

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

FILED

JUL 27 2001

UNITED STATES OF AMERICA,)
v.)
KEVIN L. GRAY,)
Defendant.)

NANCY MAYER WHITTINGTON, CLERK
U.S. DISTRICT COURT
Crim. No. 00-157-01 (RCB)

NOTICE OF INTENT TO SEEK THE DEATH PENALTY

COMES NOW the United States of America, pursuant to 21 U.S.C. § 848(h)(1)(A) and (B), by and through its undersigned counsel, Kenneth L. Wainstein, United States Attorney for the District of Columbia, and notifies the Court and the defendant, Kevin L. Gray, in the above-captioned case that in the event of the defendant's conviction of the intentional killing of one or more of the following: Scott Downing, Rodney Faison, and Ricky Fletcher, while engaging in and working in furtherance of a continuing criminal enterprise (21 U.S.C. § 848(e)(1)(A)), as charged in Counts Seventeen, Sixty-Five and Sixty-Nine of the Superseding Indictment, the Government will seek the sentence of death. The Government will seek to prove the statutory and non-statutory aggravating factors set forth in this Notice as the basis for imposition of the death penalty.

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COUNT SEVENTEEN**INTENTIONAL KILLING OF SCOTT DOWNING****A. Alternative Statutory Aggravating Factors Enumerated under 21 U.S.C. § 848(n) (1) (A) through (D):****1. Intentional Acts to Take Life or Use Lethal Force.**

The defendant intentionally engaged in conduct intending that the victim be killed or that lethal force be employed against the victim, which resulted in the death of the victim. Section 848(n) (1) (C).

2. Intentional Acts in Reckless Disregard for Life. The defendant intentionally engaged in conduct which (i) the defendant knew would create a grave risk of death to a person, other than one of the participants in the offense; and (ii) resulted in the death of the victim. Section 848(n) (1) (D).

B. Statutory Aggravating Factors Enumerated under 21 U.S.C. § 848(n) (2) through (12):

1. Pecuniary Gain. The defendant committed the offense as consideration for the receipt, or in the expectation of the receipt, of anything of pecuniary value. Section 848(n) (7).

2. Substantial Planning and Premeditation. The defendant committed the offense after substantial planning and premeditation. Section 848(n) (8).

3. Distribution to Persons under 21. The violation of Subchapter I of Title 21, United States Code, in relation to which the conduct described in Section 848(e) occurred was a violation of

21 U.S.C. § 859, in that the defendant, then over the age of eighteen (18), distributed controlled substances to persons under the age of twenty-one (21). Section 848(n)(11).

4. **Especially Heinous and Cruel.** The defendant committed the offense in an especially heinous, cruel, or depraved manner in that it involved torture or serious physical abuse to the victim. Section 848 (n)(12).

C. Other, Non-Statutory Aggravating Factors Identified Under 21 U.S.C. § 848 (h)(1)(B) and § 848(k):

1. **Contemporaneous Convictions for Acts of Violence Charged in the Superseding Indictment.**

In addition to the capital offense charged in Count Seventeen of the Superseding Indictment, the defendant engaged in a continuing pattern of criminal conduct. That pattern of criminal conduct includes the specific homicides, non-fatal shootings, and conspiracies charged in the Superseding Indictment. Each of the forty violent acts listed below serves as a non-statutory aggravating factor in the event of the defendant's conviction for the murder of Scott Downing.

a. **Murder of Alvin Henson, aka Flubby.** On or about May 1, 1989, KEVIN L. GRAY, while armed with a firearm, purposely and with deliberate and premeditated malice, killed Alvin Henson, aka Flubby, by shooting him with a firearm, thereby causing injuries from which Alvin Henson, aka Flubby, died on May 1, 1989.

(Overt Act 1, Racketeering Act 20).¹

b. **Assault with Intent to Murder Witness #1.** In or about sometime in January or February of 1992, KEVIN L. GRAY and co-conspirators, while armed with a firearm, assaulted Witness #1, a witness to the murder of Alvin Henson, with the intent to murder that witness. (Overt Act 11, Racketeering Act 21, Counts 8 and 9).

c. **Murder of Anthony L. Dent, aka Fish.** On or about October 9, 1990, KEVIN L. GRAY and co-conspirators, while armed with a firearm, purposely and with deliberate and premeditated malice, killed Anthony Lee Dent, aka Fish, by shooting him with a firearm on or about October 9, 1990, thereby causing injuries from which Anthony Lee Dent, aka Fish, died on or about October 9, 1990. (Overt Act 7, Racketeering Act 22, Counts 4 and 5).

d. **Murder of Darrell Henson, aka Termite.** On or about May 24, 1991, KEVIN L. GRAY and co-conspirators, while armed with a firearm, purposely and with deliberate and premeditated malice, killed Darrell Henson, aka Termite, by shooting him with a firearm on or about May 24, 1991, thereby causing injuries from which Darrell Henson, aka Termite, died on or about May 24, 1991. (Overt 8, Racketeering Act 23, Counts 6 and 7).

¹ All references to Overt Acts, Racketeering Acts and Counts in this Notice refer to the Superseding Indictment in this case, which is hereby incorporated into this Notice.

e. **Murder of Marvin Goodman.** On or about July 26, 1992, **KEVIN L. GRAY** and co-conspirators, while armed with a firearm, purposely and with deliberate and premeditated malice, killed Marvin Goodman, by shooting him with a firearm on or about July 26, 1992, thereby causing injuries from which Marvin Goodman died on or about July 26, 1992. (Overt Act 14, Racketeering Act 24, Counts 10 and 11).

f. **Assault with Intent to Murder Shawn Burton.** On or about January 3, 1993, **KEVIN L. GRAY** and co-conspirators, while armed with a firearm, assaulted Shawn Burton with the intent to murder him. (Overt Act 16, Racketeering Act 25, Count 12).

g. **Murder of Christopher Burton.** On or about January 20, 1993, **KEVIN L. GRAY** and co-conspirators, while armed with a firearm, purposely and with deliberate and premeditated malice, killed Christopher Burton, by shooting him with a firearm on or about January 20, 1993, thereby causing injuries from which Christopher Burton, died on or about January 20, 1993. (Overt Act 17, Racketeering Act 26, Counts 13 and 14).

h. **Conspiracy to Murder Maurice Reid.** From on or about February 13, 1993 through sometime in 1993, in the District of Columbia and elsewhere, **KEVIN L. GRAY** and co-conspirators did unlawfully, knowingly and willfully combine, conspire, confederate, and agree together to murder Maurice Reid. (Overt Act 24, Racketeering Act 28).

i. **Murder of Henry Lloyd, Jr.** On or about July 12, 1993, **KEVIN L. GRAY** and co-conspirators, while armed with a firearm, purposely and with deliberate and premeditated malice, killed Henry Lloyd, Jr., by shooting him with a firearm on or about July 12, 1993, thereby causing injuries from which Henry Lloyd, Jr. died on or about July 12, 1993. (Overt Act 32, Racketeering Act 29, Counts 18 and 19).

j. **Assault with Intent to Murder Witness #2.** On or about July 12, 1993, **KEVIN L. GRAY** and co-conspirators, while armed with a firearm, assaulted Witness #2, with the intent to murder that witness. (Overt Act 32, Racketeering Act 29, Count 20).

k. **Assault with Intent to Murder Witness #3.** On or about July 12, 1993, **KEVIN L. GRAY** and co-conspirators, while armed with a firearm, assaulted Witness #3, with the intent to murder that witness. (Overt Act 32, Racketeering Act 29, Count 21).

l. **Assault with Intent to Murder Witness #4.** On or about July 12, 1993, **KEVIN L. GRAY** and co-conspirators, while armed with a firearm, assaulted Witness #4, with the intent to murder that witness. (Overt Act 32, Racketeering Act 29, Count 22).

m. **Murder of Aaron Jackson.** On or about July 25, 1993, **KEVIN L. GRAY** and co-conspirators, while armed with a firearm, purposely and with deliberate and premeditated malice, killed Aaron Jackson by shooting him with a firearm on or about July 25, 1993, thereby causing injuries from which Aaron Jackson

died on or about July 25, 1993. (Overt Act 33, Racketeering Act 30, Counts 23 and 24).

n. **Assault with Intent to Murder Shawn Burton.** On or about September 9, 1993, **KEVIN L. GRAY** and co-conspirators, while armed with a firearm, assaulted Shawn Burton with the intent to murder him. (Overt Act 35, Racketeering Act 25).

o. **Assault with Intent to Murder Maurice Willis.** On or about December 23, 1993, **KEVIN L. GRAY** and co-conspirators, while armed with firearms, assaulted Maurice Willis with the intent to murder him. (Overt Act 38, Racketeering Act 31).

p. **Murder of Corey W. Royster, aka Bink.** On or about January 11, 1994, **KEVIN L. GRAY** and co-conspirators, while armed with firearms, purposely and with deliberate and premeditated malice, killed Corey W. Royster, aka Bink, by shooting him with firearms on or about January 11, 1994, thereby causing injuries from which Corey W. Royster, aka Bink, died on or about January 11, 1994. (Overt Act 43, Racketeering Act 33, Counts 27 and 28).

q. **Murder of Andre R. Robinson, aka Orange.** On or about January 11, 1994, **KEVIN L. GRAY** and co-conspirators, while armed with firearms, purposely and with deliberate and premeditated malice, killed Andre R. Robinson, aka Orange, by shooting him with firearms on or about January 11, 1994, thereby causing injuries from which Andre R. Robinson, aka Orange, died on or about January 11, 1994. (Overt Act 43, Racketeering Act 33, Counts 29 and 30).

r. **Murder of Ronald Powell.** On or about August 27, 1994, **KEVIN L. GRAY** and co-conspirators, while armed with a firearm, purposely and with deliberate and premeditated malice, and while perpetrating or attempting to perpetrate the crime of armed robbery, killed Ronald Powell by shooting him with a firearm on or about August 27, 1994, thereby causing injuries from which Ronald Powell died on or about August 27, 1994. (Overt Act 46, Racketeering Act 34, Counts 31, 32 and 33).

s. **Conspiracy to Commit Armed Robberies.** Between on or about January 1996 and December 1998, within the District of Columbia and elsewhere, **KEVIN L. GRAY** and co-conspirators did knowingly and willfully combine, conspire, confederate and agree together to commit armed robberies of individuals to whom they had distributed large quantities of illegal drugs. (Overt Acts 51, 52, 53, 54, 134, 135, 136, 137, 138, 139, Racketeering Act 63).

