

DMB:FEM:jmm 96R8063

UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA :
 :
 v. : CRIMINAL NO. 4:CR-96-0239
 :
 : (Muir, J.)
 DAVID PAUL HAMMER :

UNITED STATES' NOTICE OF INTENT TO
SEEK DEATH PENALTY

COMES NOW, the United States of America, by David M. Barasch, United States Attorney for the Middle District of Pennsylvania, and hereby gives Notice to the Court, as well as the Defendant, given the circumstances of the offense charged in Count One of the Indictment, of its belief that a sentence of death is a justified punishment in the event of a conviction and its intention to seek the death penalty against the Defendant, David Paul Hammer, in accordance with Title 18, United States Code, Section 3593(a)(1). The prosecution proposes to prove the following aggravating factors which support this request in accordance with Title 18, United States Code, Section 3593(a)(2).

A. Statutory Proportionality Factors Enumerated under Title 18, United States Code, Section 3591(a)(2)(A)-(D).

1. Intentional Killing. The Defendant intentionally killed Andrew Marti. 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 Andrew Marti. 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 Andrew Marti died as a direct result of the act. 18 U.S.C. § 3591(a)(2)(C).

B. Statutory Aggravating Factors Enumerated Under Title 18, United States Code, Section 3592(c).

Title 18, United States Code, Section 3592(c)(2)

1. For any offense, other than offense for which a sentence of death is sought on the basis of 18 U.S.C. § 924(c), the defendant has previously been convicted of a Federal or State offense punishable by a term of imprisonment for more than one year, involving the use or attempted or threatened use of a

firearm (as defined in 18 U.S.C. § 921) against another person.

Defendant has been convicted as follows:

<u>DATE</u>	<u>NATURE OF CONVICTION</u> (Punishable by more than One year's imprisonment)	<u>COURT</u>
5/31/78	Convicted & sentenced for pointing a weapon	Oklahoma County Court State of Oklahoma
12/4/78	Convicted & sentenced for robbery with a dangerous weapon	Caddo County Court State of Oklahoma
9/10/84	Convicted & sentenced for robbery with a firearm and shooting with intent to kill	Oklahoma County Court State of Oklahoma

Title 18, United States Code, Section 3592(c)(4)

2. The defendant has previously been convicted of two or more Federal or State offenses, each punishable by a term of imprisonment of more than one year, committed on different occasions, involving the infliction of, or attempted infliction of, serious bodily injury or death upon another person.

Defendant has been convicted as follows:

<u>DATE</u>	<u>NATURE OF CONVICTION</u> (Punishable by more than One year's imprisonment)	<u>COURT</u>
1/20/82	Convicted & sentenced for robbery by fear	Cleveland County Court State of Oklahoma
9/10/84	Convicted & sentenced for robbery with a firearm and shooting with intent to kill	Oklahoma County Court State of Oklahoma

Title 18, United States Code, Section 3592(c)(6)

3. 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:

Hammer first bound each limb of his victim by using the ruse that he would thereby merely injure him and obtain a transfer for them both to another prison. Hammer then put Marti in a sleeper hold. The autopsy shows that Marti struggled in the restraints. Hammer admits that he paused while Marti was in the sleeper hold to put his shoulder back in its socket before he could resume his actions. Once the victim had been rendered unconscious, he strangled him with a homemade cord.

Title 18, United States Code, Section 3592(c)(9)

4. The defendant committed the offense after substantial planning and premeditation to cause the death of a person or commit an act of terrorism:

Hammer told authorities, as well as other prisoners, how he sought to become Marti's "cellmate." Once he had accomplished this goal, he convinced the victim to allow himself to be restrained purportedly for another purpose but actually to facilitate the killing of this younger man. Time was needed for Hammer to present this ruse as well as to prepare the homemade

cloth restraints which were used to bind Marti's limbs. Then Hammer slowly and methodically rendered him unconscious and later strangled him.

Title 18, United States Code, Section 3592(c)(11)

5. The victim was particularly vulnerable due to old age, youth, or infirmity:

Marti, although a 27 year old federal prison inmate, may have been a vulnerable victim for several reasons. He suffered from a mild form of epilepsy and had diminished mental abilities. Additionally, Marti was in the protective custody aspect of the prison and sought out someone whom he could trust.

