:04-CR-00035 WRW) [Brett Dillingham and Marietta Alphin]; *United States v. Denis Rivera, Oscar Antonio Grande, Ishmael Cisneros and Oscar Alexander Garcia-Orellana* (E.D. VA No. 04-CR-283) [Julie E. Howe]; *United States v. Ronell Wilson* (E.D. NY CR No. 1:04-CR-01016-NGG-ALL) [Beth Bochnak & Bret Dillingham #1; Julie Howe & Lisa Dahl #2]; *United States v. Antoine Plunkett and Lanny Bodkins* (W.D. VA CR No. 4:04-CR-70083-JLK-ALL) [Jeffrey T. Frederick]; *United States v. Kenneth Wilk* (S.D. FL 04-CR-60216-ALL) [Robert Hirschhorn]; *United States v. Eric Moore* (E.D. NY No. 1:04-CR-00706-DGT) [Julie Howe]; *United States v. Wilver Lopez* (E.D. NY No. 2:04-CR-00939-LDW) [Julie Howe]; *United States v. Gerard Price* (E.D. NY No. 1:05-CR-00492-NGG) [Julie Howe]; *United States v. Valerie Friend* (S.D. WV CR No. 2:05-00107) [Beth Bochnak]; *United States v. Larry Lujan* (D. NM No. 05-924) [Joseph Guastafarro]; *United States v. Lashaun Casey* (D. PR No. 3:05-CR-0277-JAG) [Beth Bochnak]; *United States v. Michael Antonio Natson* (M.D. GA CR No. 4:05-CR-00021-CDL-GMF-ALL) [Joseph Guastafarro]; *United States v. James McTier* (E.D. NY CR No. 05-CR-401) [Julie Howe]; *United States v. Vincent Basciano* (E.D. NY No. 05-CR-0060 (S-3) (NGG)) [Beth Bochnak]; *United States v. Timothy O'Reilly* (E.D. MI No. 05-80025) [Joseph Guastafarro]; *United States v. Antonio Argueta* (D. MD No. 8:05-CR-00393-DKC) [Julie Howe]; *United States v. Herman Norman Johnson* (E.D. MI No. 2:05-CR-80337-CGC-SDP) [Julie

6. The government has employed jury experts in a number of high profile cases, including *United States v. McVeigh, supra*, *United States v. Christensen, supra*, *United States v. Sampson, supra* and *United States v. Noriega, supra*. State prosecutors have done likewise. *State v. Simpson* (L. A. CA. No. BA097211). Paulette

