EXHIBIT 2

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

WILLIAM BASKERVILLE :
:
v. :
:
:
UNITED STATES OF AMERICA :

DECLARATION OF KENNETH W. KAYSER, ESQ.

Pursuant to 28 U.S.C. § 1746, KENNETH W. KAYSER, ESQ., says the following:

1. I am an attorney duly admitted to practice law in the State of New Jersey. I am a solo practitioner with a law office in East Hanover, New Jersey. Prior to entering private practice in 1983, I was an Assistant Prosecutor in the Essex County Prosecutor's Office from 1978 through 1982 where I tried over 40 felony cases, including approximately 15 homicides, to verdict.

2. I have been a practicing attorney for approximately 36 years, specializing mostly in criminal defense.

3. I am a member of the Criminal Justice Act ("CJA") panel for the District of New Jersey. In my career, I have handled in excess of 75 trials in the State of New Jersey, and approximately eight federal jury trials in the District

of New Jersey.

4. After my representation in this matter, I was qualified to handle death penalty cases as "learned counsel". Thus far, I have been assigned as "learned" counsel on three death-penalty eligible matters, two in the District of New Jersey and one in the Southern District of New York, though I ended my representation in one of the New Jersey matters due to a conflict approximately nine months into the litigation.

5. I submit this Declaration pursuant to the Order of the District Court, dated February 24, 2007, and in response to William Baskerville's motion to vacate sentence pursuant to 28 U.S.C. § 2255.

6. Upon information and belief, in December, 2004, Carl Herman was appointed under the CJA as counsel for William Baskerville in the matter of United States v. William Baskerville, D.N.J. Crim. No. 03-836 (JAP).[1] When the case became death eligible, Mr. Herman called me and asked if I would be willing to join him in Mr. Baskerville's defense. I was assigned by the trial court as trial counsel after Mr. Baskerville was arraigned on death-eligible charges pursuant to a superseding indictment in or around April, 2005. Mr. Herman, based on his substantial death penalty experience, was re-appointed as

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[1] Mr. Baskerville's prior counsel, Paul Bergrin, was relieved due to a conflict prior to Mr.

"learned" counsel. I remained Mr. Baskerville's counsel throughout the matter, which culminated with the trial and penalty phase proceedings that took place in mid-February through early May of 2007.

7. Throughout the entire litigation process, my co-counsel and I met with Mr. Baskerville on a regular basis in the facilities where he was incarcerated. When I was assigned as counsel, Mr. Baskerville was housed at the Passaic County Jail. He was later moved to Monmouth County. Mr. Baskerville also communicated with us through written correspondence. All discovery received from the Government was copied and provided to Mr. Baskerville. Either I or Mr. Herman, or both of us in joint meetings, would respond to Mr. Baskerville's concerns or questions, and Mr. Baskerville contributed consistently throughout the process with questions and suggestions. I found Mr. Baskerville to be easy to deal with, intelligent and articulate, persistent and enthusiastic in his participation with his team, and fully engaged in his defense, which Mr. Herman and I spent many hours discussing with him at every stage of the proceedings. He participated in his defense more than most of my clients.

8. Because the Government sought the death penalty, the defense was able to staff the defense team with few limitations, including the hiring of a

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Herman being assigned.

mitigation specialist, an investigator, and a jury consultant. Mr. Baskerville also contributed fully to the mitigation process as well as the fact investigation. All strategic decisions pre-trial were discussed with Mr. Baskerville, and there were no issues that I can recall where there was a dispute about any decision that was made.

9. After the Government notified Mr. Baskerville of its intention to seek the death penalty, Mr. Herman and I discussed at length with Mr. Baskerville the potential for him to cooperate with the Government in return for the Government removing the death penalty from consideration. Mr. Baskerville rejected any cooperation with the Government, even to avoid the possibility of the death penalty.

10. The defense team submitted numerous pre-trial motions challenging various pieces of evidence the Government sought to introduce at trial. The challenges to the Government's evidence were also discussed at length with Mr. Baskerville, who agreed to the strategy Mr. Herman and I employed. Pre-trial hearings were held on some of these legal challenges while other issues were decided after extensive briefing.

