DECLARATION OF WILLIAM J. WILLINGHAM

My name is William I. Willingham. I am an attorney admitted to practice before the courts of the State of Alabama. I graduated from the Birmingham School of Law in 1979. I was in private practice from 1979 to 1981. I was employed as an Assistant District Attorney in the office of the District Attorney of Talladega County, Alabama from 1981 to 1985. Since then, I have been engaged in private practice as a sole practitioner in Talladega County.

On March 10, 1988, I was appointed by the Court of Talladega County to represent William E. Kuenzel, the Petitioner herein and then an indigent defendant in a capital murder case brought against him by the State of Alabama. The case arose out of the murder on November 9, 1987 of one Linda Offord, a cashier/clerk at Joe Bob's, a convenience store at the intersection of two roads on the outskirts of Sylacauga, Alabama in Talladega County. On September 22 and 23, 1988, Mr. Kuenzel was tried, convicted and sentenced by the jury to death.

By way of background, I had little prior experience trying capital cases. While I was employed as an Assistant District Attorney from 1981 to 1985, I worked on about 3 capital cases. However, as a then young and inexperienced lawyer, I was the low man on the totem pole, and played a minor role in the proceedings. While I was working on Mr. Kuenzel's case, I served as court appointed defense counsel in another capital case in Talladega County, but I had no prior experience handling capital cases on my own.

Second, at the time, as a practical matter, Alabama law and court practice in Talladega County did not encourage court appointed defense counsel to prepare sufficiently for either the guilt phase or the sentencing phase of a murder trial. In addition to Mr. Kuenzel's case, I was appointed defense counsel by the same court in six other criminal cases, including another murder case, all of which were on the court's criminal trial docket at the same time. Under Alabama law, however, I was en titled to only $20.00 per hour for my out-of-court time on each

case, with a ceiling of $1000.00 for each case. I therefore had to limit my out-of-court time on each of these cases, so that I could continue my regular civil practice where my hourly rate was at least three times greater, with no ceiling. Otherwise, I could not have survived as a sole practitioner.

Thus, in Mr. Kuenzel's case, between March 10, 1988, when I was appointed as his attorney and September 22, 1988, when his trial began, I devoted a total of 50.9 hours, or an average of less than two hours per week, preparing for the guilt and sentencing phases of his trial, including legal research, preparation of motions, reviewing discovery material , interviewing witnesses, investigating the facts relevant to guilt and sentencing, and preparing for trial. During the two month period immediately before trial, I had some assistance from Steven Adcock, who was appointed co-counsel in June 1988. However, Mr. Adcock had no prior experience with murder cases and he spent most of his out-of-court time on Mr. Kuenzel's case consulting with me, interviewing witnesses together with me and in the final weeks before trial preparing for trial rather than investigating the facts or interviewing witnesses on his own.

In addition, to some extent, I was lulled into complacency. In my view, the State had an extremely weak case against Mr. Kuenzel. Based on discovery and my interviews with my client and a few witnesses, it appeared to me that Mr. Kuenzel had an alibi and that the evidence pointed to Harvey Venn, a self-described accomplice, rather than Mr. Kuenzel, as the killer. More particularly, it appeared that the alleged murder weapon had been returned by Mr. Kuenzel to his father, from whom he had borrowed it, before rather than after the murder, and that he was seen at home sleeping on his couch shortly before the murder. In addition, based on the reports of the Alabama Department of Forensic Sciences, which were turned over to me by the State, the physical evidence seemed to point to Mr. Venn rather than Mr. Kuenzel as the killer. Blood that

matched the blood of the victim was found on Mr. Venn's clothes, not on Mr. Kuenzel's, there was no other physical evidence linking Mr. Kuenzel to the crime and it appeared that the killing was probably accidental.

