

FILED
ASHEVILLE, N. C.

JAN 14 1999

UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF NORTH CAROLINA
BRYSON CITY DIVISION

U.S. DISTRICT COURT
W. DIST. OF N. C.

UNITED STATES OF AMERICA)
)
 v.)
)
 JEREMIAH LOCUST, SR.)
)
 _____)

DOCKET NO. 2:98CR185

**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 offenses charged in Counts One and Two are such that, in the event of 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 each of these offenses: Count One, the murder of Great Smoky Mountains National Park Ranger Joseph Kolodski while he was engaged in his official duties, in violation of 18 U.S.C. § 1114 (1), 1111 (a), and 7(3); and Count Two, the murder of Great Smoky Mountains National Park Ranger Joseph Kolodski while he was assisting Ranger Anthony Welch in the performance of his duties, in violation of 18 U.S.C. §§ 1114(1), 111(a), and 7(3).

As to the murder of Park Ranger Joseph Kolodski, as charged in Counts One and Two, the Government proposes to prove the following factors applicable to each of Counts One and Two and which justify a sentence of death for each of Counts One and Two.

- A. Statutory Proportionality Factors Enumerated Under 18 U.S.C. § 3591(a)(2)(A)-(D).
1. INTENTIONAL KILLING. The defendant intentionally killed Ranger Joseph Kolodski. 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 Ranger Joseph Kolodski. Section 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 be used in connection with a person, other than one of the participants in the offense, and Ranger Joseph Kolodski died as a direct result of the act. Section 3591(a)(2)(C).
4. INTENTIONAL ENGAGEMENT IN AN ACT OF VIOLENCE. The defendant intentionally and specifically engaged in an act of violence, knowing that the act created grave risk of death to a person, other than one of the participants of the offense, such that participation in the act constituted a reckless disregard for human life and the victim, Ranger Joseph Kolodski, died as a direct result of the act. Section 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, namely Ranger Anthony Welch, in addition to the victim of the offense. 18 U.S.C. § 3592 (c)(5).

2. 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, namely Linda Carol Stockton, in addition to the victim of the offense. 18 U.S.C. § 3592 (c)(5).


3. 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, namely John Yust, Anna Marie Love Yust, and Adam John Love Yust, in addition to the victim of the offense. 18 U.S.C. § 3592 (c)(5).

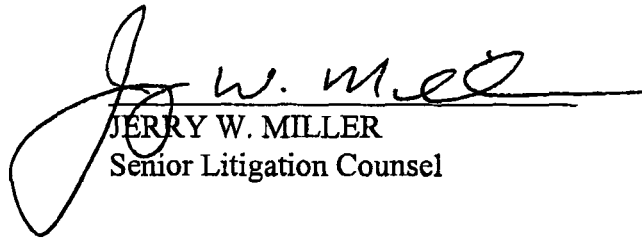
4. Substantial Planning and Premeditation -- The defendant committed the offense after substantial planning and premeditation to cause the death of a person or commit an act of terrorism. 18 U.S.C. § 3592(c)(9)


5. High Public Officials -- The defendant committed the offense against a federal public servant who is a law enforcement officer while engaged in the performance of official duties and because of the performance of official duties. 18 U.S.C. § 3592(c)(14)

6. Attempted Multiple Killings in a Single Criminal Episode – After murdering Ranger Kolodski, the defendant attempted to murder Ranger Anthony Welch. 18 U.S.C. § 3592 (c)(16).
- C. Other, Non-Statutory, Aggravating Factors Identified Under 18 U.S.C. § 3593(a)(2).
1. Victim Impact – Ranger Joseph Kolodski’s personal characteristics and the harmful effect and scope of the instant offenses on his family. 18 U.S.C. § 3593(a) and *Payne v. Tennessee*, 501 U.S.C. 808, 111 S.Ct. 2597 (1991).
 2. Commission of a State Crime -- North Carolina recognizes the common law misdemeanor of going armed with unusual and dangerous weapons to the terror of the people. *State v. Dawson*, 272 N.C. 535, 159 S.E.2d 1 (1968). The elements of that crime are (1) the defendant arms himself with a dangerous weapon; (2) for the purpose of terrifying others; (3) goes about on the public highways; (4) in a manner to cause terror to others. *Id.* Locust’s conduct in this case certainly meets all of those elements. He armed himself with a rifle; his actions show that he intended to threaten tourists and law enforcement; the Parkway is a public highway under concurrent state and federal jurisdiction; Locust acted in a manner to frighten the public.

RESPECTFULLY SUBMITTED, this the ^{27th}~~18th~~ day of January, 1999,


MARK T. CALLOWAY
United States Attorney


JERRY W. MILLER
Senior Litigation Counsel


DEBORAH A. AUSBURN
Assistant United States Attorney