11. Mr. Baskerville also actively participated during the nearly seven-week-long jury selection process. He consulted with both Mr. Herman and me, as well as the jury consultant. He regularly gave input, and the trial

team met with him after court to discuss potential jurors. There was no disagreement expressed with the strategy employed by the trial team during jury selection.

12. Mr. Herman and I understood that our primary task was to challenge the Government's evidence, but paramount in every decision that was made was to save Mr. Baskerville from receiving a death sentence. This concern caused us to evaluate the Government's case on the drug counts differently than the murder counts and the entire case differently from a non-death penalty case. The strategies we employed had to be based on the outcome of the entire trial, including the penalty phase. Since a review of the evidence on the drug counts revealed a very strong case for the Government, decisions to challenge or not to challenge certain witnesses on cross-examination or to contest certain Government evidence were made so the defense team (1) would not lose credibility with the jury, and (2) with an eye toward setting up anticipated mitigation issues in the event the trial proceeded to the penalty phase. Thus, certain decisions not to cross-examine on certain issues, not to object to certain evidence and not to dispute some of the Government's evidence were made with these considerations in mind and may not have been the strategy the defense team would have employed in a non-capital case.

13. I have reviewed the § 2255 motion filed by Mr. Baskerville in which he claims that I provided ineffective assistance of counsel. I submit this Declaration to address the specific claims raised in the § 2255 motion.

14. Mr. Baskerville first complains about the failure to investigate the audio portion of a video the Government presented at trial. The video contained evidence of one of several drug transactions that were charged in the superseding indictment. Mr. Baskerville claims the audio portion showed that the FBI agent could not identify the vehicle used in the transaction, the license plate number or whether a transaction took place. Further he claims that counsel's "excuse" for not using the audio was because counsel informed him that "a federal agent cannot be impeached."

15. Mr. Baskerville's claim that I told him that "a federal agent cannot be impeached" is simply untrue. I never told him that, nor do I agree with the premise. First, while it is generally difficult to impeach any FBI agent, one such as Special Agent Shawn Manson is particularly difficult. She had a strong command of the facts and testified with confidence. She was an attractive and likeable person who seemed to have a good rapport with the jury. Despite being an impressive Government witness, she was in fact able to be impeached on aspects of her testimony. This included her statements regarding efforts to protect the government informant-murder victim, Kemo

McCray, which helped the defense at the penalty phase as it "shifted the blame" for the death to a perceived Government failure to protect its own witness. Second, I would never tell any client that a law enforcement witness "cannot be impeached" as my experience shows that to be almost universally untrue and it is a goal of any defense attorney. Third, while I have no memory of this audio portion ever being an issue that Mr. Baskerville raised, or that was discussed at any length, an examination of the evidence shows the audio portion would not be something the defense would want before the jury in any case.

16. There were several video recordings from the six drug transactions which clearly showed Mr. Baskerville engaged in drug transactions, thus making the audio from one of the earlier recordings of significantly less value. The audio would only have served to make the event more real in the jury's mind, and Agent Manson's testimony showed that the audio would not have contradicted her on any material aspect of the drug case, which was probably viewed as overwhelming by the jury. Finally, there was no real dispute over the vehicle used or its license plate number as the same vehicle was used in other transactions and was tied to Mr. Baskerville through registration records.

17. Mr. Baskerville next complains about the failure to

investigate "the phone system at Hudson County." This claim deals with the testimony of Deputy Marshal William Cannon that the Hudson County Jail did not have the capacity to record inmate phone calls in the time period where Mr. Baskerville was overheard on the phone complaining that Kemo McCray was the one responsible for his arrest and incarceration.[2] He further claims he asked counsel to investigate when such calls were first recorded. Finally, he claims he was told that Deputy Marshal Cannon "was a known liar."