t. **Murder of Joseph Thomas, aka Froggy.** On or about February 27, 1996, **KEVIN L. GRAY** and co-conspirators, while armed with a firearm, purposely and with deliberate and premeditated malice, killed Joseph Thomas, aka Froggy, by shooting him with a firearm on or about February 27, 1996, thereby causing injuries from which Joseph Thomas, aka Froggy died on or about February 27, 1996. (Overt Act 56, Racketeering Act 36, Counts 36 and 37).

u. **Murder of Marco B. Smith.** On or about May 19,

1996, **KEVIN L. GRAY** and co-conspirators, while armed with a firearm, purposely and with deliberate and premeditated malice, killed Marco B. Smith, by shooting him with a firearm on or about May 19, 1996, thereby causing injuries from which Marco B. Smith, died on or about May 19, 1996. (Overt Act 61, Racketeering Act 37, Counts 38 and 39).

v. **Murder of Ricardo E. Bailey.** On or about May 31, 1996, **KEVIN L. GRAY** and co-conspirators, while armed with a firearm, purposely and with deliberate and premeditated malice, killed Ricardo E. Bailey, by shooting him with a firearm on or about May 31, 1996, thereby causing injuries from which Ricardo E. Bailey died on or about May 31, 1996. (Overt Act 67, Racketeering Act 38, Counts 40, 41 and 42).

w. **Conspiracy to Murder Garlan Baskerville.** From on or about sometime in 1996 to July 5, 1996, in the District of Columbia and elsewhere, **KEVIN L. GRAY** and co-conspirators did unlawfully, knowingly and willfully combine, conspire, confederate, and agree together to murder Garlan Baskerville. (Overt Act 68, Racketeering Act 39).

x. **Assault with Intent to Murder Tracy Medina.** In or about sometime in 1996, **KEVIN L. GRAY** and co-conspirators, while armed with a firearm, assaulted Tracy Medina with the intent to murder him. (Overt Act 73, Racketeering Act 40, Counts 45 and 46).

y. **Assault with Intent to Murder Tracy Medina.** On

or about August 3, 1996, **KEVIN L. GRAY** and co-conspirators, while armed with a firearm, assaulted Tracy Medina with the intent to murder him. (Overt Act 74, Racketeering Act 40, Counts 47 and 48).

z. **Murder of Joseph A. Jones.** On or about August 20, 1996, **KEVIN L. GRAY** and co-conspirators, while armed with a firearm, purposely and with deliberate and premeditated malice, killed Joseph A. Jones, by shooting him with a firearm on or about August 20, 1996, thereby causing injuries from which Joseph A. Jones died on or about August 20, 1996. (Overt Act 76, Racketeering Act 41, Counts 49 and 50).

aa. **Murder of Rodney Faison, aka Booyang.** On or about January 3, 1998, **KEVIN L. GRAY** and co-conspirators, while armed with a firearm, purposely and with deliberate and premeditated malice, killed Rodney Faison, aka Booyang, by shooting him with a firearm on or about January 3, 1998, thereby causing injuries from which Rodney Faison, aka Booyang died on or about January 3, 1998. (Overt Act 105, Racketeering Act 50, Counts 64 and 65).

bb. **Murder of Roy Cobb.** On or about May 30, 1998, **KEVIN L. GRAY** and co-conspirators, while armed with a firearm, purposely and with deliberate and premeditated malice, killed Roy Cobb, by shooting him with a firearm on or about May 30, 1998, thereby causing injuries from which Roy Cobb died on or about May 30, 1998. (Overt Act 114, Racketeering Act 51, Counts 66 and 67).

cc. **Murder of Ricky Fletcher.** On or about June 20, 1998, **KEVIN L. GRAY** and co-conspirators, while armed with firearms, purposely and with deliberate malice, killed Ricky Fletcher, by shooting him with firearms on or about June 20, 1998, thereby causing injuries from which Ricky Fletcher died on or about June 20, 1998. (Overt Act 121, Racketeering Act 52, Counts 68 and 69).

dd. **Conspiracy to Murder Marvin Best.** From on or about sometime in 1998 to July of 1998, in the District of Columbia and elsewhere, **KEVIN L. GRAY** and co-conspirators did unlawfully, knowingly and willfully combine, conspire, confederate, and agree together to murder Marvin Best. (Overt Act 123, Racketeering Act 52).

ee. **Conspiracy to Murder Michael Horne, aka Mike-Mike.** From on or about sometime in 1998 through July 31, 1998, in the District of Columbia and elsewhere, **KEVIN L. GRAY** and co-conspirators did unlawfully, knowingly and willfully combine, conspire, confederate, and agree together to murder Michael Horne, aka Mike-Mike. (Overt Acts 124, 125 and 126, Racketeering Act 53).

ff. **Conspiracy to Murder Robert Harris, aka Rah-Rah.** In or about sometime in 1998, in the District of Columbia and elsewhere, **KEVIN L. GRAY** and co-conspirators did unlawfully, knowingly and willfully combine, conspire, confederate, and agree together to murder Robert Harris, aka Rah-Rah. (Overt Acts 153, 154, 155, 156 and 157, Racketeering Act 28).

gg. **Conspiracy to Murder Antoine Ball.** In or about sometime in 1998, in the District of Columbia and elsewhere, **KEVIN L. GRAY** and co-conspirators did unlawfully, knowingly and willfully combine, conspire, confederate and agree together to murder Antoine Ball. (Overt Acts 132 and 133).

hh. **Murder of Carlos Cardoza, Jr.** On or about December 13, 1998, **KEVIN L. GRAY** and co-conspirators, while armed with a firearm, purposely and with deliberate and premeditated malice, killed Carlos Cardoza, Jr., by shooting him with a firearm on or about December 13, 1998, thereby causing injuries from which Carlos Cardoza, Jr., died on or about December 13, 1998. (Overt Act 148, Racketeering Act 54, Counts 70, 71 and 72).

ii. **Murder of Jaime Pereira.** From on or about sometime in early 1999 to March 3, 1999, **KEVIN L. GRAY** and co-conspirators did travel in and cause another person to travel in interstate commerce with the intent that a murder be committed in violation of the laws of the Commonwealth of Virginia and of the United States in consideration for a promise and agreement to pay, anything of pecuniary value, and did conspire to do so, and the death of Jaime Pereira resulted. (Overt Acts 161 and 162, Racketeering Act 56, Count 73).

jj. **Murder of Thomas Walker.** On or about July 22, 1999, **KEVIN L. GRAY** and co-conspirators, while armed with a firearm, purposely and with deliberate and premeditated malice,

killed Thomas Walker, by shooting him with a firearm on or about July 22, 1999, thereby causing injuries from which Thomas Walker died on or about July 22, 1999. (Overt Act 214, Racketeering Act 59, Counts 76 and 77).

kk. **Murder of Anthony Watkins.** On or about August 9, 1999, **KEVIN L. GRAY** and co-conspirators, while armed with a firearm, purposely and with deliberate and premeditated malice, killed Anthony Watkins, by shooting him with a firearm on or about August 9, 1999, thereby causing injuries from which Anthony Watkins died on or about August 9, 1999. (Overt Act 224, Racketeering Act 59, Counts 78 and 79).

ll. **Murder of Derrick Edwards.** On or about September 26, 1999, **KEVIN L. GRAY** and co-conspirators, while armed with a firearm, purposely and with deliberate and premeditated malice, killed Derrick Edwards, by shooting him with a firearm on or about September 26, 1999, thereby causing injuries from which Derrick Edwards died on or about September 26, 1999. (Overt Act 228, Racketeering Act 61, Counts 80 and 81).

mm. **Conspiracy to Murder Marcus Jay.** In or about 1999, in the District of Columbia and elsewhere, **KEVIN L. GRAY** and co-conspirators did unlawfully, knowingly and willfully combine, conspire, confederate, and agree together to murder Marcus Jay. (Overt Acts 174, 178, 181, and 187, Racketeering Act 57).

nn. **Assault with Intent to Kill Witness #6.** On or

about December 15, 1999, **KEVIN L. GRAY** and co-conspirators did attempt to kill Witness #6 by shooting him with a firearm with the intent to prevent the communication by Witness #6 to a law enforcement officer or judge of the United States of information relating to the commission or possible commission of a Federal offense. (Overt Act 231, Racketeering Act 62, Counts 82, 83 and 84).

2. **Unadjudicated Acts of Violence not Charged in the Superseding Indictment.**

In addition to the acts of violence charged in the Superseding Indictment and described herein, **KEVIN L. GRAY** and co-conspirators committed the following unadjudicated murders not charged in the Superseding Indictment. Each murder serves as a non-statutory aggravating factor which we will seek to prove in the event of the defendant's conviction for the murder of Scott Downing.

a. **Murder of Joseph Lundy.** On or about June 28, 1993, **KEVIN L. GRAY** and co-conspirators, while armed with a firearm, purposely and with deliberate and premeditated malice, killed Joseph Lundy, by shooting him with a firearm on or about June 28, 1993, thereby causing injuries from which Joseph Lundy died on or about June 28, 1993.

b. **Murder of Quintin Butler.** On or about July 14, 1996, **KEVIN L. GRAY**, while armed with a firearm, purposely and with deliberate and premeditated malice, killed Quintin Butler, by

shooting him with a firearm on or about July 14, 1996, thereby causing injuries from which Quintin Butler died on or about July 14, 1996.

