

FILED

JAN 7 1998

**AT 8:30 AM
WILLIAM T. WALSH**

UNITED STATES OF AMERICA

v.

MOSES CLARY
a/k/a "MOZEEK"

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

JAN 7 1998
#54

: Hon. Joseph H. Rodriguez

: Criminal No. 96-576

: NOTICE OF INTENTION TO
SEEK THE DEATH PENALTY

Pursuant to the requirements of 18 U.S.C. § 3593(a), the United States, by Faith S. Hochberg, United States Attorney for the District of New Jersey, hereby gives notice that it believes that the circumstances of the offenses charged in Counts 3, 6 and 8 of the Superseding Indictment are such that, in the event of a conviction on any of those Counts, a sentence of death is justified under Chapter 228 (Sections 3591 through 3598) of Title 18 of the United States Code, and that the United States will seek the sentence of death for each of these offenses:

(a) Count 3 -- causing the death of a person, Nicholas Morris, through the use of a firearm in the course of a violation of 18 U.S.C. § 924(c) -- the violation consisting of the use of a firearm during and in relation to a crime of violence, 18 U.S.C. §§ 1951(a) and 2, as charged in Count 2 of the Superseding

Indictment -- where the killing was a murder in the first degree under 18 U.S.C. § 1111, all in violation of 18 U.S.C.

§ 924(i) [redesignated as subsection (j), Pub. L. 104-294] and 18 U.S.C. § 2;

(b) Count 6 -- killing a person, Nicholas Morris, in the commission of a bank robbery, in violation of 18 U.S.C. § 2113(e) and 18 U.S.C. § 2; and

(c) Count 8 -- causing the death of a person, Nicholas Morris, through the use of a firearm in the course of a violation of 18 U.S.C. § 924(c) -- the violation consisting of the use of a firearm during and in relation to a crime of violence, 18 U.S.C. §§ 2113(e) and 2, as charged in Count 6 of the Superseding Indictment -- where the killing was a murder in the first degree under 18 U.S.C. § 1111, in violation of 18 U.S.C. § 924(i) [redesignated as subsection (j), Pub. L. 104-294] and 18 U.S.C. § 2;

each of which carries a possible sentence of death.

The United States proposes to prove the following factors as justifying a sentence of death as to each of those Counts:

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

1. Intentional Killing. The defendant intentionally killed the victim, Nicholas Morris. 18 U.S.C. § 3591(a)(2)(A).

2. Intentional Infliction of Serious Bodily Injury. The defendant intentionally inflicted serious bodily injury that resulted in the death of the victim, Nicholas Morris. 18 U.S.C. § 3591(a)(2)(B).

3. Intentional Acts to Take Life or Use Lethal Force. The defendant intentionally participated in an act, contemplating that the life of a person would be taken or intending that lethal force would be used in connection with a person, other than one of the participants in the offense, and the victim, Nicholas Morris, died as a direct result of the act. 18 U.S.C. § 3591(a)(2)(C).

4. Intentional Acts of Violence Creating Grave Risk of Death, Directly Resulting in Death. The defendant intentionally and specifically engaged in an act of violence, knowing that the act created a grave risk of death to a person, other than one of the participants in the offense, such that participation in the act constituted a reckless disregard for human life and the victim,

Nicholas Morris, died as a direct result of the act. 18 U.S.C. § 3591(a)(2)(D).

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 or in escaping apprehension for the offense, knowingly created a grave risk of death to one or more persons, including Rudolph Matlack, Maureen Lavin, Walter Berglund, and others present in and around the Deptford Mall on August 5, 1996, in addition to the victim of the offense, Nicholas Morris. 18 U.S.C. § 3592(c)(5).

2. Pecuniary Gain. The defendant committed the offense as consideration for the receipt, or in expectation of the receipt, of something of pecuniary value. 18 U.S.C. § 3592(c)(8).

3. Substantial Planning and Premeditation. The defendant committed the offense after substantial planning and premeditation to cause the death of a person. 18 U.S.C. § 3592(c)(9).