18. Factually, I never told Mr. Baskerville that Deputy Marshal Cannon "was a known liar." I had no knowledge whatsoever about Deputy Marshal Cannon before the Government notified me that he would be a witness in the case. Additionally, I have no memory of any request by Mr. Baskerville to investigate the Hudson County Jail's ability to record calls, nor do I have a memory of ever discussing the issue with anyone on the defense team. The Government would have been obligated to turn over any recording of Mr. Baskerville if it existed, so there was no legitimate reason to challenge the lack of a recording, which only enhanced the defense's ability to cross-examine the witness who purportedly heard Mr. Baskerville during the jailhouse call. If the call was recorded, it could have easily confirmed what the witness was saying, but in any case since the Government had approximately half a dozen

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[2] This argument is made at both paragraphs B (failure to investigate Hudson County phone

witnesses testify to similar jailhouse "admissions" by Mr. Baskerville, I do not believe that an investigation of Deputy Marshal's statements would have been productive,[3] and could possibly have revealed even more damaging evidence. Whether Cannon's knowledge of the phone system was based on something he learned from a third party, arguably making his testimony hearsay, was not an issue that Mr. Baskerville raised with me at the time, but in any case requiring the Government to call another witness on this issue would not have been productive on such a minor point and may have affected the defense's credibility with the jury.

19. Mr. Baskerville next complains about the failure to investigate Government witness Anthony Young. This claim involves Young's testimony that Rakim Baskerville was present when the co-conspirators received a phone call from Paul Bergrin at approximately 4:00 p.m. on November 25, 2003, disclosing that the informant against Baskerville was Kemo McCray. While the phone call itself played an important part in the murder counts, the fact that Young may have misidentified who was present when the call was received does not appear to be of any great value to impeach Anthony Young, especially

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system) and K (failure to challenge hearsay testimony of Marshal Cannon) of Mr. Baskerville's motion but will be answered together for purposes of this response.

[3] As it turns out, any investigation would have led to the same conclusion. The Government informs me that Hudson County Jail personnel again confirmed for purposes of this 2255 motion that the jail did not acquire the capability to record inmate calls until well after the time period in question, which is consistent with Deputy Marshal Cannon's testimony. Mr.

when the Government had produced in discovery a recording of the call that, although inadmissible due to a sealing violation, largely corroborated Young's account of what Bergrin said. In any case, I have no memory of the issue being raised by Baskerville at any time. Even if Mr. Baskerville did raise the issue, it is not clear how any investigation would have contradicted Mr. Young's testimony. Certainly the calls intercepted during the investigation into the Curry Organization did not plainly reveal who else was present during the phone calls (or, conversely, plainly show that Young had misidentified who was sitting with him).

20. More generally, the defense had plenty of evidence to impeach Anthony Young and employed an aggressive strategy to discredit him, which was discussed at length with Mr. Baskerville.[4] First, Young was an

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Baskerville does not present any facts to contradict this in his motion.

[4] I have reviewed the portion of Mr. Baskerville's motion where he claims certain audio recordings of wiretapped conversations from United States v. Hakim Curry should have been used to impeach Young. (See pages 16-18, Declaration of William Baskerville). Mr. Baskerville's claim that he was not provided with these recordings is incorrect. The Government provided these recordings as part of its discovery but also indicated that because of a sealing issue it was self-suppressing the recordings and would not introduce them unless the defense consented or otherwise did something that opened the door to their admission. After reviewing the recordings, and discussing them with Mr. Baskerville, trial counsel concluded that the recordings would have both bolstered the Government's case and damaged Baskerville's defense. In all material respects the recordings would have corroborated large portions of Young's testimony. For example, in one such interception Bergrin called Curry immediately after Mr. Baskerville's initial appearance on November 25, 2003, and said among other things, "I got a chance to speak to William, and he said the informant is a guy by the name of K-mo." When Curry asked "where he from?", Bergrin replied, "I don't know . . . I'm going to go over now to speak to him [Mr. Baskerville] and see him." Curry then said, "All right, get detail and detail and call me back," and Bergrin replied, "All right." This conversation not only corroborated important aspects of Young's testimony, but more importantly was devastating independent proof supporting the Government's theory that Mr.

admitted cold-blooded killer. This fact was helpful at the penalty phase as Young, the triggerman who gunned down McCray, was not receiving the death penalty. Second, Young had no direct connection to Mr. Baskerville, and so his testimony had only an indirect impact on Mr. Baskerville; by contrast, Young was a more important witness against Paul Bergrin at a subsequent trial of this incident. Finally, Young was cross-examined on his original version of events to the FBI where he first denied being the triggerman and then denied being involved at all before finally coming clean. The defense also cross-examined Young about his recorded statements to fellow inmate Hassan Miller, in which Young appeared to be counseling Miller to lie to authorities in order to obtain a cooperation agreement. Thus, the defense did vigorously cross-examine Young while keeping in mind his importance to the death penalty phase.