3. **Contemporaneous Convictions for Narcotics Trafficking.**

From on or about sometime in 1988 and continuing until November of 2000, as set forth in Count One of the Superseding Indictment, **KEVIN L. GRAY** obtained, possessed with intent to distribute and distributed quantities of powder cocaine, cocaine base, also known as crack cocaine, heroin and marijuana, which were subsequently distributed to members and associates of the enterprise and customers in the District of Columbia, the State of Maryland, the Commonwealth of Virginia, and elsewhere. Each of the separate drug offenses listed below serves as a non-statutory aggravating factor in the event of the defendant's conviction for the murder of Scott Downing.

a. On or about April 10, 1996, in Washington, D.C., **KEVIN L. GRAY** knowingly and intentionally distributed approximately 62 grams of a mixture and substance containing cocaine base, also known as crack cocaine. (Overt Act 58, Racketeering Act 3, Count 127).

b. On or about May 7, 1996, in Washington, D.C., **KEVIN L. GRAY** knowingly and intentionally distributed approximately 60 grams of a mixture and substance containing cocaine base, also known as crack cocaine. (Overt Act 59, Racketeering Act 4, Count

128).

c. On or about October 5, 1996, in Washington, D.C., **KEVIN L. GRAY** possessed with the intent to distribute approximately 29 grams of a mixture and substance containing cocaine base, also known as crack cocaine. (Overt Act 78, Racketeering Act 11).

d. On or about July 29, 1998, in Washington, D.C., **KEVIN L. GRAY** and co-conspirators possessed with the intent to distribute approximately 240 grams of a mixture and substance containing cocaine base, also known as crack cocaine. (Overt Act 127, Racketeering Act 16, Count 135).

e. On or about November 13, 1998, in Washington, D.C., **KEVIN L. GRAY** knowingly and intentionally distributed approximately 31 grams of a mixture and substance containing cocaine base, also known as crack cocaine. (Overt Act 140, Racketeering Act 5, Count 129).

f. On or about February 15, 1999, in Washington, D.C., **KEVIN L. GRAY** knowingly and intentionally distributed approximately 3 grams of a mixture and substance containing heroin. (Overt Act 160, Racketeering Act 6, Count 130).

g. On or about March 3, 1999, in Washington, D.C., **KEVIN L. GRAY** knowingly and intentionally distributed approximately 3 grams of a mixture and substance containing heroin. (Overt Act 163, Racketeering Act 7, Count 131).

h. On or about July 2, 1999, in Washington, D.C., **KEVIN L. GRAY** and co-conspirators possessed with the intent to distribute approximately 40 grams of a mixture and substance containing heroin. (Overt Act 210, Racketeering Act 18, Count 137).

i. On or about October 20, 1999, in Washington, D.C., **KEVIN L. GRAY** and co-conspirators possessed with the intent to distribute approximately 13 grams of a mixture and substance containing heroin. (Overt Act 229, Racketeering Act 19, Count 138).

4. **Contemporaneous Convictions for Firearms Offenses.**

From on or about sometime in 1988 and continuing until November of 2000, as set forth in the Superseding Indictment, **KEVIN L. GRAY**, obtained, possessed, and distributed numerous firearms in the District of Columbia, the State of Maryland, and elsewhere. The defendant obtained firearms from several sources in and around Washington, D.C. He subsequently distributed some of those firearms to various co-conspirators. The defendant and co-conspirators possessed a firearm during each of the acts of violence set forth as non-statutory aggravating factors in this Notice. (Counts 85, 86, 88, 90, 91, 92, 94, 95, 97, 98, 99, 101, 102, 103, 105, 106, 107, 114, 115, 116, 117, 118, 120, 121, 122 and 123). Additionally, the defendant possessed firearms on the following occasions, each of which serves as an additional non-statutory aggravating factor in the event of the defendant's conviction for the murder of Scott Downing.

a. On or about June 14, 1992, in Washington, D.C., **KEVIN L. GRAY** possessed a 9 millimeter Berretta firearm. (Overt Act 13, Count 89).

b. On or about September 20, 1993, in Washington, D.C., **KEVIN L. GRAY** and co-conspirators possessed a .380 caliber Berretta firearm. (Overt Act 36).

c. On or about July 29, 1998, in Washington, D.C., **KEVIN L. GRAY** and co-conspirators possessed a Calico 9 millimeter semi-automatic firearm and a Rossi .44 caliber revolver. (Overt Act 127).

d. On or about July 2, 1999, in Washington, D.C., **KEVIN L. GRAY** and co-conspirators possessed a Taurus 9 millimeter semi-automatic firearm. (Overt Act 210).

5. Obstruction of Justice.

From on or about sometime in 1988 and continuing until sometime in 2000, as set forth in the Superseding Indictment and this Notice, **KEVIN L. GRAY**, obstructed or impeded and attempted to obstruct or impede the administration of justice during the course of the investigation or prosecution of his criminal activities. More specifically, **KEVIN L. GRAY** conspired or attempted to murder a number of individuals who he believed were cooperating with law enforcement, including, but not limited to Witness #1, Scott Downing, Maurice Reid, Ricardo Bailey, Carlos Cardoza, Jr., James L. Lee and Witness #6, as described in non-statutory aggravating

factors 2, 8, 22, 34, 35 and 40, above, and in the Superseding Indictment.

6. Leadership Role.

From on or about sometime in 1988 and continuing until sometime in 2000, **KEVIN L. GRAY** maintained a leadership role in the organization, management and administration of the continuing criminal enterprise set forth in the Superseding Indictment. That leadership role is evidenced by one or more of the following acts which were undertaken by the defendant:

a. **Distribution of Illegal Drugs.** The defendant distributed wholesale quantities of cocaine, cocaine base, and heroin to various co-conspirators. The defendant supervised the subsequent distribution of retail quantities of illegal drugs to customers in and around Washington, D.C. The defendant collected money from co-conspirators who engaged in retail sales. He acquired and maintained "stash houses," which were used to store, manufacture and package illegal drugs. The defendant protected and expanded the territory in which the conspiracy distributed illegal drugs.

b. **Solicitation and Direction of Acts of Violence.** The defendant solicited others to commit acts of violence. The defendant specifically directed the actions of co-conspirators in the commission of acts of violence, including identifying victims, providing weapons, and transporting co-conspirators to and from

locations. The defendant paid co-conspirators in illegal drugs and currency after their commission of specific acts of violence.

c. **Obstruction of Justice.** The defendant directed others to take steps to discover the identities of individuals who had provided information regarding his and his co-conspirators' criminal activity. The defendant attempted to prevent further cooperation or trial testimony by those individuals by directing the removal of them from the jurisdiction or by killing or attempting to kill them.

d. **Protection of Arrested Co-conspirators.** The defendant obtained counsel and posted bond for various co-conspirators when those co-conspirators were arrested. On other occasions, he provided money to co-conspirators and their families to pay attorneys or post bond. The defendant provided money to co-conspirators and their families when those co-conspirators were incarcerated. The defendant's provision of money for counsel and family support prevented the cooperation of his arrested co-conspirators and facilitated their release from custody and continued efforts on behalf of the organization.

7. **Future Dangerousness of the Defendant.**

The defendant is likely to commit criminal acts of violence in the future which would be a continuing and serious threat to the lives and safety of others, including, but not limited to, inmates and correctional officers resident in an institutional correctional

setting as evidenced by the offenses charged in the Superseding Indictment, and the aforementioned statutory and non-statutory aggravating factors alleged in this Notice. See Simmons v. South Carolina, 512 U.S. 154, 162 (1994). In addition to the offenses charged in the Superseding Indictment and the statutory and non-statutory aggravating factors alleged in this Notice, the circumstances which demonstrate his future dangerousness include: the fact that the defendant has escaped or tried to escape from a number of correctional facilities; the defendant's long-term pattern of violent criminal conduct; his continuous efforts to obstruct justice and threaten or kill witnesses; his leadership role in planning and encouraging others to undertake criminal activities; his demonstrated low rehabilitative potential; and his lack of remorse for his criminal activities which have caused significant damage to the community and numerous victims and their families.

8. Victim Impact.

As demonstrated by the victim's personal characteristics as a human being and the impact of the victim's death on the victim's family, the defendant caused injury, harm, and loss to the family of Scott Downing. See Payne v. Tennessee, 501 U.S. 808, 825-27 (1991). The government will present information concerning the effect of the offenses upon Scott Downing's family, which may include oral testimony, a particularized victim impact statement

referencing the scope of the injury and loss suffered by Scott Downing's family, and any other relevant information.

COUNT SIXTY-FIVE

INTENTIONAL KILLING OF RODNEY FAISON

A. Alternative Statutory Aggravating Factors Enumerated under 21 U.S.C. § 848(n) (1) (A) through (D):

1. **Intentional Acts to Take Life or Use Lethal Force.**

The defendant intentionally engaged in conduct intending that the victim be killed or that lethal force be employed against the victim, which resulted in the death of the victim. Section 848(n) (1) (C).

2. **Intentional Acts in Reckless Disregard for Life.**

The defendant intentionally engaged in conduct which (i) the defendant knew would create a grave risk of death to a person, other than one of the participants in the offense; and (ii) resulted in the death of the victim. Section 848(n) (1) (D).

B. Statutory Aggravating Factors Enumerated under 21 U.S.C. § 848(n) (2) through (12):

1. **Procured by Payment.**

The defendant procured the commission of the offense by payment, or promise of payment, of anything of pecuniary value. Section 848(n) (6).

2. **Substantial Planning and Premeditation.**

The defendant committed the offense after substantial planning and premeditation. Section 848(n) (8).

3. **Distribution to Persons under 21.**

The violation of

Subchapter I of Title 21, United States Code, in relation to which the conduct described in Section 848(e) occurred was a violation of 21 U.S.C. § 859, in that the defendant, then over the age of eighteen (18), distributed controlled substances to persons under the age of twenty-one (21). Section 848(n)(11).

