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IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TENNESSEE
WESTERN DIVISION

FILED *ABY* D.C.

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Federal Public Defender's Office
Memphis Tennessee

COURT REPORTER
U.S. DIST. CT.
MEMPHIS

UNITED STATES OF AMERICA,

Plaintiff,

vs.

JAMES HAROLD BURGETT,

Defendant.

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Criminal No. 98-20160-G

AMENDED NOTICE OF INTENT TO SEEK THE DEATH PENALTY

COMES NOW the United States of America, pursuant to 18 U.S.C. § 3593(a), by and through its undersigned counsel, and notifies the Court and the defendant in the above-captioned case that the Government believes the circumstances of the offense charged in Count One of the Indictment are such that, in the event of a conviction, a sentence of death is justified under Chapter 228 (Sections 3591 through 3598) of Title 18 of the United States Code, and that the Government will seek the sentence of death for this offense: premeditated murder of a federal witness, Diane Wilcox, in violation of 18 U.S.C. 1513(a), which carries a possible sentence of death.

The Government proposes to prove the following factors as justifying a sentence of death.

A. Statutory Proportionality Factors Enumerated under 18 U.S.C. § 3591(a)(2)(A)-(D).

1. **Intentional Killing.** The defendant intentionally killed Diane Wilcox. Section 3591(a)(2)(A).

2. **Intentional Infliction of Serious Bodily Injury.** The defendant intentionally inflicted serious bodily injury that resulted in the death of Diane Wilcox. Section 3591(a)(2)(B).

B. Statutory Aggravating Factors Enumerated under 18 U.S.C. § 3592(c).

1. **Grave Risk of Death to Additional Persons.** The defendant, in the commission of the offense, knowingly created a grave risk of death to one other person, Stephanie Wilcox, in addition to the victim of the offense, Diane Wilcox. Section 3592(c)(5).

2. **Substantial Planning and Premeditation.** The defendant committed the offense after substantial planning and premeditation to cause the death of Diane Wilcox. Section 3592(c)(9).

3. **Multiple Killings or Attempted Killings.** The defendant intentionally killed and attempted to kill more than one person, by attempting to kill Jaclyn Wilcox in addition to killing Diane Wilcox, in a single criminal episode. Section 3592(c)(16).

C. Other, Non-Statutory, Aggravating Factors Identified under 18 U.S.C. § 3593(a)(2).

1. **Obstruction of Justice.** The defendant committed the offense with the intent to retaliate against Diane Wilcox for providing information and assistance to a federal law enforcement officer in regard to the commission and possible commission of a federal offense. See 18 U.S.C. 1121(a)(2), 1510, 1512(a)(1), 1513(a)(1); U.S.S.G. 3C1.1; Tenn. Code Ann. 39-13-204(i)(6).

2. **Victim Impact Evidence.** The defendant caused injury, harm, and loss to Diane Wilcox's family because of Diane Wilcox's personal characteristics as an individual human being and the impact of her death upon her family. 18 U.S.C. 3593(a); Payne v. Tennessee, 111 S.Ct. 2597, 2608-09 (1991).

Respectfully submitted,

Veronica F. Coleman
United States Attorney

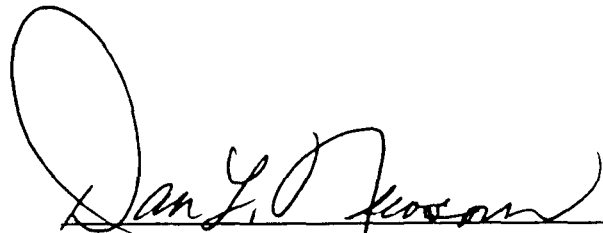
By:


Dan L. Newsom
Senior Litigation Counsel

CERTIFICATE OF SERVICE

I, Dan L. Newsom, Assistant United States Attorney for the Western District of Tennessee, hereby certify that a copy of the foregoing **Amended Notice** has been mailed, first class postage pre-paid, to Ms. Doris Randle-Holt, Assistant Federal Public Defender, 100 North Main Building, Suite 410, Memphis, Tennessee 38103, and Mr. James A. Simmons, Attorney at Law, 1501 Sixteenth Avenue South, Nashville, Tennessee 37212, attorneys for the defendant.