21. Mr. Baskerville next complains about the failure to investigate or challenge the chain of custody as to the drugs that McCray purchased from him, which were introduced as evidence against him.[5] Mr.

Baskerville conspired with Bergrin and Curry to murder Kemo because he was an informant against Mr. Baskerville. This call alone would have completely undermined our defense theory that Mr. Baskerville was at most an unwitting collateral beneficiary of Bergrin and Curry's plan to murder Kemo. Moreover, introducing any of the calls would have likely allowed the Government to introduce other damaging evidence contained in the large volume of recordings which detailed the inner workings of the Curry drug organization. Since, any possible inconsistencies between the recordings and Young's testimony were minor, the potential benefit of introducing any of these recordings was dwarfed by the enormous damage the recordings would have done to the defense in this case. Further, as explained in footnote 7, discrediting Young would not have helped Mr. Baskerville's defense during either the guilt or penalty phase.

[5] This chain of custody argument is made at both paragraphs D (failure to investigate) and G (failure to challenge drug evidence) of Mr. Baskerville's motion but will be answered together for

Baskerville did discuss DEA-7 forms with the trial team, but ultimately, while the forms contained some minor errors, there was nothing that would have shown a defect in the chain of custody so as to preclude admission of the drugs. A challenge may have been made to the weight of the evidence, at best, and some brief cross-examination was done on the errors in the DEA-7 form. However, this was a very minor point that the trial team believed would have ultimately not been persuasive and would have undermined the defense's credibility with the jury for the death phase.

22. Mr. Baskerville next complains about the failure to present certain defense witnesses which he claims would have further undermined Anthony Young's testimony. He further claims that "defendant-movant unequivocally expressed to trial counsel that he fully intended to present an actual defense . . . to challenge all material aspects of Young's specific testimony . . ."

23. Mr. Baskerville's assertion that he disagreed with the decision not to present a defense case is false. In addition to the court's extensive on-the-record examination of the defendant's decision not to testify, defense counsel spoke at length with Mr. Baskerville about not presenting defense witnesses. Again, our paramount concern was to maintain credibility with the

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purposes of this response.

jury in order to avoid the imposition of the death penalty. The discussion about whether to present a defense case began during the extensive trial preparation process and continued right through the nearly six-week-long trial. At no time did Mr. Baskerville object to the strategy of not calling witnesses on his behalf, nor did he request specific witnesses to be called, nor did he object to a specific witness not being called.

24. At any rate, the witnesses Mr. Baskerville claims should have been called would have added nothing of value or would have been detrimental to his case. For instance, Baskerville claims that attorney Paul Bergrin notified me that he was willing to testify. In fact, no such discussion took place. Even if it had, I would never have called Mr. Bergrin as a defense witness. First, he was Mr. Baskerville's original attorney who was conflicted out of the case. Issues may have arisen as to the attorney-client privilege, and the Government may have been entitled to elicit otherwise privileged communications of Mr. Baskerville on cross-examination. Additionally, Mr. Bergrin was, according to the Government, "house counsel" for the Curry organization. Any such evidence elicited in front of the jury would have damaged Mr. Baskerville, as the Government claimed Mr. Baskerville was a part of this organization. Mr. Bergrin's bias to protect the organization may have been brought out, and, coupled with the allegation that Bergrin was an

unindicted co-conspirator in the McCray murder, his testimony may have been seen as self-serving and lacking credibility. Additionally, I emphasized during the summation in the guilt phase that Bergrin, as "house counsel," was principally responsible for McCray's death. This theme was also brought up in the opening of the penalty phase to point out that Bergin was not facing any charges, let alone the death penalty. Finally, Mr. Bergrin could (and likely would) have invoked his Fifth Amendment privilege against self-incrimination.[6]