C. Other, Non-Statutory Aggravating Factors Identified Under 21 U.S.C. § 848 (h) (1) (B) and § 848(k):

1. **Contemporaneous Convictions for Acts of Violence Charged in the Superseding Indictment.**

In addition to the capital offense charged in Count Sixty-Five of the Superseding Indictment, the defendant engaged in a continuing pattern of criminal conduct. That pattern of criminal conduct includes the specific homicides, non-fatal shootings, and conspiracies charged in the Superseding Indictment. Each of the forty violent acts listed below serves as a non-statutory aggravating factor in the event of the defendant's conviction for the murder of Rodney Faison.

a. **Murder of Alvin Henson, aka Flubby.** On or about May 1, 1989, **KEVIN L. GRAY**, while armed with a firearm, purposely and with deliberate and premeditated malice, killed Alvin Henson, aka Flubby, by shooting him with a firearm, thereby causing injuries from which Alvin Henson, aka Flubby, died on May 1, 1989. (Overt Act 1, Racketeering Act 20).

b. **Assault with Intent to Murder Witness #1.** In or about sometime in January or February of 1992, **KEVIN L. GRAY** and

co-conspirators, while armed with a firearm, assaulted Witness #1, a witness to the murder of Alvin Henson, with the intent to murder that witness. (Overt Act 11, Racketeering Act 21, Counts 8 and 9).

c. **Murder of Anthony L. Dent, aka Fish.** On or about October 9, 1990, **KEVIN L. GRAY** and co-conspirators, while armed with a firearm, purposely and with deliberate and premeditated malice, killed Anthony Lee Dent, aka Fish, by shooting him with a firearm on or about October 9, 1990, thereby causing injuries from which Anthony Lee Dent, aka Fish, died on or about October 9, 1990. (Overt Act 7, Racketeering Act 22, Counts 4 and 5).

d. **Murder of Darrell Henson, aka Termite.** On or about May 24, 1991, **KEVIN L. GRAY** and co-conspirators, while armed with firearms, purposely and with deliberate and premeditated malice, killed Darrell Henson, aka Termite, by shooting him with a firearm on or about May 24, 1991, thereby causing injuries from which Darrell Henson, aka Termite, died on or about May 24, 1991. (Overt 8, Racketeering Act 23, Counts 6 and 7).

e. **Murder of Marvin Goodman.** On or about July 26, 1992, **KEVIN L. GRAY** and co-conspirators, while armed with a firearm, purposely and with deliberate and premeditated malice, killed Marvin Goodman, by shooting him with a firearm on or about July 26, 1992, thereby causing injuries from which Marvin Goodman died on or about July 26, 1992. (Overt Act 14, Racketeering Act

24, Counts 10 and 11).

f. **Assault with Intent to Murder Shawn Burton.** On or about January 3, 1993, **KEVIN L. GRAY** and co-conspirators, while armed with a firearm, assaulted Shawn Burton with the intent to murder him. (Overt Act 16, Racketeering Act 25, Count 12).

g. **Murder of Christopher Burton.** On or about January 20, 1993, **KEVIN L. GRAY** and co-conspirators, while armed with a firearm, purposely and with deliberate and premeditated malice, killed Christopher Burton, by shooting him with a firearm on or about January 20, 1993, thereby causing injuries from which Christopher Burton, died on or about January 20, 1993. (Overt Act 17, Racketeering Act 26, Counts 13 and 14).

h. **Murder of Scott Downing.** On or about February 13, 1993, **KEVIN L. GRAY** and co-conspirators, while armed with a firearm, purposely and with deliberate and premeditated malice, killed Scott Downing, by shooting him with a firearm on or about February 13, 1993, thereby causing injuries from which Scott Downing, died on or about February 13, 1993. (Overt Act 23, Racketeering Act 27, Counts 16 and 17).

i. **Conspiracy to Murder Maurice Reid.** From on or about February 13, 1993 through sometime in 1993, in the District of Columbia and elsewhere, **KEVIN L. GRAY** and co-conspirators did unlawfully, knowingly and willfully combine, conspire, confederate, and agree together to murder Maurice Reid. (Overt Act 24,

Racketeering Act 28).

j. **Murder of Henry Lloyd, Jr.** On or about July 12, 1993, **KEVIN L. GRAY** and co-conspirators, while armed with a firearm, purposely and with deliberate and premeditated malice, killed Henry Lloyd, Jr., by shooting him with a firearm on or about July 12, 1993, thereby causing injuries from which Henry Lloyd, Jr. died on or about July 12, 1993. (Overt Act 32, Racketeering Act 29, Counts 18 and 19).

k. **Assault with Intent to Murder Witness #2.** On or about July 12, 1993, **KEVIN L. GRAY** and co-conspirators, while armed with a firearm, assaulted Witness #2, with the intent to murder that witness. (Overt Act 32, Racketeering Act 29, Count 20).

l. **Assault with Intent to Murder Witness #3.** On or about July 12, 1993, **KEVIN L. GRAY** and co-conspirators, while armed with a firearm, assaulted Witness #3, with the intent to murder that witness. (Overt Act 32, Racketeering Act 29, Count 21).

m. **Assault with Intent to Murder Witness #4.** On or about July 12, 1993, **KEVIN L. GRAY** and co-conspirators, while armed with a firearm, assaulted Witness #4, with the intent to murder that witness. (Overt Act 32, Racketeering Act 29, Count 22).

n. **Murder of Aaron Jackson.** On or about July 25, 1993, **KEVIN L. GRAY** and co-conspirators, while armed with a firearm, purposely and with deliberate and premeditated malice, killed Aaron Jackson by shooting him with a firearm on or about

July 25, 1993, thereby causing injuries from which Aaron Jackson died on or about July 25, 1993. (Overt Act 33, Racketeering Act 30, Counts 23 and 24).

o. **Assault with Intent to Murder Shawn Burton.** On or about September 9, 1993, **KEVIN L. GRAY** and co-conspirators, while armed with a firearm, assaulted Shawn Burton with the intent to murder him. (Overt Act 35, Racketeering Act 25).

p. **Assault with Intent to Murder Maurice Willis.** On or about December 23, 1993, **KEVIN L. GRAY** and co-conspirators, while armed with firearms, assaulted Maurice Willis with the intent to murder him. (Overt Act 38, Racketeering Act 31).

q. **Murder of Corey W. Royster, aka Bink.** On or about January 11, 1994, **KEVIN L. GRAY** and co-conspirators, while armed with firearms, purposely and with deliberate and premeditated malice, killed Corey W. Royster, aka Bink, by shooting him with firearms on or about January 11, 1994, thereby causing injuries from which Corey W. Royster, aka Bink, died on or about January 11, 1994. (Overt Act 43, Racketeering Act 33, Counts 27 and 28).

r. **Murder of Andre R. Robinson, aka Orange.** On or about January 11, 1994, **KEVIN L. GRAY** and co-conspirators, while armed with firearms, purposely and with deliberate and premeditated malice, killed Andre R. Robinson, aka Orange, by shooting him with firearms on or about January 11, 1994, thereby causing injuries from which Andre R. Robinson, aka Orange, died on or about January

11, 1994. (Overt Act 43, Racketeering Act 33, Counts 29 and 30).

s. **Murder of Ronald Powell.** On or about August 27, 1994, KEVIN L. GRAY and co-conspirators, while armed with a firearm, purposely and with deliberate and premeditated malice, and while perpetrating or attempting to perpetrate the crime of armed robbery, killed Ronald Powell by shooting him with a firearm on or about August 27, 1994, thereby causing injuries from which Ronald Powell died on or about August 27, 1994. (Overt Act 46, Racketeering Act 34, Counts 31, 32 and 33).

t. **Conspiracy to Commit Armed Robberies.** Between on or about January 1996 and December 1998, within the District of Columbia and elsewhere, KEVIN L. GRAY and co-conspirators did knowingly and willfully combine, conspire, confederate and agree together to commit armed robberies of individuals to whom they had distributed large quantities of illegal drugs. (Overt Acts 51, 52, 53, 54, 134, 135, 136, 137, 138, 139, Racketeering Act 63).

u. **Murder of Joseph Thomas, aka Froggy.** On or about February 27, 1996, KEVIN L. GRAY and co-conspirators, while armed with a firearm, purposely and with deliberate and premeditated malice, killed Joseph Thomas, aka Froggy, by shooting him with a firearm on or about February 27, 1996, thereby causing injuries from which Joseph Thomas, aka Froggy died on or about February 27, 1996. (Overt Act 56, Racketeering Act 36, Counts 36 and 37).

v. **Murder of Marco B. Smith.** On or about May 19, 1996, **KEVIN L. GRAY** and co-conspirators, while armed with a firearm, purposely and with deliberate and premeditated malice, killed Marco B. Smith, by shooting him with a firearm on or about May 19, 1996, thereby causing injuries from which Marco B. Smith, died on or about May 19, 1996. (Overt Act 61, Racketeering Act 37, Counts 38 and 39).

w. **Murder of Ricardo E. Bailey.** On or about May 31, 1996, **KEVIN L. GRAY** and co-conspirators, while armed with a firearm, purposely and with deliberate and premeditated malice, killed Ricardo E. Bailey, by shooting him with a firearm on or about May 31, 1996, thereby causing injuries from which Ricardo E. Bailey died on or about May 31, 1996. (Overt Act 67, Racketeering Act 38, Counts 40, 41 and 42).

x. **Conspiracy to Murder Garlan Baskerville.** From on or about sometime in 1996 to July 5, 1996, in the District of Columbia and elsewhere, **KEVIN L. GRAY** and co-conspirators did unlawfully, knowingly and willfully combine, conspire, confederate, and agree together to murder Garlan Baskerville. (Overt Act 68, Racketeering Act 39).

y. **Assault with Intent to Murder Tracy Medina.** In or about sometime in 1996, **KEVIN L. GRAY** and co-conspirators, while armed with a firearm, assaulted Tracy Medina with the intent to murder him. (Overt Act 73, Racketeering Act 40, Counts 45 and 46).

z. **Assault with Intent to Murder Tracy Medina.** On or about August 3, 1996, **KEVIN L. GRAY** and co-conspirators, while armed with a firearm, assaulted Tracy Medina with the intent to murder him. (Overt Act 74, Racketeering Act 40, Counts 47 and 48).

aa. **Murder of Joseph A. Jones.** On or about August 20, 1996, **KEVIN L. GRAY** and co-conspirators, while armed with a firearm, purposely and with deliberate and premeditated malice, killed Joseph A. Jones, by shooting him with a firearm on or about August 20, 1996, thereby causing injuries from which Joseph A. Jones died on or about August 20, 1996. (Overt Act 76, Racketeering Act 41, Counts 49 and 50).

bb. **Murder of Roy Cobb.** On or about May 30, 1998, **KEVIN L. GRAY** and co-conspirators, while armed with a firearm, purposely and with deliberate and premeditated malice, killed Roy Cobb, by shooting him with a firearm on or about May 30, 1998, thereby causing injuries from which Roy Cobb died on or about May 30, 1998. (Overt Act 114, Racketeering Act 51, Counts 66 and 67).

cc. **Murder of Ricky Fletcher.** On or about June 20, 1998, **KEVIN L. GRAY** and co-conspirators, while armed with firearms, purposely and with deliberate malice, killed Ricky Fletcher, by shooting him with firearms on or about June 20, 1998, thereby causing injuries from which Ricky Fletcher died on or about June 20, 1998. (Overt Act 121, Racketeering Act 52, Counts 68 and 69).

dd. **Conspiracy to Murder Marvin Best.** From on or

about sometime in 1998 to July of 1998, in the District of Columbia and elsewhere, **KEVIN L. GRAY** and co-conspirators did unlawfully, knowingly and willfully combine, conspire, confederate, and agree together to murder Marvin Best. (Overt Act 123, Racketeering Act 52).

