

DECLARATION OF KEVIN McNALLY

1. I currently serve, along with David Bruck of Virginia and Richard Burr of Oklahoma, as Federal Death Penalty Resource Counsel, assisting court-appointed and defender attorneys charged with the defense of capital cases in the federal court. I have served in that capacity since the inception of the Resource Counsel Project in January, 1992. The Project is funded and administered under the Criminal Justice Act by the Defender Services Division 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, and on the defense services provided in such cases under the Criminal Justice Act.¹

3. In order to carry out the duties entrusted to me, I maintain a comprehensive list of federal death penalty prosecutions and information regarding Criminal Justice Act appropriations in these cases.

I accomplish this by reviewing dockets and 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 with defense counsel. The Project's information regarding federal capital

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.

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 cases wherein the defendant was allowed to play tapes of jailhouse recordings during the penalty phase include: *United States v. Darryl Johnson* (N.D. IL CR No. 96 CR 379); *United States v. Gurmeet Singh Dhinsa* (E.D. NY CR No. 97-672 (S-3) (ERK)); *United States v. Alan Quinones and Diego Rodriguez* (S.D. NY CR No. 00 CR 0761 (JSR)) and *United States v. Aaron Foster, Keon Moses and Michael Taylor* (D. MD CR No. 02-CR-410-ALL).

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 America that the foregoing is true and correct. Executed this _____ day of June, 2005.

Kevin McNally

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