25. Similar reasoning existed with co-conspirators Jamal McNeil, Rakim Baskerville and Jamal Baskerville, all members of the Curry organization who were implicated to some extent in the McCray murder plot. Jamal McNeil had a long criminal history, which would have undermined his credibility. Jamal Baskerville's bias as Will Baskerville's family member is obvious. His involvement with the Curry organization in general and specifically the events surrounding the McCray murder would only have

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[6] In relation to potential testimony to be offered by Bergrin, I have reviewed the portion of Mr. Baskerville's motion where he claims that Agent Manson's testimony at the subsequent trial of Bergrin was inconsistent in some respects with her testimony at the Baskerville trial. (See page 10, paragraphs (B) and (C), Declaration of William Baskerville). Apparently, Bergrin believed that Young was not the shooter of McCray. Presently, I do not recall whether I knew about Roderick Boyd's statement which purported to cast doubt on Young being the shooter, but to imply that anyone other than Anthony Young was the shooter would have been detrimental to Mr. Baskerville's defense. Young had no direct contact with Mr. Baskerville. So, while he could speak to the conspiracy generally, he could not point the finger directly at Mr. Baskerville. Everything Young offered about Baskerville was second-hand. Young could be guilty without Baskerville being guilty. The in-jail cooperators who spoke directly to Mr. Baskerville were of primary concern. Further, Young was spared the death penalty through a plea agreement with the Government. Young being the shooter provided the defense a significant basis to ask the jury to spare Mr. Baskerville from the death penalty. Discrediting Young would not have helped

damaged Mr. Baskerville's case and helped the Government prove a drug conspiracy. And Rakim Baskerville had already been convicted and sentenced to life in prison for participating in a drug conspiracy along with Hakeem Curry in a previous trial. None of these witnesses, even if they would have waived their Fifth Amendment rights, would have aided Mr. Baskerville, and would likely have caused serious damage to the defense's ability to maintain credibility with the jury.

26. Deidra Baskerville, Mr. Baskerville's wife, also would have been of little or no value. Her bias is obvious. Her knowledge of the drug business Mr. Baskerville was engaged in would have been brought out by the Government, leaving her credibility in question. Also, the defense had to preserve her credibility for the penalty phase in case her testimony was needed at that time. Whether she was present for any meetings or not during the plot to kill McCray was a minor point which would not have been material to the jury's decision making.

27. Attorney Paul Feinberg, Anthony Young's original lawyer, was not called after a discussion with Mr. Baskerville. I felt that his testimony was of no value as it did not add any material inconsistencies to Anthony Young's testimony. Finally, Rasheeda Tarver was interviewed by the defense team's

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Mr. Baskerville's defense during either the guilt or penalty phase.

investigator, but after reviewing her potential testimony, the defense team decided she was of no value and would not make a good witness. Baskerville never disputed this decision. Tarver's credibility could have easily been impeached by the Government.

28. Mr. Baskerville next attacks the failure to challenge the testimony of Eric Dock, one of the Government's jailhouse informants. Specifically, he claims that the trial team failed to call Paul Bergrin at the pre-trial *Massiah* hearing to advance an argument that Dock obtained information about the murder not from admissions Baskerville made to Dock in jail, but from pre-trial discovery in Mr. Baskerville's cell that Dock supposedly had accessed. Mr. Baskerville never requested to call Mr. Bergrin, as evidenced by the brief the defense submitted when moving to suppress under *Massiah*. This brief was discussed with Mr. Baskerville prior to its submission and neither Bergrin nor the theory that Dock had access to Mr. Baskerville's discovery was ever mentioned. Further, Mr. Baskerville's claim misunderstands the relevant time-line for the *Massiah* hearing, since the murder charges had not yet been brought by the Government during the time period relevant to the *Massiah* hearing. The *Massiah* hearing concerned solely the issue of whether Mr. Baskerville's statements could be used against him to prove the drug counts. There was never an issue or an objection by Mr.

Baskerville that his statements to Dock could be used to prove the murder counts. Thus, even if the motion to suppress had been successful, the only result would have been a limiting instruction requiring the jury to consider Baskerville's admissions to Dock only on the murder counts, and not on the drug counts. Finally, an extensive brief was filed on this issue, and an extensive cross-examination was conducted of both the summary agent and Eric Dock himself.