ee. **Conspiracy to Murder Michael Horne, aka Mike-Mike.** From on or about sometime in 1998 through July 31, 1998, in the District of Columbia and elsewhere, **KEVIN L. GRAY** and co-conspirators did unlawfully, knowingly and willfully combine, conspire, confederate, and agree together to murder Michael Horne, aka Mike-Mike. (Overt Acts 124, 125 and 126, Racketeering Act 53).

ff. **Conspiracy to Murder Robert Harris, aka Rah-Rah.** In or about sometime in 1998, in the District of Columbia and elsewhere, **KEVIN L. GRAY** and co-conspirators did unlawfully, knowingly and willfully combine, conspire, confederate, and agree together to murder Robert Harris, aka Rah-Rah. (Overt Acts 153, 154, 155, 156 and 157, Racketeering Act 28).

gg. **Conspiracy to Murder Antoine Ball.** In or about sometime in 1998, in the District of Columbia and elsewhere, **KEVIN L. GRAY** and co-conspirators did unlawfully, knowingly and willfully combine, conspire, confederate and agree together to murder Antoine Ball. (Overt Acts 132 and 133).

hh. **Murder of Carlos Cardoza, Jr.** On or about December 13, 1998, **KEVIN L. GRAY** and co-conspirators, while armed

with a firearm, purposely and with deliberate and premeditated malice, killed Carlos Cardoza, Jr., by shooting him with a firearm on or about December 13, 1998, thereby causing injuries from which Carlos Cardoza, Jr., died on or about December 13, 1998. (Overt Act 148, Racketeering Act 54, Counts 70, 71 and 72).

ii. **Murder of Jaime Pereira.** From on or about sometime in early 1999 to March 3, 1999, **KEVIN L. GRAY** and co-conspirators did travel in and cause another person to travel in interstate commerce with the intent that a murder be committed in violation of the laws of the Commonwealth of Virginia and of the United States in consideration for a promise and agreement to pay, anything of pecuniary value, and did conspire to do so, and the death of Jaime Pereira resulted. (Overt Acts 161 and 162, Racketeering Act 56, Count 73).

jj. **Murder of Thomas Walker.** On or about July 22, 1999, **KEVIN L. GRAY** and co-conspirators, while armed with a firearm, purposely and with deliberate and premeditated malice, killed Thomas Walker, by shooting him with a firearm on or about July 22, 1999, thereby causing injuries from which Thomas Walker died on or about July 22, 1999. (Overt Act 214, Racketeering Act 59, Counts 76 and 77).

kk. **Murder of Anthony Watkins.** On or about August 9, 1999, **KEVIN L. GRAY** and co-conspirators, while armed with a firearm, purposely and with deliberate and premeditated malice,

killed Anthony Watkins, by shooting him with a firearm on or about August 9, 1999, thereby causing injuries from which Anthony Watkins died on or about August 9, 1999. (Overt Act 224, Racketeering Act 59, Counts 78 and 79).

ll. **Murder of Derrick Edwards.** On or about September 26, 1999, **KEVIN L. GRAY** and co-conspirators, while armed with a firearm, purposely and with deliberate and premeditated malice, killed Derrick Edwards, by shooting him with a firearm on or about September 26, 1999, thereby causing injuries from which Derrick Edwards died on or about September 26, 1999. (Overt Act 228, Racketeering Act 61, Counts 80 and 81).

mm. **Conspiracy to Murder Marcus Jay.** In or about 1999, in the District of Columbia and elsewhere, **KEVIN L. GRAY** and co-conspirators did unlawfully, knowingly and willfully combine, conspire, confederate, and agree together to murder Marcus Jay. (Overt Acts 174, 178, 181, and 187, Racketeering Act 57).

nn. **Assault with Intent to Kill Witness #6.** On or about December 15, 1999, **KEVIN L. GRAY** and co-conspirators did attempt to kill Witness #6 by shooting him with a firearm with the intent to prevent the communication by Witness #6 to a law enforcement officer or judge of the United States of information relating to the commission or possible commission of a Federal offense. (Overt Act 231, Racketeering Act 62, Counts 82, 83 and 84).

2. **Unadjudicated Acts of Violence not Charged in the Superseding Indictment.**

In addition to the acts of violence charged in the Superseding Indictment and described herein, **KEVIN L. GRAY** and co-conspirators committed the following unadjudicated murders not charged in the Superseding Indictment. Each murder serves as a non-statutory aggravating factor which we will seek to prove in the event of the defendant's conviction for the murder of Rodney Faison.

a. **Murder of Joseph Lundy.** On or about June 28, 1993, **KEVIN L. GRAY** and co-conspirators, while armed with a firearm, purposely and with deliberate and premeditated malice, killed Joseph Lundy, by shooting him with a firearm on or about June 28, 1993, thereby causing injuries from which Joseph Lundy died on or about June 28, 1993.

b. **Murder of Quintin Butler.** On or about July 14, 1996, **KEVIN L. GRAY**, while armed with a firearm, purposely and with deliberate and premeditated malice, killed Quintin Butler, by shooting him with a firearm on or about July 14, 1996, thereby causing injuries from which Quintin Butler died on or about July 14, 1996.

3. **Contemporaneous Convictions for Narcotics Trafficking.**

From on or about sometime in 1988 and continuing until November of 2000, as set forth in Count One of the Superseding Indictment, **KEVIN L. GRAY** obtained, possessed with intent to

distribute and distributed quantities of powder cocaine, cocaine base, also known as crack cocaine, heroin and marijuana, which were subsequently distributed to members and associates of the enterprise and customers in the District of Columbia, the State of Maryland, the Commonwealth of Virginia, and elsewhere. Each of the separate drug offenses listed below serves as a non-statutory aggravating factor in the event of the defendant's conviction for the murder of Rodney Faison.

a. On or about April 10, 1996, in Washington, D.C., **KEVIN L. GRAY** knowingly and intentionally distributed approximately 62 grams of a mixture and substance containing cocaine base, also known as crack cocaine. (Overt Act 58, Racketeering Act 3, Count 127).

b. On or about May 7, 1996, in Washington, D.C., **KEVIN L. GRAY** knowingly and intentionally distributed approximately 60 grams of a mixture and substance containing cocaine base, also known as crack cocaine. (Overt Act 59, Racketeering Act 4, Count 128).

c. On or about October 5, 1996, in Washington, D.C., **KEVIN L. GRAY** possessed with the intent to distribute approximately 29 grams of a mixture and substance containing cocaine base, also known as crack cocaine. (Overt Act 78, Racketeering Act 11).

d. On or about July 29, 1998, in Washington, D.C.,

KEVIN L. GRAY and co-conspirators possessed with the intent to distribute approximately 240 grams of a mixture and substance containing cocaine base, also known as crack cocaine. (Overt Act 127, Racketeering Act 16, Count 135).

e. On or about November 13, 1998, in Washington, D.C., **KEVIN L. GRAY** knowingly and intentionally distributed approximately 31 grams of a mixture and substance containing cocaine base, also known as crack cocaine. (Overt Act 140, Racketeering Act 5, Count 129).

f. On or about February 15, 1999, in Washington, D.C., **KEVIN L. GRAY** knowingly and intentionally distributed approximately 3 grams of a mixture and substance containing heroin. (Overt Act 160, Racketeering Act 6, Count 130).

g. On or about March 3, 1999, in Washington, D.C., **KEVIN L. GRAY** knowingly and intentionally distributed approximately 3 grams of a mixture and substance containing heroin. (Overt Act 163, Racketeering Act 7, Count 131).

h. On or about July 2, 1999, in Washington, D.C., **KEVIN L. GRAY** and co-conspirators possessed with the intent to distribute approximately 40 grams of a mixture and substance containing heroin. (Overt Act 210, Racketeering Act 18, Count 137).

i. On or about October 20, 1999, in Washington, D.C., **KEVIN L. GRAY** and co-conspirators possessed with the intent to distribute approximately 13 grams of a mixture and substance

containing heroin. (Overt Act 229, Racketeering Act 19, Count 138).

4. **Contemporaneous Convictions for Firearms Offenses.**

From on or about sometime in 1988 and continuing until November of 2000, as set forth in the Superseding Indictment, **KEVIN L. GRAY**, obtained, possessed, and distributed numerous firearms in the District of Columbia, the State of Maryland, and elsewhere. The defendant obtained firearms from several sources in and around Washington, D.C. He subsequently distributed some of those firearms to various co-conspirators. The defendant and co-conspirators possessed a firearm during each of the acts of violence set forth as non-statutory aggravating factors in this Notice. (Counts 85, 86, 88, 90, 91, 92, 94, 95, 97, 98, 99, 101, 102, 103, 105, 106, 107, 114, 115, 116, 117, 118, 120, 121, 122 and 123). Additionally, the defendant possessed firearms on the following occasions, each of which serves as an additional non-statutory aggravating factor in the event of the defendant's conviction for the murder of Rodney Faison.

a. On or about June 14, 1992, in Washington, D.C., **KEVIN L. GRAY** possessed a 9 millimeter Berretta firearm. (Overt Act 13, Count 89).

b. On or about September 20, 1993, in Washington, D.C., **KEVIN L. GRAY** and co-conspirators possessed a .380 caliber Berretta firearm. (Overt Act 36).

c. On or about July 29, 1998, in Washington, D.C.,

KEVIN L. GRAY and co-conspirators possessed a Calico 9 millimeter semi-automatic firearm and a Rossi .44 caliber revolver. (Overt Act 127).

d. On or about July 2, 1999, in Washington, D.C., **KEVIN L. GRAY** and co-conspirators possessed a Taurus 9 millimeter semi-automatic firearm. (Overt Act 210).

5. **Obstruction of Justice.**

From on or about sometime in 1988 and continuing until sometime in 2000, as set forth in the Superseding Indictment and this Notice, **KEVIN L. GRAY**, obstructed or impeded and attempted to obstruct or impede the administration of justice during the course of the investigation or prosecution of his criminal activities. More specifically, **KEVIN L. GRAY** conspired or attempted to murder a number of individuals who he believed were cooperating with law enforcement, including, but not limited to Witness #1, Scott Downing, Maurice Reid, Ricardo Bailey, Carlos Cardoza, Jr., James L. Lee and Witness #6, as described in non-statutory aggravating factors 2, 8, 22, 34, 35 and 40, above, and in the Superseding Indictment.