C. Other, Non-Statutory, Aggravating Factors Identified Under Title 18, United States Code, Section 3593(a)(2).

United States v. Pretlow, 779 F. Supp. 758, 768-69 (D.N.J. 1991).

1. Participation in additional, uncharged murders, attempted murders, or other serious acts of violence:

a. Hammer's 1984 conviction for shooting with intent to kill does not adequately describe the seriousness of that act or his callousness. Hammer shot the victim three times in the head after requiring him to lay face down on the ground, execution style. The victim was saved by the fact that the

bullets contained "bird shot." In a subsequent interview with a reporter, Hammer stated that if he had known his victim lived, he would have reloaded his weapon and fired it six more times.

b. Additionally, Hammer, although incarcerated at the time in the Oklahoma Department of Corrections, urged a person in the community to rob and, if necessary, kill Kenneth B. Kenner, a person with whom he had telephone communication and correspondence, in Louisville, Tennessee. In fact, Kenner was killed on November 23, 1986. Hammer confessed to his involvement in the offense during an interview on December 18, 1986, by Oklahoma and Tennessee law enforcement officials. No federal or state charges were brought against him notwithstanding his admission.

2. Future Dangerousness of the Defendant. The Defendant is likely to commit criminal acts of violence in the future and thereby would pose a continuing and serious threat to society. Simmons v. South Carolina, ____ U.S. ____, 114 S. Ct. 2187, 2193 (1994).

a. Hammer advised a fellow inmate in a written statement after the murder that "given the opportunity, I will kill again." He further indicates in the same written statement that he "do[es] not fear the death penalty or anything else the

Government can do to me." Finally, Hammer's statements to the Federal Bureau of Investigation, the prison psychologist, and to other inmates shortly after the killing of Marti reveal NO remorse for the victim but some pity for his family.

b. Hammer also previously has threatened prosecutors and judges who have placed him in prison or denied him release. Specifically, in December 1989, Hammer sent threatening letters to Chief Judge David L. Russell of the United States District Court for the Western District of Oklahoma and in August 1989, he sent threatening letters to an Oklahoma State Judge and Prosecutor in his 1984 convictions.

c. Hammer has threatened to blow up public buildings in Oklahoma on November 9, 1989. This caused widespread panic as well as disrupted the Oklahoma State government and its criminal justice system.

d. Hammer has escaped or attempted to escape on multiple occasions. These occurred on October 16, 1981, September 20, 1983, and October 28, 1983. When he has successfully escaped, Hammer, thereafter, committed acts of violence.

3. Victim Impact Evidence. The victim's personal characteristics as an individual human being and/or the impact of

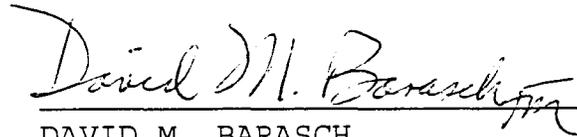
the death upon the victim's family. Payne v. Tennessee, ____
U.S. ____, 111 S. Ct. 2597, 2608-09 (1991).

a. **Characteristics.** The victim's personal characteristics as an individual human being include but are not limited to one or more of the following: An artistically talented young man who was willing to admit that he had a problem and was making efforts to better himself for re-entry into society. He displayed compassion and love towards his family and friends as well as possessed a special ability to relate to children. This connection with children was due, in part, to his limited mental capacity resulting from epileptic seizures which he suffered as a young child.

b. **Impact of Death.** The family of the victim has suffered injury and loss, as a result of the victim's death, including, but not limited to, one or more of the following: Marti maintained regular contact with his family, especially his mother, father, and sister. His family believed his problems with the law stemmed from his epilepsy and held nothing against him. They supported him and his efforts to re-enter society as a better person.

WHEREFORE, for the reasons stated above, as well as those which may be supplemented for good cause pursuant to Title 18, United States Code, Section 3593(a)(2), the United States respectfully requests that this Court, in accordance with Title 18, United States Code, Section 3593(b), conduct an appropriate sentencing hearing upon conviction for the offense contained in the Indictment to determine whether punishment, including a sentence of death, should be imposed.

Respectfully submitted,


DAVID M. BARASCH
United States Attorney

Dated: April 9, 1997