29. Mr. Baskerville next complains about the alleged failure to object or challenge as speculative certain testimony of Anthony Young. This testimony concerned Young's statement that "if you cross the Baskervilles and somebody give you the name who did it, get rid of 'em." He also complains that I failed to challenge whether, by passing on the name of the informant to the drug gang, Mr. Baskerville was making a "request" – as opposed to a "demand" – to kill McCray, and that the trial team failed to highlight that there was no direct contact between Mr. Baskerville and Anthony Young. I have no memory of Mr. Baskerville ever discussing these claims at the time Mr. Young testified. Regardless, there was no value in challenging any of these claims. First, objecting to the statement made by Young would have risked opening the door to past instances of similar conduct by the Curry gang members, which the defense was well-aware included intimidation, threats, and violence against

those who had crossed or informed on the gang. Second, whether Mr. Baskerville's statement was considered a "request" or a "demand" to kill McCray was of no factual or legal consequence and would have further risked opening the door to more damaging evidence. Lastly, the Government never claimed that Young and Mr. Baskerville had direct contact, but that Mr. Baskerville started the chain of events that communicated the murder plot to his co-conspirators. There simply was no strategic reason to raise any of these challenges.

30. Mr. Baskerville next argues that there was a failure to object to certain "hearsay testimony" of Anthony Young. This claim involves a statement made to Young by Jamal McNeil that Baskerville was urging the gang to "hurry up and get rid of the CI." Mr. Baskerville fails to understand that this statement was a classic co-conspirator statement, which under the law is excluded from the definition of hearsay. Mr. Baskerville never raised this issue at the time of trial and I do not remember ever discussing it with him. An objection only would have highlighted to the jury the devastating impact of the statement and would have been overruled. The defense did make motions pre-trial which included a challenge to the Government's introduction of co-conspirator statements. The court ruled on this motion and made the Government outline the criteria for the introduction of these statements.

31. Mr. Baskerville next argues that a failure to object to hearsay testimony by FBI Agent Manson. In fact, the objection to this testimony was made pre-trial through written briefs and argument before the court on the issue of "forfeiture by wrongdoing" under Federal Rule of Evidence 804(b)(6). Despite the defense's vigorous legal challenge, the Court overruled the objection after finding that the Government presented sufficient proof that Mr. Baskerville caused the hearsay declarant, Kemo McCray, to be unavailable at trial.

32. Mr. Baskerville next raises a general complaint that the trial team failed to "meaningfully cross-examine important witnesses." Nothing could be further from the truth. Mr. Herman and I prepared for countless hours the cross-examinations of the Government's witnesses. Again, Mr. Baskerville may not have been looking at the cross-examinations with an eye towards avoiding a death sentence should the trial reach the penalty phase, but Mr. Herman and I, having to keep that eye in focus, were prepared for every witness, having carefully and thoroughly reviewed the voluminous discovery material and working hard to make sure "no stone was left unturned" because of the nature of the case and the potential for Mr. Baskerville to face the ultimate penalty. The record bears out, over nearly six weeks of trial, our detailed cross-examinations which attempted to undermine the Government's

evidence to the best of our ability, and with Mr. Baskerville's active participation each day.

33. Mr. Baskerville next raises my failure to properly preserve a *Batson* claim that was raised on appeal. In fact, the trial team raised the *Batson* issue in the first instance, and the prosecutor provided facially race-neutral reasons for his peremptory challenges of three African-Americans on the jury panel. After hearing the explanations, and the court crediting them, the defense had no compelling basis on which to challenge the prosecutor's stated reasons as pretextual. The trial team simply did not believe the prosecutor gave pretextual reasons, so there was no legitimate basis to make any further objection. The trial team was fully prepared to make the type of comparison of similarly-situated white jurors as the defense team employed a very thorough jury consultant. This consultant had taken down every detail of the jurors' backgrounds. Notably, the trial team did not have the benefit of the notes made by the prosecutor during jury selection. These were turned over to appellate counsel during the pendency of the direct appeal, but even if the prosecutor's notes had been available, trial counsel's position would not have changed. The notes are consistent with the trial team's memory of the conduct of the relevant jurors, something that may not have been clear from the "cold" appellate record. For example, the "Jamaican" woman struck by the prosecutor

was objectively not a good juror: anyone in the courtroom – including the jury consultant -- who heard her answers would have seen she was evasive on simple questions and that her demeanor was not appropriate for such a serious undertaking. Thus, no further objection could have, in good faith, been made.