6. **Leadership Role.**

From on or about sometime in 1988 and continuing until sometime in 2000, **KEVIN L. GRAY** maintained a leadership role in the organization, management and administration of the continuing criminal enterprise set forth in the Superseding Indictment. That

leadership role is evidenced by one or more of the following acts which were undertaken by the defendant:

a. **Distribution of Illegal Drugs.** The defendant distributed wholesale quantities of cocaine, cocaine base, and heroin to various co-conspirators. The defendant supervised the subsequent distribution of retail quantities of illegal drugs to customers in and around Washington, D.C. The defendant collected money from co-conspirators who engaged in retail sales. He acquired and maintained "stash houses," which were used to store, manufacture and package illegal drugs. The defendant protected and expanded the territory in which the conspiracy distributed illegal drugs.

b. **Solicitation and Direction of Acts of Violence.** The defendant solicited others to commit acts of violence. The defendant specifically directed the actions of co-conspirators in the commission of acts of violence, including identifying victims, providing weapons, and transporting co-conspirators to and from locations. The defendant paid co-conspirators in illegal drugs and currency after their commission of specific acts of violence.

c. **Obstruction of Justice.** The defendant directed others to take steps to discover the identities of individuals who had provided information regarding his and his co-conspirators' criminal activity. The defendant attempted to prevent further cooperation or trial testimony by those individuals by directing

the removal of them from the jurisdiction or by killing or attempting to kill them.

d. **Protection of Arrested Co-conspirators.** The defendant obtained counsel and posted bond for various co-conspirators when those co-conspirators were arrested. On other occasions, he provided money to co-conspirators and their families to pay attorneys or post bond. The defendant provided money to co-conspirators and their families when those co-conspirators were incarcerated. The defendant's provision of money for counsel and family support prevented the cooperation of his arrested co-conspirators and facilitated their release from custody and continued efforts on behalf of the organization.

7. **Future Dangerousness of the Defendant.**

The defendant is likely to commit criminal acts of violence in the future which would be a continuing and serious threat to the lives and safety of others, including, but not limited to, inmates and correctional officers resident in an institutional correctional setting as evidenced by the offenses charged in the Superseding Indictment, and the aforementioned statutory and non-statutory aggravating factors alleged in this Notice. See Simmons v. South Carolina, 512 U.S. 154, 162 (1994). In addition to the offenses charged in the Superseding Indictment and the statutory and non-statutory aggravating factors alleged in this Notice, the circumstances which demonstrate his future dangerousness include:

the fact that the defendant has escaped or tried to escape from a number of correctional facilities; the defendant's long-term pattern of violent criminal conduct; his continuous efforts to obstruct justice and threaten or kill witnesses; his leadership role in planning and encouraging others to undertake criminal activities; his demonstrated low rehabilitative potential; and his lack of remorse for his criminal activities which have caused significant damage to the community and numerous victims and their families.

8. Victim Impact.

As demonstrated by the victim's personal characteristics as a human being and the impact of the victim's death on the victim's family, the defendant caused injury, harm, and loss to the family of Rodney Faison. See Payne v. Tennessee, 501 U.S. 808, 825-27 (1991). The government will present information concerning the effect of the offenses upon Rodney Faison's family, which may include oral testimony, a particularized victim impact statement referencing the scope of the injury and loss suffered by Rodney Faison's family, and any other relevant information.

COUNT SIXTY-NINE

INTENTIONAL KILLING OF RICKY FLETCHER

A. Alternative Statutory Aggravating Factors Enumerated under 21 U.S.C. § 848(n) (1) (A) through (D):

" 1. Intentional Acts to Take Life or Use Lethal Force.

The defendant intentionally engaged in conduct intending that the

victim be killed or that lethal force be employed against the victim, which resulted in the death of the victim. Section 848(n)(1)(C).

2. **Intentional Acts in Reckless Disregard for Life.** The defendant intentionally engaged in conduct which (i) the defendant knew would create a grave risk of death to a person, other than one of the participants in the offense; and (ii) resulted in the death of the victim. Section 848(n)(1)(D).

B. Statutory Aggravating Factors Enumerated under 21 U.S.C. § 848(n)(2) through (12):

1. **Procured by Payment.** The defendant procured the commission of the offense by payment, or promise of payment, of anything of pecuniary value. Section 848(n)(6).

2. **Substantial Planning and Premeditation.** The defendant committed the offense after substantial planning and premeditation. Section 848(n)(8).

3. **Distribution to Persons under 21.** The violation of Subchapter I of Title 21, United States Code, in relation to which the conduct described in Section 848(e) occurred was a violation of 21 U.S.C. § 859, in that the defendant, then over the age of eighteen (18), distributed controlled substances to persons under the age of twenty-one (21). Section 848(n)(11).

C. Other, Non-Statutory Aggravating Factors Identified Under 21 U.S.C. § 848 (h)(1)(B) and § 848(k):

1. **Contemporaneous Convictions for Acts of Violence Charged in the Superseding Indictment.**

In addition to the capital offense charged in Count Sixty-Nine of the Superseding Indictment, the defendant engaged in a continuing pattern of criminal conduct. That pattern of criminal conduct includes the specific homicides, non-fatal shootings, and conspiracies charged in the Superseding Indictment. Each of the forty violent acts listed below serves as a non-statutory aggravating factor in the event of the defendant's conviction for the murder of Ricky Fletcher.

a. **Murder of Alvin Henson, aka Flubby.** On or about May 1, 1989, KEVIN L. GRAY, while armed with a firearm, purposely and with deliberate and premeditated malice, killed Alvin Henson, aka Flubby, by shooting him with a firearm, thereby causing injuries from which Alvin Henson, aka Flubby, died on May 1, 1989. (Overt Act 1, Racketeering Act 20).

b. **Assault with Intent to Murder Witness #1.** In or about sometime in January or February of 1992, KEVIN L. GRAY and co-conspirators, while armed with a firearm, assaulted Witness #1, a witness to the murder of Alvin Henson, with the intent to murder that witness. (Overt Act 11, Racketeering Act 21, Counts 8 and 9).

c. **Murder of Anthony L. Dent, aka Fish.** On or about October 9, 1990, KEVIN L. GRAY and co-conspirators, while

armed with a firearm, purposely and with deliberate and premeditated malice, killed Anthony Lee Dent, aka Fish, by shooting him with a firearm on or about October 9, 1990, thereby causing injuries from which Anthony Lee Dent, aka Fish, died on or about October 9, 1990. (Overt Act 7, Racketeering Act 22, Counts 4 and 5).

d. **Murder of Darrell Henson, aka Termite.** On or about May 24, 1991, **KEVIN L. GRAY** and co-conspirators, while armed with firearms, purposely and with deliberate and premeditated malice, killed Darrell Henson, aka Termite, by shooting him with a firearm on or about May 24, 1991, thereby causing injuries from which Darrell Henson, aka Termite, died on or about May 24, 1991. (Overt 8, Racketeering Act 23, Counts 6 and 7).

e. **Murder of Marvin Goodman.** On or about July 26, 1992, **KEVIN L. GRAY** and co-conspirators, while armed with a firearm, purposely and with deliberate and premeditated malice, killed Marvin Goodman, by shooting him with a firearm on or about July 26, 1992, thereby causing injuries from which Marvin Goodman died on or about July 26, 1992. (Overt Act 14, Racketeering Act 24, Counts 10 and 11).

f. **Assault with Intent to Murder Shawn Burton.** On or about January 3, 1993, **KEVIN L. GRAY** and co-conspirators, while armed with a firearm, assaulted Shawn Burton with the intent to murder him. (Overt Act 16, Racketeering Act 25, Count 12).

g. **Murder of Christopher Burton.** On or about January 20, 1993, **KEVIN L. GRAY** and co-conspirators, while armed with a firearm, purposely and with deliberate and premeditated malice, killed Christopher Burton, by shooting him with a firearm on or about January 20, 1993, thereby causing injuries from which Christopher Burton, died on or about January 20, 1993. (Overt Act 17, Racketeering Act 26, Counts 13 and 14).

h. **Murder of Scott Downing.** On or about February 13, 1993, **KEVIN L. GRAY** and co-conspirators, while armed with a firearm, purposely and with deliberate and premeditated malice, killed Scott Downing, by shooting him with a firearm on or about February 13, 1993, thereby causing injuries from which Scott Downing, died on or about February 13, 1993. (Overt Act 23, Racketeering Act 27, Counts 16 and 17).

i. **Conspiracy to Murder Maurice Reid.** From on or about February 13, 1993 through sometime in 1993, in the District of Columbia and elsewhere, **KEVIN L. GRAY** and co-conspirators did unlawfully, knowingly and willfully combine, conspire, confederate, and agree together to murder Maurice Reid. (Overt Act 24, Racketeering Act 28).

j. **Murder of Henry Lloyd, Jr.** On or about July 12, 1993, **KEVIN L. GRAY** and co-conspirators, while armed with a firearm, purposely and with deliberate and premeditated malice, killed Henry Lloyd, Jr., by shooting him with a firearm on or about

July 12, 1993, thereby causing injuries from which Henry Lloyd, Jr. died on or about July 12, 1993. (Overt Act 32, Racketeering Act 29, Counts 18 and 19).

k. **Assault with Intent to Murder Witness #2.** On or about July 12, 1993, **KEVIN L. GRAY** and co-conspirators, while armed with a firearm, assaulted Witness #2, with the intent to murder that witness. (Overt Act 32, Racketeering Act 29, Count 20).

l. **Assault with Intent to Murder Witness #3.** On or about July 12, 1993, **KEVIN L. GRAY** and co-conspirators, while armed with a firearm, assaulted Witness #3, with the intent to murder that witness. (Overt Act 32, Racketeering Act 29, Count 21).

m. **Assault with Intent to Murder Witness #4.** On or about July 12, 1993, **KEVIN L. GRAY** and co-conspirators, while armed with a firearm, assaulted Witness #4, with the intent to murder that witness. (Overt Act 32, Racketeering Act 29, Count 22).

n. **Murder of Aaron Jackson.** On or about July 25, 1993, **KEVIN L. GRAY** and co-conspirators, while armed with a firearm, purposely and with deliberate and premeditated malice, killed Aaron Jackson by shooting him with a firearm on or about July 25, 1993, thereby causing injuries from which Aaron Jackson died on or about July 25, 1993. (Overt Act 33, Racketeering Act 30, Counts 23 and 24).

o. **Assault with Intent to Murder Shawn Burton.** On or about September 9, 1993, **KEVIN L. GRAY** and co-conspirators,

while armed with a firearm, assaulted Shawn Burton with the intent to murder him. (Overt Act 35, Racketeering Act 25).

p. Assault with Intent to Murder Maurice Willis.