Also, the District Attorney perceived that the prosecution's case was problematic. He so informed me and shortly before trial offered a life sentence with the possibility of parole if Mr. Kuenzel changed his plea from not guilty to guilty, an offer initially made and rejected by Mr. Kuenzel at the time he was indicted and a strong indication to me that the State did not think it had a strong case against him.

In these circumstances, the evidence that was readily available to me seemed sufficient to win the case, and so, given all of the other constraints under which I was working, I did not pursue investigative leads that might have led me to much more persuasive evidence of his innocence.

Finally, the consistent practice of the Circuit Court of Talladega County was to dispose of criminal cases, even capital cases, as quickly as possible, usually with a few days of testimony. Individual voir dire was seldom if ever allowed, even in capital cases. Defense counsel was expected to present the defendant's case immediately after the prosecution presented its case without a continuance and with only a few rather than many witnesses. Motions for a continuance were routinely denied. Generally, there was no funding available in Talladega County for a mitigation expert, or for a neurologist or psychiatrist to evaluate the defendant's mental health based on his social history and diagnostic testing. (In Mr. Kuenzel's case, we requested funds for a mental health expert and the court responded by designating a "counselor" who may not have been qualified to evaluate the defendant's mental health.)

In any event, because of all of these facts and circumstances I may not have been adequately prepared for the guilt phase of Mr. Kuenzel's trial and prepared hardly at all for the sentencing phase. Since I thought I had a good chance of winning at the guilt phase, the time I spent in preparing Mr. Kuenzel's case was focused on persuading the jury that my client was not guilty beyond a reasonable doubt, and the task of finding sufficient mitigation evidence to persuade the jury to vote for life rather than death was neglected.

Reviewing my files and the fee declaration I submitted to the court, it would appear that my out-of-court time preparing for both phases of the trial was allocated approximately as follows:

Activity	Phase	Time
Consultations w/ Mr. Kuenzel	Mostly Guilt	8.50
Consultations w/ Mr.K's mother	Mostly sentencing	2.25
Consultations w/ Mr.K's family	Mostly guilt	2.75
Consultations w/ probation officer	Sentencing	1.00
Consultations w/ Investigator	Guilt	2.00
Consultations w/ witnesses	Guilt	3.50
Consultations w/co-counsel	Mostly Guilt	5.00
Legal Research	Guilt	4.50
Preparation of Motions	Guilt	6.00
Discovery	Guilt	6.00
Investigation	Guilt	5.00
Review file	Guilt	3.50
Miscellaneous		.90
TOTAL OUT-OF-COURT TIME BEFORE TRIAL		**50.90**

In preparing for the guilt phase of Mr. Kuenzel's trial, neither I nor Mr. Adcock interviewed or spoke to Crystal Floyd, Crystal Epperson, or Sam Gibbons.

Ms. Floyd was identified by Harvey Venn, in his statements to the police shortly after the murder and in his trial testimony, as a 13 year old girlfriend he visited the afternoon of November 9, 1987, many hours before the murder which occurred shortly after 11 p.m. that night. Ms. Floyd was on the State's witness list but was never called to testify. However, I understand from David Dretzin, who tells me he has represented Mr. Kuenzel in post conviction proceedings, that Ms. Floyd has signed an affidavit stating that she was visited by Mr. Venn hardly an hour before the murder; that he appeared to her to be heavily under the influence of drugs and/or alcohol; that he was alone, without Mr. Kuenzel; and that she so advised the police or the D.A. shortly after the murder.

Ms. Epperson was identified by April Harris — the only witness who placed Mr. Kuenzel at the crime scene shortly before the murder — as the driver of the vehicle in which she was a passenger driving by the crime scene. Ms. Epperson also was on the State's witness list but was never called to testify. I understand from Mr. Dretzin that Ms. Epperson has signed an affidavit stating that she did not see Mr. Kuenzel at the crime scene the night of the murder; that she does not believe that Ms. Harris saw him either; and that she so advised the police or the District Attorney shortly after the murder. Mr. Dretzin also advised me that an investigator engaged by him has stated in an affidavit that he physically examined the crime scene, measured the distance between Ms. Epperson's vehicle and the door of Joe Bob's to be about 200 feet and, on that basis, concluded that it was impossible for Ms. Harris to have seen Mr. Kuenzel inside of Jo Bob's as she testified at trial.