This 7th day of September 1999.



Dan L. Newsom
Senior Litigation Counsel
167 N. Main, Room 800
Memphis, TN 38103

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TENNESSEE
WESTERN DIVISION

FILED BY AB D.C.

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Robert R. Di Trolio
CLERK, U.S. DIST. CT.
W. D. OF TN, MEMPHIS

UNITED STATES OF AMERICA,)
)
 Plaintiff,)
)
 v.)
)
 JAMES HAROLD BURGETT,)
)
 Defendant.)

Criminal No. 98-20160-G

UNITED STATES' NOTICE TO DEFENDANT OF INTENT TO SEEK
THE DEATH PENALTY AND NOTICE OF AGGRAVATING FACTORS
PURSUANT TO TITLE 18, UNITED STATES CODE, SECTION 3593(a)

Comes now the United States of America, by and through the United States Attorney for the Western District of Tennessee and her duly authorized Assistant, Dan. L. Newsom, and would respectfully state to this Honorable Court as follows:

1. The United States believes that the circumstances of the offenses charged in the Indictment in this cause are such that, upon conviction of the defendant, a sentence of death is justified under Chapter 228 of Title 18, United States Code.
2. The United States has heretofore given notice to the defendant, James Harold Burgett, and to the Court of its intention and its authorization to seek the death

penalty in this cause, and hereby reaffirms that intention and authorization. Said notice was by letter, dated February 2, 1999, forwarded to counsel for the defendant and provided to the Court on said date. (A copy is attached as Exhibit A hereto and fully incorporated herein by reference)

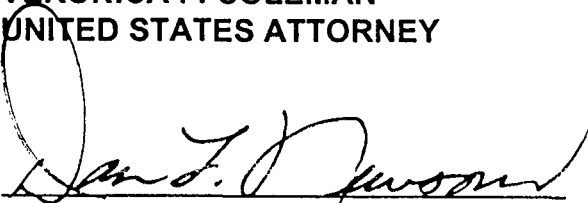
3. Pursuant to Title 18, United States Code, Section 3593(a), the United States further gives notice herein of those aggravating factors which the Government, upon conviction of the defendant, intends to prove as justifying a sentence of death. Those factors are as follows:

- A. 18 USC 3591(a)(2)(A) The defendant intentionally killed the victim;
- B. 18 USC 3591(a)(2)(B) The defendant intentionally inflicted serious bodily injury that resulted in the death of the victim;
- C. 18 USC 3592(c)(5) Grave risk of death to additional persons - The defendant, in the commission of the offense, knowingly created a grave risk of death to 1 or more persons in addition to the victim of the offense.
- D. 18 USC 3592(c)(16) Multiple killings or attempted killings - The defendant intentionally killed or attempted to kill more than one person in a single criminal episode.
- E. A victim was killed in an effort by the defendant to obstruct justice, tamper with a witness, or in retaliation for cooperating with authorities.

- F. Victim impact evidence concerning the effect of the offense on the victim's family as evidenced by oral testimony and victim impact statements.

Respectfully submitted,
VERONICA F. COLEMAN
UNITED STATES ATTORNEY

By:


DAN L. NEWSOM
Assistant U.S. Attorney
Senior Litigation Counsel
167 North Main Street, Suite 800
Memphis, Tennessee 38103

CERTIFICATE OF SERVICE

I, DAN L. NEWSOM, do hereby that a true and accurate and copy of the foregoing Notice of the United States has been forwarded, via first-class U.S. Mail, postage prepaid, to JAMES A. SIMMONS, Attorney for Defendant, 1501 Sixteenth Avenue South, Nashville, TN 37212 and DORIS RANDLE-HOLT, Assistant Federal Defender and Attorney for the defendant, Suite 410, 100 North Main Building, Memphis, Tennessee 38103, this 9th day of August, 1999.

By:


DAN L. NEWSOM
Senior Litigation Counsel