On or about December 23, 1993, **KEVIN L. GRAY** and co-conspirators, while armed with firearms, assaulted Maurice Willis with the intent to murder him. (Overt Act 38, Racketeering Act 31).

q. Murder of Corey W. Royster, aka Bink.

On or about January 11, 1994, **KEVIN L. GRAY** and co-conspirators, while armed with firearms, purposely and with deliberate and premeditated malice, killed Corey W. Royster, aka Bink, by shooting him with firearms on or about January 11, 1994, thereby causing injuries from which Corey W. Royster, aka Bink, died on or about January 11, 1994. (Overt Act 43, Racketeering Act 33, Counts 27 and 28).

r. Murder of Andre R. Robinson, aka Orange.

On or about January 11, 1994, **KEVIN L. GRAY** and co-conspirators, while armed with firearms, purposely and with deliberate and premeditated malice, killed Andre R. Robinson, aka Orange, by shooting him with firearms on or about January 11, 1994, thereby causing injuries from which Andre R. Robinson, aka Orange, died on or about January 11, 1994. (Overt Act 43, Racketeering Act 33, Counts 29 and 30).

s. Murder of Ronald Powell.

On or about August 27, 1994, **KEVIN L. GRAY** and co-conspirators, while armed with a firearm, purposely and with deliberate and premeditated malice, and while perpetrating or attempting to perpetrate the crime of armed

robbery, killed Ronald Powell by shooting him with a firearm on or about August 27, 1994, thereby causing injuries from which Ronald Powell died on or about August 27, 1994. (Overt Act 46, Racketeering Act 34, Counts 31, 32 and 33).

t. **Conspiracy to Commit Armed Robberies.** Between on or about January 1996 and December 1998, within the District of Columbia and elsewhere, **KEVIN L. GRAY** and co-conspirators did knowingly and willfully combine, conspire, confederate and agree together to commit armed robberies of individuals to whom they had distributed large quantities of illegal drugs. (Overt Acts 51, 52, 53, 54, 134, 135, 136, 137, 138, 139, Racketeering Act 63).

u. **Murder of Joseph Thomas, aka Froggy.** On or about February 27, 1996, **KEVIN L. GRAY** and co-conspirators, while armed with a firearm, purposely and with deliberate and premeditated malice, killed Joseph Thomas, aka Froggy, by shooting him with a firearm on or about February 27, 1996, thereby causing injuries from which Joseph Thomas, aka Froggy died on or about February 27, 1996. (Overt Act 56, Racketeering Act 36, Counts 36 and 37).

v. **Murder of Marco B. Smith.** On or about May 19, 1996, **KEVIN L. GRAY** and co-conspirators, while armed with a firearm, purposely and with deliberate and premeditated malice, killed Marco B. Smith, by shooting him with a firearm on or about May 19, 1996, thereby causing injuries from which Marco B. Smith,

died on or about May 19, 1996. (Overt Act 61, Racketeering Act 37, Counts 38 and 39).

w. **Murder of Ricardo E. Bailey.** On or about May 31, 1996, KEVIN L. GRAY and co-conspirators, while armed with a firearm, purposely and with deliberate and premeditated malice, killed Ricardo E. Bailey, by shooting him with a firearm on or about May 31, 1996, thereby causing injuries from which Ricardo E. Bailey died on or about May 31, 1996. (Overt Act 67, Racketeering Act 38, Counts 40, 41 and 42).

x. **Conspiracy to Murder Garlan Baskerville.** From on or about sometime in 1996 to July 5, 1996, in the District of Columbia and elsewhere, KEVIN L. GRAY and co-conspirators did unlawfully, knowingly and willfully combine, conspire, confederate, and agree together to murder Garlan Baskerville. (Overt Act 68, Racketeering Act 39).

y. **Assault with Intent to Murder Tracy Medina.** In or about sometime in 1996, KEVIN L. GRAY and co-conspirators, while armed with a firearm, assaulted Tracy Medina with the intent to murder him. (Overt Act 73, Racketeering Act 40, Counts 45 and 46).

z. **Assault with Intent to Murder Tracy Medina.** On or about August 3, 1996, KEVIN L. GRAY and co-conspirators, while armed with a firearm, assaulted Tracy Medina with the intent to murder him. (Overt Act 74, Racketeering Act 40, Counts 47 and 48).

aa. **Murder of Joseph A. Jones.** On or about August

together to murder Marvin Best. (Overt Act 123, Racketeering Act 52).

ee. **Conspiracy to Murder Michael Horne, aka Mike-Mike.** From on or about sometime in 1998 through July 31, 1998, in the District of Columbia and elsewhere, **KEVIN L. GRAY** and co-conspirators did unlawfully, knowingly and willfully combine, conspire, confederate, and agree together to murder Michael Horne, aka Mike-Mike. (Overt Acts 124, 125 and 126, Racketeering Act 53).

ff. **Conspiracy to Murder Robert Harris, aka Rah-Rah.** In or about sometime in 1998, in the District of Columbia and elsewhere, **KEVIN L. GRAY** and co-conspirators did unlawfully, knowingly and willfully combine, conspire, confederate, and agree together to murder Robert Harris, aka Rah-Rah. (Overt Acts 153, 154, 155, 156 and 157, Racketeering Act 28).

gg. **Conspiracy to Murder Antoine Ball.** In or about sometime in 1998, in the District of Columbia and elsewhere, **KEVIN L. GRAY** and co-conspirators did unlawfully, knowingly and willfully combine, conspire, confederate and agree together to murder Antoine Ball. (Overt Acts 132 and 133).

hh. **Murder of Carlos Cardoza, Jr.** On or about December 13, 1998, **KEVIN L. GRAY** and co-conspirators, while armed with a firearm, purposely and with deliberate and premeditated malice, killed Carlos Cardoza, Jr., by shooting him with a firearm on or about December 13, 1998, thereby causing injuries from which

20, 1996, **KEVIN L. GRAY** and co-conspirators, while armed with a firearm, purposely and with deliberate and premeditated malice, killed Joseph A. Jones, by shooting him with a firearm on or about August 20, 1996, thereby causing injuries from which Joseph A. Jones died on or about August 20, 1996. (Overt Act 76, Racketeering Act 41, Counts 49 and 50).

bb. **Murder of Rodney Faison, aka Booyang.** On or about January 3, 1998, **KEVIN L. GRAY** and co-conspirators, while armed with a firearm, purposely and with deliberate and premeditated malice, killed Rodney Faison, aka Booyang, by shooting him with a firearm on or about January 3, 1998, thereby causing injuries from which Rodney Faison, aka Booyang died on or about January 3, 1998. (Overt Act 105, Racketeering Act 50, Counts 64 and 65).

cc. **Murder of Roy Cobb.** On or about May 30, 1998, **KEVIN L. GRAY** and co-conspirators, while armed with a firearm, purposely and with deliberate and premeditated malice, killed Roy Cobb, by shooting him with a firearm on or about May 30, 1998, thereby causing injuries from which Roy Cobb died on or about May 30, 1998. (Overt Act 114, Racketeering Act 51, Counts 66 and 67).

dd. **Conspiracy to Murder Marvin Best.** From on or about sometime in 1998 to July of 1998, in the District of Columbia and elsewhere, **KEVIN L. GRAY** and co-conspirators did unlawfully, knowingly and willfully combine, conspire, confederate, and agree

Carlos Cardoza, Jr., died on or about December 13, 1998. (Overt Act 148, Racketeering Act 54, Counts 70, 71 and 72).

ii. **Murder of Jaime Pereira.** From on or about sometime in early 1999 to March 3, 1999, **KEVIN L. GRAY** and co-conspirators did travel in and cause another person to travel in interstate commerce with the intent that a murder be committed in violation of the laws of the Commonwealth of Virginia and of the United States in consideration for a promise and agreement to pay, anything of pecuniary value, and did conspire to do so, and the death of Jaime Pereira resulted. (Overt Acts 161 and 162, Racketeering Act 56, Count 73).

jj. **Murder of Thomas Walker.** On or about July 22, 1999, **KEVIN L. GRAY** and co-conspirators, while armed with a firearm, purposely and with deliberate and premeditated malice, killed Thomas Walker, by shooting him with a firearm on or about July 22, 1999, thereby causing injuries from which Thomas Walker died on or about July 22, 1999. (Overt Act 214, Racketeering Act 59, Counts 76 and 77).

kk. **Murder of Anthony Watkins.** On or about August 9, 1999, **KEVIN L. GRAY** and co-conspirators, while armed with a firearm, purposely and with deliberate and premeditated malice, killed Anthony Watkins, by shooting him with a firearm on or about August 9, 1999, thereby causing injuries from which Anthony Watkins died on or about August 9, 1999. (Overt Act 224, Racketeering Act

59, Counts 78 and 79).

ll. **Murder of Derrick Edwards.** On or about September 26, 1999, **KEVIN L. GRAY** and co-conspirators, while armed with a firearm, purposely and with deliberate and premeditated malice, killed Derrick Edwards, by shooting him with a firearm on or about September 26, 1999, thereby causing injuries from which Derrick Edwards died on or about September 26, 1999. (Overt Act 228, Racketeering Act 61, Counts 80 and 81).

mm. **Conspiracy to Murder Marcus Jay.** In or about 1999, in the District of Columbia and elsewhere, **KEVIN L. GRAY** and co-conspirators did unlawfully, knowingly and willfully combine, conspire, confederate, and agree together to murder Marcus Jay. (Overt Acts 174, 178, 181, and 187, Racketeering Act 57).

nn. **Assault with Intent to Kill Witness #6.** On or about December 15, 1999, **KEVIN L. GRAY** and co-conspirators did attempt to kill Witness #6 by shooting him with a firearm with the intent to prevent the communication by Witness #6 to a law enforcement officer or judge of the United States of information relating to the commission or possible commission of a Federal offense. (Overt Act 231, Racketeering Act 62, Counts 82, 83 and 84).