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Howe]; *United States v. Antoine Baker* (E.D. AR No. 4:06 CR 00) [Joseph Guastaferro]; *United States v. Steven Green* (W.D. KY No. 5:06-CR-00019-TBR) [Denise de la Rue]; *United States v. Edison Burgos-Montes* (D. PR No. 06-CR-009) [Beth Bochnak]; *United States v. Ricardo Sanchez and Danny Troya* (S.D. FL06-80171-CR) [Rebecca Lynn]; *United States v. Azibo Aquart* (D. CT 3:06CR160 (PCD)) [Bret Dillingham]; *United States v. Maurice Phillips* (E.D. PA No. 2:07-CR-00549-JCJ) [Julie Howe]; *United States v. Joseph Duncan* (D. ID CR No. 07-23-N-EJL) [Beth Bochnak]; *United States v. Kaboni Savage* (E.D. PA No. 2:07-CR-00550-RBS) [Beth Bochnak]; *United States v. Steven Northington and Robert Merrit* [E.D. PA No. 2:07-CR-00550-RBS) [Julie Howe]; *United States v. Michael Jacques* (D. VT No. 2:08-CR-00117-WKS) [Julie Howe]; *United States v. Ritz Williams* (M.D. PA No. 4:08-CR-00070-YK) [Julie Howe]; *United States v. Patrick Albert Byers* (D. MD No. 08-056) [Jeff Frederick]; *United States v. Harry Burton* (D. MD No. 1:07-CR-00149-WDQ) [Julie Howe]; *United States v. Alexis Candelario-Santana* (D. PR No. 3:09-CR-00427-JAF) [Julie Howe]; *United States v. Ulysses Jones* (W.D. MO No. 6:10-CR-03090-DGK) [Denise De La Rue]; *United States v. Thomas Steven Sanders* (W.D. LA No. 1:10-CR-00351-DDD-JDK) [Denise De La Rue]; *United States v. Ahmed Salad, Abukar Osman Beyle & Shani Nurani Shiekh* (E.D. VA No. 2:11-CR-00034-RBS-DEM) [Marjorie Fargo]; *United States v. Juan Briseno* (N.D. IN No. 2:11-CR-00077-PPS-APR) [Julie Howe]; *United States v. Xavier Jimenez-Bencevi* (D. PR No. 3:12-CR-00221-JAF) [Beth Bochnak]; *United States v. Farad Roland* (D. NJ No. 2:12-CR-00298-ES) [Julie Howe]; *United States v. Jessie Con-Ui* (M.D. PA No. 3:13-CR-00123-ARC) [Julie Howe]; *United States v. James Watts* (S.D. IL No. 4:14-CR-40063-JPG) [Julie Howe]; *United States v. Dylann Storm Roof* (D. SC No. 2:15-CR-00472-RMG) [Denise De La Rue]; *United States v. Christopher Cramer and Ricky Allen Fackrel* (E.D. TX No. 1:16-CR-00026-MAC-ZJH) [Julie Howe]; *United States v. Brendt Christensen* (C.D. IL No. 2:17-CR-20037-CSB-EIL) [Julie Howe] and *United States v. Brandon Michael Council* (D. SC No. 4:17-CR-00866-CRI) [Marjorie Fargo]. In *United States v. Billy Joe Lyon* (W.D. KY No. 4:99 CR - 11- M) the Court approved the hiring of paralegal services to be used prior to trial and during the jury selection process. Federal public defenders have employed jury selection experts. See *United States v. Theodore John Kaczynski* (E. D. CA. No. CR-S-96-259GEB GGH) [Denise de la Rue and Beth Bochnak] and *United States v. George Lecco* (S.D. WV CR No. 2:05-00107) [Eda Gordon and Marjorie Fargo]. Jury selection experts have been appointed even when the government has not sought the death penalty. See *United States v. Antone Davi, et al.* (NV No. CR-S-97-126) and *United States v. Thomas Galan* (N.D. OH No. 3:06-CR-00730-JGC-1) [Julie Howe].

Taylor from California was hired by the government to assist in a North Carolina federal capital prosecution. *United States v. Jeremiah Locust* (W.D. NC No. 2:98CR185).

7. Jury selection experts have been appointed in numerous state capital prosecutions. *See, e.g., State v. Cruz* (Maricopa County Inf. No. 120721). The leading case authorizing appointment of a jury selection expert is *Corenevsky v. Superior Court*, 204 Cal.Rptr. 165 (Cal. 1984). The trial court permitted \$8,740.00 for a jury selection expert in a non-capital murder case. In a pre-trial writ, the appellate court determined that this was within the discretion of the trial court. 204 Cal.Rptr at 173. Additionally, in *State v. Anaya*, 438 A.2d 892, 894-895 (Me. 1981), the Court reversed when a timely request for "appointment of two experts in the fields of statistics and demography to aid ... in analyzing the composition of the grand jury array" was denied.

8. In two federal capital cases, *United States v. Gurmeet Singh Dhinsa* (E.D. NY No. 97-CR-672 (S-4) (ERK) [Robert Hirschhorn] and *United States v. Richard Stitt* (E.D. VA 2:98CR47), retained counsel employed a jury expert. I have retained a jury selection expert in a non-capital case. *State of Illinois v. Harry Aleman* (Cook County Circuit Court File No. 93-CR-28787).

9. 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 18<sup>th</sup> day of August, 2020.

/s/ Kevin McNally  
Kevin McNally