

**DECLARATION OF KEVIN McNALLY REGARDING THE NUMBER OF
PEREMPTORIES
ALLOWED IN JURY SELECTION IN FEDERAL CAPITAL TRIALS**

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.¹

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. 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” *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

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. In *United States v. Johnson, Roane and Tipton* (E.D. VA CR No. 3-92-CR-68), the court granted the three defendants 30 peremptory challenges. In *United States v. Murray* (M.D. PA CR No. 92-200), the court granted the two defendants 30 peremptory challenges. In *United States v. Diaz and Walker* (N.D. NY CR No. 94-328), the court gave the two defendants 50 peremptory challenges. In *United States v. Llera-Plaza, Rodriguez and Acosta* (E.D. PA CR No. 98-362), the court awarded the

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>

three defendants 33 peremptory challenges. In *United States v. Quinones and Rodriquez* (S.D. NY CR No. 00 CR 0761 (JSR)), the Court granted the two defendants 32 peremptory challenges. In *United States v. Moussaoui* (E.D. VA CR No. 01-CR-455-ALL), the court awarded the defendant 25 peremptory challenges. In *United States v. Moses and Taylor* (D. MD CR No. 02-CR-410-ALL), the court gave the two defendants 30 peremptory challenges. In *United States v. Henderson* (S.D. NY No. 1:02-CR-00451-MBM-ALL), the court awarded the defendant 30 peremptory challenges and the government 20. In *United States v. Cisneros, Rivera, Garcia-Orellano and Grande* (E.D. VA CR No. 04-CR-283-ALL), Judge Lee awarded the four defendants 40 peremptory challenges. In *United States v. Lecco and Friend* (S.D. WV CR No. 2:05-00107), the Court awarded the two defendants 30 challenges. See *United States v. Lecco*, 2007 WL 894567 (S.D. WV). In *United States v. Dinkins & Gilbert* (D. MD No. 1:06-CR-00309-JFM), the court granted the defense 30 peremptory challenges and the government 24. In *United States v. Phillips* (E.D. PA No. 2:07-CR-00549-JCJ), the court awarded each side 27 peremptory challenges. In *United States v. Cramer & Fackrel* (E.D. TX No. 1:16-CR-00026-MAC-ZJH), the court granted the defendants 33 peremptory challenges and the prosecution 23.

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 17th day of December, 2019.

/s/ Kevin McNally