2. **Unadjudicated Acts of Violence not Charged in the Superseding Indictment.**

In addition to the acts of violence charged in the Superseding

Indictment and described herein, **KEVIN L. GRAY** and co-conspirators committed the following unadjudicated murders not charged in the Superseding Indictment. Each murder serves as a non-statutory aggravating factor which we will seek to prove in the event of the defendant's conviction for the murder of Ricky Fletcher.

a. **Murder of Joseph Lundy.** On or about June 28, 1993, **KEVIN L. GRAY** and co-conspirators, while armed with a firearm, purposely and with deliberate and premeditated malice, killed Joseph Lundy, by shooting him with a firearm on or about June 28, 1993, thereby causing injuries from which Joseph Lundy died on or about June 28, 1993.

b. **Murder of Quintin Butler.** On or about July 14, 1996, **KEVIN L. GRAY**, while armed with a firearm, purposely and with deliberate and premeditated malice, killed Quintin Butler, by shooting him with a firearm on or about July 14, 1996, thereby causing injuries from which Quintin Butler died on or about July 14, 1996.

3. **Contemporaneous Convictions for Narcotics Trafficking.**

From on or about sometime in 1988 and continuing until November of 2000, as set forth in Count One of the Superseding Indictment, **KEVIN L. GRAY** obtained, possessed with intent to distribute and distributed quantities of powder cocaine, cocaine base, also known as crack cocaine, heroin and marijuana, which were

subsequently distributed to members and associates of the enterprise and customers in the District of Columbia, the State of Maryland, the Commonwealth of Virginia, and elsewhere. Each of the separate drug offenses listed below serves as a non-statutory aggravating factor in the event of the defendant's conviction for the murder of Ricky Fletcher.

a. On or about April 10, 1996, in Washington, D.C., **KEVIN L. GRAY** knowingly and intentionally distributed approximately 62 grams of a mixture and substance containing cocaine base, also known as crack cocaine. (Overt Act 58, Racketeering Act 3, Count 127).

b. On or about May 7, 1996, in Washington, D.C., **KEVIN L. GRAY** knowingly and intentionally distributed approximately 60 grams of a mixture and substance containing cocaine base, also known as crack cocaine. (Overt Act 59, Racketeering Act 4, Count 128).

c. On or about October 5, 1996, in Washington, D.C., **KEVIN L. GRAY** possessed with the intent to distribute approximately 29 grams of a mixture and substance containing cocaine base, also known as crack cocaine. (Overt Act 78, Racketeering Act 11).

d. On or about July 29, 1998, in Washington, D.C., **KEVIN L. GRAY** and co-conspirators possessed with the intent to distribute approximately 240 grams of a mixture and substance

containing cocaine base, also known as crack cocaine. (Overt Act 127, Racketeering Act 16, Count 135).

e. On or about November 13, 1998, in Washington, D.C., **KEVIN L. GRAY** knowingly and intentionally distributed approximately 31 grams of a mixture and substance containing cocaine base, also known as crack cocaine. (Overt Act 140, Racketeering Act 5, Count 129).

f. On or about February 15, 1999, in Washington, D.C., **KEVIN L. GRAY** knowingly and intentionally distributed approximately 3 grams of a mixture and substance containing heroin. (Overt Act 160, Racketeering Act 6, Count 130).

g. On or about March 3, 1999, in Washington, D.C., **KEVIN L. GRAY** knowingly and intentionally distributed approximately 3 grams of a mixture and substance containing heroin. (Overt Act 163, Racketeering Act 7, Count 131).

h. On or about July 2, 1999, in Washington, D.C., **KEVIN L. GRAY** and co-conspirators possessed with the intent to distribute approximately 40 grams of a mixture and substance containing heroin. (Overt Act 210, Racketeering Act 18, Count 137).

i. On or about October 20, 1999, in Washington, D.C., **KEVIN L. GRAY** and co-conspirators possessed with the intent to distribute approximately 13 grams of a mixture and substance containing heroin. (Overt Act 229, Racketeering Act 19, Count 138).

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4. Contemporaneous Convictions for Firearms Offenses.

From on or about sometime in 1988 and continuing until November of 2000, as set forth in the Superseding Indictment, **KEVIN L. GRAY**, obtained, possessed, and distributed numerous firearms in the District of Columbia, the State of Maryland, and elsewhere. The defendant obtained firearms from several sources in and around Washington, D.C. He subsequently distributed some of those firearms to various co-conspirators. The defendant and co-conspirators possessed a firearm during each of the acts of violence set forth as non-statutory aggravating factors in this Notice. (Counts 85, 86, 88, 90, 91, 92, 94, 95, 97, 98, 99, 101, 102, 103, 105, 106, 107, 114, 115, 116, 117, 118, 120, 121, 122 and 123). Additionally, the defendant possessed firearms on the following occasions, each of which serves as an additional non-statutory aggravating factor in the event of the defendant's conviction for the murder of Ricky Fletcher.

a. On or about June 14, 1992, in Washington, D.C., **KEVIN L. GRAY** possessed a 9 millimeter Berretta firearm. (Overt Act 13, Count 89).

b. On or about September 20, 1993, in Washington, D.C., **KEVIN L. GRAY** and co-conspirators possessed a .380 caliber Berretta firearm. (Overt Act 36).

c. On or about July 29, 1998, in Washington, D.C., **KEVIN L. GRAY** and co-conspirators possessed a Calico 9 millimeter

semi-automatic firearm and a Rossi .44 caliber revolver. (Overt Act 127).

d. On or about July 2, 1999, in Washington, D.C., **KEVIN L. GRAY** and co-conspirators possessed a Taurus 9 millimeter semi-automatic firearm. (Overt Act 210).

5. Obstruction of Justice.

From on or about sometime in 1988 and continuing until sometime in 2000, as set forth in the Superseding Indictment and this Notice, **KEVIN L. GRAY**, obstructed or impeded and attempted to obstruct or impede the administration of justice during the course of the investigation or prosecution of his criminal activities. More specifically, **KEVIN L. GRAY** conspired or attempted to murder a number of individuals who he believed were cooperating with law enforcement, including, but not limited to Witness #1, Scott Downing, Maurice Reid, Ricardo Bailey, Carlos Cardoza, Jr., James L. Lee and Witness #6, as described in non-statutory aggravating factors 2, 8, 22, 34, 35 and 40, above, and in the Superseding Indictment.

6. Leadership Role.

From on or about sometime in 1988 and continuing until sometime in 2000, **KEVIN L. GRAY** maintained a leadership role in the organization, management and administration of the continuing criminal enterprise set forth in the Superseding Indictment. That leadership role is evidenced by one or more of the following acts

which were undertaken by the defendant:

a. **Distribution of Illegal Drugs.** The defendant distributed wholesale quantities of cocaine, cocaine base, and heroin to various co-conspirators. The defendant supervised the subsequent distribution of retail quantities of illegal drugs to customers in and around Washington, D.C. The defendant collected money from co-conspirators who engaged in retail sales. He acquired and maintained "stash houses," which were used to store, manufacture and package illegal drugs. The defendant protected and expanded the territory in which the conspiracy distributed illegal drugs.

b. **Solicitation and Direction of Acts of Violence.** The defendant solicited others to commit acts of violence. The defendant specifically directed the actions of co-conspirators in the commission of acts of violence, including identifying victims, providing weapons, and transporting co-conspirators to and from locations. The defendant paid co-conspirators in illegal drugs and currency after their commission of specific acts of violence.

c. **Obstruction of Justice.** The defendant directed others to take steps to discover the identities of individuals who had provided information regarding his and his co-conspirators' criminal activity. The defendant attempted to prevent further cooperation or trial testimony by those individuals by directing the removal of them from the jurisdiction or by killing or

attempting to kill them.

d. **Protection of Arrested Co-conspirators.** The defendant obtained counsel and posted bond for various co-conspirators when those co-conspirators were arrested. On other occasions, he provided money to co-conspirators and their families to pay attorneys or post bond. The defendant provided money to co-conspirators and their families when those co-conspirators were incarcerated. The defendant's provision of money for counsel and family support prevented the cooperation of his arrested co-conspirators and facilitated their release from custody and continued efforts on behalf of the organization.

7. **Future Dangerousness of the Defendant.**

The defendant is likely to commit criminal acts of violence in the future which would be a continuing and serious threat to the lives and safety of others, including, but not limited to, inmates and correctional officers resident in an institutional correctional setting as evidenced by the offenses charged in the Superseding Indictment, and the aforementioned statutory and non-statutory aggravating factors alleged in this Notice. See Simmons v. South Carolina, 512 U.S. 154, 162 (1994). In addition to the offenses charged in the Superseding Indictment and the statutory and non-statutory aggravating factors alleged in this Notice, the circumstances which demonstrate his future dangerousness include: the fact that the defendant has escaped or tried to escape from a

number of correctional facilities; the defendant's long-term pattern of violent criminal conduct; his continuous efforts to obstruct justice and threaten or kill witnesses; his leadership role in planning and encouraging others to undertake criminal activities; his demonstrated low rehabilitative potential; and his lack of remorse for his criminal activities which have caused significant damage to the community and numerous victims and their families.

8. Victim Impact.

As demonstrated by the victim's personal characteristics as a human being and the impact of the victim's death on the victim's family, the defendant caused injury, harm, and loss to the family of Ricky Fletcher. See Payne v. Tennessee, 501 U.S. 808, 825-27 (1991). The government will present information concerning the effect of the offenses upon Ricky Fletcher's family, which may include oral testimony, a particularized victim impact statement

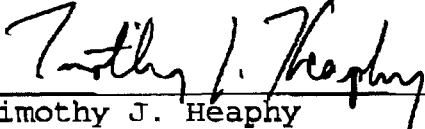
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referencing the scope of the injury and loss suffered by Ricky Fletcher's family, and any other relevant information.

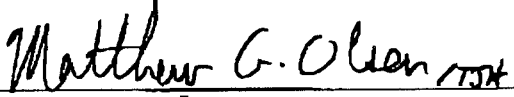
Respectfully submitted,

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Dated: July 27, 2001

CERTIFICATE OF SERVICE

I hereby certify that on the 27th day of July, 2001, a copy of the foregoing Notice of Intent to Seek the Death Penalty was delivered by hand, to the following:

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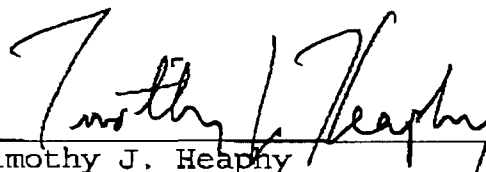
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