

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

IN CLEARED FILED

UNITED STATES OF AMERICA,) CR-N-98-30044-MAP 10/14/98 A 8:35
) Plaintiff,
)
vs.)
KRISTEN GILBERT,)
)
Defendant.)

**NOTICE OF INTENTION TO SEEK THE
DEATH PENALTY AS TO DEFENDANT KRISTEN GILBERT**

Pursuant to the requirements of 18 U.S.C. 3593(a), the United States of America hereby provides notice to this Court and to defendant Kristen Gilbert that the Government believes that the circumstances of the various capital offenses charged in the indictment are such that, in the event of a conviction, a sentence of death is justified, and that the Government will seek the death penalty. Specifically, the Government will seek a sentence of death for each of the following counts charged in the indictment, each of which provides for a sentence of death upon a finding of guilt: Counts One, Three, Eight, and Twelve.

During a bifurcated capital penalty hearing, the United States of America will rely on the following statutory aggravating factors listed in 18 U.S.C. § 3592(c) as justifying a sentence of death:

1. Heinous, Cruel, or Depraved Manner of Committing Offense. That the defendant committed the offense in an especially heinous, cruel, and depraved manner in that it

involved torture and serious physical abuse. See Section 3592(c)(6).

2. Substantial planning and premeditation. That the defendant committed the offenses after substantial planning and premeditation to cause the death of one or more persons and to commit an act of terrorism. See Section 3592(c)(9).

3. Vulnerability of the victims. That various victims were particularly vulnerable due to old age and infirmity. See Section 3592(c)(11).

In addition to the statutory aggravating factors outlined above, the United States will rely on the following non-statutory aggravating factors pursuant to 18 U.S.C. § 3593(a), to justify a sentence of death:

1. Series of murder offenses. That the defendant intentionally killed more than one person over the course of a series of criminal episodes.

2. Other, charged and uncharged, acts of violence and other offenses. That the defendant has committed, in addition to the capital and non-capital offenses charged in the indictment, other offenses and acts of violence, including, among other acts and offenses, the following:

- a. an act of violence committed against a patient on or about July 16, 1987 in Greenfield, MA;
- b. an act of violence committed against a person in approximately January or February, 1988 in Greenfield, MA;
- c. an act of violence committed against a person between November 5, 1995 and November 14, 1995 in Florence, MA;

- d. an act of violence committed against a patient on January 28, 1996 between approximately 4:25 p.m. and 11:30 p.m. on Ward C, Veterans Affairs Medical Center, Leeds, MA;
- e. statistical evidence of the extremely high association of patient deaths and the defendant's presence on duty during the 12:00 a.m. to 8:00 a.m. shift from the fall, 1989 through December 28, 1990 and the defendant's presence on duty during the 4:00 p.m. to 12:00 a.m. shift from February 9, 1991 through February 17, 1996 on Ward C, Veterans Affairs Medical Center, Leeds, MA; and,
- f. an act of violence committed on September 26, 1996, for which the defendant was charged and convicted in CR-N-96-30054-MAP in federal district court, Springfield, MA.

3. Future dangerousness of the defendant. That the defendant is likely to commit criminal acts in the future that would be a continuing and serious threat to the lives and safety of others. See Simmons v. South Carolina, 512 U.S. 154, 162 (1994).

In addition to the capital and non-capital offenses charged in the indictment and the statutory and non-statutory aggravating factors alleged in this Notice, the defendant has engaged in a continuing pattern of violent conduct, has threatened others with violence, and has demonstrated a low rehabilitative potential and a lack of remorse for the offenses, including, but not limited to, the following:

- a. an offense committed against a patient on January 30, 1994 between approximately 9:30 p.m. and 10:15 p.m. on Ward C, Veterans Affairs Medical Center, Leeds, MA;
- b. the acquisition of veterinarian medication through false representations on or about October 30, 1995;

- c. the theft of cardiac medications captropil and nifedipine from Ward C, Veterans Affairs Medical Center, Leeds, MA, in early November, 1995;
- d. an offense committed against a patient on November 9, 1995 between approximately 10:30 p.m. and 10:55 p.m. on Ward C, Veterans Affairs Medical Center, Leeds, MA;
- e. an offense committed against a patient on November 17, 1995 between approximately 4:45 p.m. and 5:15 p.m. on Ward C, Veterans Affairs Medical Center, Leeds, MA;
- f. a continuing pattern of abuse of the defendant's specialized medical knowledge as a nurse and her position of trust gained as a nurse while employed on Ward C, Veterans Affairs Medical Center, Leeds, MA, from March, 1989 through February 17, 1996;
- g. threatening conduct against the life of another person committed in the spring, 1996;
- h. the attempted acquisition of a needle and syringe from Ward C, Veterans Affairs Medical Center, Leeds, MA, in the spring, 1996;
- i. a threat against the life of another person committed between July 9, 1996 and July 16, 1996;
- j. an offense committed against the property of another person on July 11, 1996;
- k. threatening conduct and an offense committed against the property of another person committed on September 15, 1996; and,
- l. a continuing pattern of feigned, self-induced overmedications committed between the dates of July 9, 1996 and October 8, 1996.

4. Victim impact evidence. That the defendant's offenses had an adverse effect on the victims and the victims' families, as evidenced by oral testimony and victim impact statements that describe the extent and scope of injury and loss suffered by the victims and the victims' families. See Payne v. Tennessee, 501 U.S. 808, 825-28 (1991).

Finally, pursuant to 18 U.S.C. 3591(a)(2)(A) - (D), the United States will rely on the following preliminary factors with respect to intent to establish the defendant's eligibility for the death penalty:

1. That the defendant intentionally killed the victims.
2. That the defendant intentionally inflicted serious bodily injury that resulted in the death of the victims.
3. That the defendant intentionally participated in acts, contemplating that the lives of persons would be taken and that lethal force would be used against such persons, and that the victims died as a result of such acts.
4. That the defendant intentionally and specifically engaged in acts of violence, knowing that the acts created a grave risk of death to persons, other than a participant in the offenses, such that participation in the acts constituted a reckless disregard for human life and the victims died as a result of the acts.

Respectfully Submitted,

DONALD K. STERN
UNITED STATES ATTORNEY


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Assistant United States Attorney

CERTIFICATE OF SERVICE

Hampden, ss.

Springfield, Massachusetts
May 14, 1999

I, William M. Welch, Assistant U.S. Attorney, do hereby certify that I have served the copy of the foregoing by fax and mail to:

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