34. Mr. Baskerville next raises the failure to challenge "Grand Jury irregularities." Mr. Baskerville claims that Government witness Eric Dock gave false testimony to the Grand Jury. There was no reason to believe the Government presented false testimony to the Grand Jury and thus there was no proper motion to be made regarding the Grand Jury. Based on the jury's verdict, there remains no objective basis to believe Eric Dock gave false testimony either at the Grand Jury or at trial.

35. Mr. Baskerville next raises the trial team's failure to challenge delays in the discovery process, without specifying exactly what discovery he is talking about. In any case, there were virtually no issues about how the discovery in this case was provided by the Government as the discovery was timely and thorough, as one would expect in a death-penalty case. Mr. Baskerville was provided copies of all the discovery material save for any material governed by a protective order. The defense had full use of the discovery provided and had no "surprises" as far as late or missing discovery.

Mr. Baskerville never complained about discovery being untimely or incomplete. The only specific discovery failure I can recall was the originally provided audio of the Hassan Miller and Anthony Young jail conversation which was used extensively in the cross-examination of Young. The originally provided audio was only a small part of that conversation which was apparent from its context and caused me to demand the remainder of the conversation which was provided shortly after.

36. Mr. Baskerville claims that trial counsel failed to object to a jury charge defining the intent elements of Counts 1 and 2, the murder counts. Specifically he argues that the court charged the jury with regard to "premeditation" instead of the language used in the Superseding Indictment, "malice aforethought," thus relieving the Government of its burden of proof. This claim is factually incorrect as the record shows that the Court did charge the jury regarding malice aforethought. (Tr. at 5634-5635). In any event, "premeditation" is the highest form of malice aforethought, so any jury that found premeditation rationally could not have failed to find malice aforethought.

37. Mr. Baskerville claims that defense counsel failed to object or preserve the issue of an erroneous jury instruction regarding the definition of conspiracy. While he does not state a specific deficiency in the charge as given,

a detailed review of the entire jury instruction was made prior to the charge conference and was discussed with Mr. Baskerville. Trial counsel believed the instruction was consistent with the law in the Third Circuit and therefore there was no objection to be made with regard to the conspiracy charge. Mr. Baskerville did not complain at the time about the jury charge.

38. Mr. Baskerville also claims that the failure to ask for a "bifurcated trial" was ineffective. Mr. Baskerville perhaps means that the murder charge and the drug charges should have been tried separately. No severance motion was made because it would have been frivolous under the circumstances as the charges were so intertwined. The motive for the murder was to eliminate the informant on the drug counts. Thus, evidence of the drug counts could not have been excluded on a separate trial of the murder counts under Rule 404(b). Thus, the severance motion would have been denied.

39. Finally, Mr. Baskerville claims that the trial team failed to object to his sentence, which resulted in a mandatory life sentence for the drug counts. Mr. Baskerville claims the court failed to ask him directly about his two prior drug felony convictions, which was the basis for the enhanced sentencing that resulted in a life sentence being imposed. The jury had already found in the penalty phase the aggravating factor that Mr. Baskerville had "previously been convicted of two or more State or Federal offenses punishable by a term of

imprisonment of more than one year, committed on different occasions, involving the distribution of a controlled substance. 18 U.S.C. Section 3592(c)(10)." The Government introduced the certified judgments of conviction at the penalty phase. Mr. Baskerville agreed with the decision to concede these convictions so as not to lose credibility with the jury. Thus, there was no basis to challenge the validity of the convictions and their application under Title 21, United States Code, Section 851, at the sentencing hearing.

40. I declare under penalty of perjury that the foregoing is true and correct:

EXECUTED ON: 9/29/2014

KENNETH W. KAYSER, ESQ.