Sam Gibbons was identified by Harvey Venn as the owner of a .12 gauge shotgun that Mr. Venn acknowledged he had in his car the night of the murder. However, Mr. Dretzin has told me that he has an affidavit from the widow of Sam Gibbons stating that the shotgun borrowed by Harvey Venn from her now deceased husband was a .16 gauge shotgun, not a .12 gauge shotgun, as Venn testified at trial; that Mr. Gibbons was interviewed by the police or the D.A. shortly after the murder; and that they examined the weapon and then returned it to Mr. Gibbons with the advice that it was not the murder weapon. Mr. Dretzin also tells me that, unlike the other weapons that Mr. Vein testified were in his car that night, Mr. Gibbons' shotgun apparently was never turned over to the Alabama Department of Forensic Sciences for testing and analysis; that Mr. Gibbons' shotgun was turned over by Mr. Gibbons' widow after Mr. Gibbons death to an investigator retained by Mr. Dretzin and by the investigator to an independent firearms expert who examined and tested the weapon and who has stated in an affidavit that Mr. Gibbons' shotgun could have been the murder weapon and could easily have been fired accidentally.

The State's case against Mr. Kuenzel rested almost entirely on:

1) expert testimony that the murder weapon was a .16 gauge shotgun;

2) Mr. Venn's testimony that Mr. Kuenzel's .16 gauge shotgun was returned to his father after rather than before the murder, that Mr. Kuenzel's .16 gauge shotgun was the only .16 gauge shotgun in his car the night of the murder, that Mr. Kuenzel was with him the entire night of the murder, and that Mr. Kuenzel was the trigger man and Mr. Venn only an accomplice; and

3) Ms. Harris's testimony that she saw Mr. Kuenzel at the crime scene inside the convenience store shortly before the murder, while driving by as a passenger in a pickup truck.

I do not excuse myself for not interviewing Ms. Floyd, Ms. Harris and Mr. Gibbons. However, the District Attorney represented in court before trial that he had turned over to defense counsel all Brady material when in truth he never turned over to defense counsel any statements taken by the police or the D.A. from Ms. Floyd, Ms. Epperson or Mr. Gibbons, and never disclosed to defense counsel that the shotgun borrowed by Mr. Vein from Mr. Gibbons and that was in his car the night of the murder was a .16 gauge rather than a .12 gauge shotgun. With hindsight, I realize I should not have relied on his representations.

Whoever was at fault, I believe that, if Ms. Floyd, Ms. Harris and Mr. Gibbons had appeared as defense witnesses at Mr. Kuenzel's trial and testified as indicated above, there is a reasonable probability that the jury would not have found Mr. Kuenzel guilty beyond a reasonable doubt.

In preparing for the sentencing phase of Mr. Kuenzel's trial, I spoke to Mr. Kuenzel's mother and to his ex-wife. While I may have spoken briefly to other members of the family regarding mitigation, I believe that most of my conversations with them were about Mr. Kuenzel's alibi, rather than mitigation. Nor did I interview other witnesses for mitigation evidence. As a consequence, I failed to unearth much in the way of mitigation evidence and was for the most part unaware of the mitigation evidence, recited at pages 17 through 19 of Mr. Kuenzel's Second Amended Petition For Writ of Habeas Corpus, that came to light after Mr. Kuenzel was convicted, sentenced and exhausted his direct appeals.

WILLIAM J. WILLINGHAM

Dated: 2/12/07 WJW

Sworn to and subscribed before me this
12th day of February 2007 Notary Public

Notary Public