4. Multiple Killings or Attempted Killings. The defendant intentionally killed or attempted to kill more than one person in a single criminal episode, in that the defendant attempted to

kill Walter Berglund after attempting to kill Rudolph Matlack and killing Nicholas Morris. 18 U.S.C. § 3592(c)(16).

C. Other Non-Statutory Aggravating Factors Identified Pursuant to 18 U.S.C. § 3593(a).

1. Future dangerousness of the defendant. The probability that the defendant would commit criminal acts of violence in the future which would be a continuing and serious threat to society, as established by evidence including but not limited to the following:

a. Prior criminal record. The defendant has an extensive prior criminal record including crimes of violence, encompassing both his juvenile and adult criminal records;

b. Prior criminal acts not the subject of adjudication. The defendant assisted in one or more earlier armed robberies committed by Vincent Reid; committed robberies and thefts; possessed stolen property; unlawfully possessed weapons; escaped from a juvenile residential facility; assaulted and beat his girlfriend and the mother of his child, Badia Henderson; committed other assaults; and unlawfully possessed and distributed controlled dangerous substances;

c. Low potential for rehabilitation. Efforts to rehabilitate and/or deter the defendant from criminal conduct -- including but not limited to prior incarcerations, counseling, training, and educational efforts -- have failed; and

d. Lack of remorse. By his statements and actions following his flight from the Deptford Mall on August 5, 1996 -- including but not limited to his statements to associates and others while in flight and while a fugitive, his actions in spending proceeds of the crime, his statements to law enforcement agents at the time of his arrest, his statements to Badia Henderson while incarcerated and awaiting trial, and his statements to inmates and others while incarcerated and awaiting trial -- the defendant has demonstrated a lack of remorse for the capital offense committed in this case.

2. Vileness of the crime. The defendant's conduct in committing the offense, apart from the other aggravating factors, was substantially greater in degree than that described in the definition of the crime, as established by evidence including

but not limited to the following:

a. Efforts to destroy evidence and eliminate witnesses. The defendant sought to and did destroy evidence of his crime, and attempted to kill Walter Berglund, a witness to his escape from apprehension;

b. Commission of the offense in a manner, and at a time and place, which foreseeably would threaten injury to, and sow terror among, many persons including children. The defendant committed the crime on a weekday afternoon in a public, enclosed shopping mall, which crime would and did foreseeably threaten serious injury to, and terrorize, many persons including children, in that: (i) the defendant by his actions placed at risk of injury and terrorized many bystanders and others, including children, present in and around the mall; (ii) those persons were used, and sought to be used, by the defendant as a shield and deterrent against return fire by Rudolph Matlack and/or any other Brooks security guard accompanying Matlack or waiting in an armored vehicle outside the mall; and (iii) the defendant exhibited his weapon as he fled through the mall, terrorizing numerous persons; and

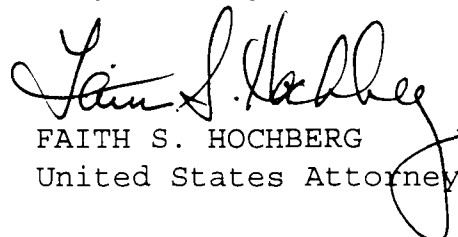
c. Substantial premeditation. Regardless of whether the defendant himself was responsible for all of the details of the planning which accompanied the crime, he committed the crime with and following substantial premeditation and awareness of the risks and dangers involved in that he had ample time during the events leading up to the crime to reflect on his actions and their consequences.

3. Victim impact. The victim's personal characteristics and accomplishments as an individual human being and the impact of the death upon the victim's family, as established by evidence including but not limited to the following:

- a. who the victim, Nicholas Morris, was and what he did in life; and
- b. the extent and scope of the injury and loss suffered by the victim's family.

DATED: January 7, 1998

Respectfully submitted,


FAITH S. HOCHBERG
United States Attorney