

**DECLARATION OF KEVIN McNALLY**  
**REGARDING PREPARATION TIME BEFORE MEETING WITH THE**  
**ATTORNEY GENERAL'S CAPITAL CASE REVIEW COMMITTEE**

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. [http://www.uscourts.gov/sites/default/files/original\\_spencer\\_report.pdf](http://www.uscourts.gov/sites/default/files/original_spencer_report.pdf). 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

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. Resource Counsel collect comprehensive, accurate data concerning various practices that have emerged since the federal courts resumed trying capital cases in 1990. This collection of data includes the intervals of time between various pre-trial

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..." *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/services-forms/defender-services/publications/update-cost-and-quality-defense-representation-federal>

milestones. Considerable preparation time has been routinely granted between the indictment and/or the appointment of counsel and the meeting held at Main Justice with the Attorney General's Capital Case Review Committee. We have collected information as to 261 defendants who were authorized for a federal capital prosecution. The average time between indictment and the defense "mitigation" presentation at the Department of Justice was 10.9 months.<sup>2</sup>

5. Pursuant to my responsibilities with the Federal Death Penalty Resource Counsel Project, I have compiled the above information regarding federal capital cases in the regular course of the business of the Federal Death Penalty Resource Counsel Project.

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<sup>2</sup>Eleven of these 261 were cases in which the Department of Justice meeting occurred before indictment: *United States v. Carlos David Caro* (W.D. VA No. 06-CR-00001); *United States v. Demario James Atwater* (M.D. NC No. 1:08-CR-00384); *United States v. Ulysses Jones* (W.D. MO No. 6:10-CR-03090-DGK); *United States v. Michael O'Driscoll* (M.D. PA No. 4-CR-01-277); *United States v. Gary Watland* (D. CO No. 1:11-CR-00038); *United States v. John Millner* (E.D. KY No. 7:09-MJ-25-EBA); *United States v. Samuel Stone* (C.D. CA No. 1:12-CR-00072-AWI-DLB); *United States v. Patrick Andrews* (N.D. WV No. 1:12-CR-00100-IMK-JSK); *United States v. Andrew Rogers* (S.D. IN No. 2:16-CR-00018-WTL-CMM); *United States v. Ricky Fackrell* (E.D. TX) and *United States v. Frederick Ashley* (C.D. CA). An additional defendant was involved in the Pan Am flight terrorist murders in 1986. Although the defendant was indicted in 1991, he was not arrested until 2002. *United States v. Zayd Hassan Abd Latif Safarini* (D. DC No. 91-CR-504). These cases are not included in this analysis.

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 6<sup>th</sup> day of July, 2020.

/s/ Kevin McNally  
Kevin McNally