

**IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF NEW YORK**

UNITED STATES OF AMERICA

v.

SUPERSEDING INDICTMENT (S4)

00-CR-269

[TJM]

**LAVIN MATTHEWS
AKA "L"**

Defendant.

NOTICE OF INTENT TO SEEK A SENTENCE OF DEATH

The United States of America, by its attorney, Joseph A. Pavone, the United States Attorney for the Northern District of New York, by Assistant United States Attorney Miroslav Lovric, pursuant to Title 21, United States Code, Sections 848(h)(1)(A) & (B) and Title 18, United States Code, Sections 3593(a)(1) & (2), notifies the Court and defendant Lavin Matthews that in the event of the defendant's conviction on Count Two or Count Four or Count Five for intentionally killing Carlton Rose, as alleged in Counts Two, Four and Five of the superseding indictment, the government will seek the sentence of death, in that the circumstances of the offenses are such that a sentence of death is justified.

The government will seek to prove the following aggravating factors as the basis for imposition of the death penalty.

AS TO COUNT TWO:

A. Statutory Aggravating Factors Enumerated Pursuant To Title 21, United States Code, Sections 848(n)(1)(A) Through (D):

1. Lavin Matthews intentionally killed Carlton Rose [Section 848(n)(1)(A)].
2. Lavin Matthews intentionally inflicted serious bodily injury which resulted in the death of Carlton Rose [Section 848(n)(1)(B)].
3. Lavin Matthews intentionally engaged in conduct intending that Carlton Rose be killed and that lethal force be employed against Carlton Rose, which resulted in Carlton Rose's death [Section 848(n)(1)(C)].
4. Lavin Matthews intentionally engaged in conduct which:
 - (i) Lavin Matthews knew would create a grave risk of death to a person, other than one of the participants in the offense, AND
 - (ii) resulted in the death of Carlton Rose[Section 848(n)(1)(D)].

B. Statutory Aggravating Factors Enumerated Pursuant To Title 21, United States Code, Sections 848(n)(2) Through (n)(12):

1. Lavin Matthews committed the offense described in Count Two of the superseding indictment after having previously been convicted of two State offenses punishable by a term of imprisonment of more than one year, committed on different occasions, involving the infliction of, and attempted infliction of, serious bodily injury upon another person. Lavin Matthews pleaded guilty and was convicted on or about October 13, 1992 in Kings County, New York for Attempted Robbery In The First Degree. The conviction resulted from an event that occurred on or about March 12, 1991 at the Park Place Subway Station in Brooklyn, New York. While armed with a pistol, Lavin Matthews attempted to rob personal property from a person and shot the person with a pistol. Furthermore, Lavin Matthews pleaded guilty and was convicted on or about November 6,

1992 in New York County, New York for Attempted Burglary In The First Degree. The conviction resulted from an event that occurred on or about August 12, 1992 inside an apartment located at 2 West 129th Street, New York, New York. Lavin Matthews, Christopher McMillian and several others, while armed with pistols, forced their way into Shamar Pratt's apartment and fired gunshots at Shamar Pratt. Both of these convictions are for felony offenses punishable by imprisonment for a term exceeding one year [Section 848(n)(3)].

2. Lavin Matthews committed the offense described in Count Two of the superseding indictment as consideration for the receipt and in the expectation of the receipt of something of pecuniary value, that is, narcotics, money and personal property [Section 848(n)(7)].

3. Lavin Matthews committed the offense described in Count Two of the superseding indictment after substantial planning and premeditation [Section 848(n)(8)].

4. Lavin Matthews committed the offense described in Count Two of the superseding indictment in an especially heinous, cruel and depraved manner in that it involved torture and serious physical abuse to Carlton Rose. Carlton Rose's hands were bound behind his back and his feet were tied together. Carlton Rose was brutally beaten and cut about the face and head. After a black garbage bag was tied over Carlton Rose's head, Carlton Rose was strangled with a scarf-like instrument. Carlton Rose died from strangulation and asphyxiation [Section 848(n)(12)].

AS TO COUNT FOUR AND COUNT FIVE:

A. Gateway Culpability Factors Enumerated Pursuant To Title 18, United States Code, Sections 3591(a)(2)(A) Through (D):

1. Lavin Matthews intentionally killed Carlton Rose [Section 3591(a)(2)(A)].
2. Lavin Matthews intentionally inflicted serious bodily injury that resulted in the death of Carlton Rose [Section 3591(a)(2)(B)].
3. Lavin Matthews intentionally participated in an act, contemplating that the life of Carlton Rose would be taken and intending that lethal force would be used in connection with Carlton Rose,

that Carlton Rose was not a participant in the offense, and Carlton Rose died as a direct result of the act [Section 3591(a)(2)(C)].

4. Lavin Matthews intentionally and specifically engaged in an act of violence, knowing that the act created a grave risk of death to Carlton Rose, that Carlton Rose was not a participant in the offense, such that participation in the act constituted a reckless disregard for human life and Carlton Rose died as a direct result of the act [Section 3591(a)(2)(D)].

B. Statutory Aggravating Factors Enumerated Pursuant To Title 18, United States Code, Sections 3592(c)(1) Through (c)(16):

1. Lavin Matthews committed the offenses described in Counts Four and Five of the superseding indictment after having previously been convicted of a State offense punishable by a term of imprisonment of more than one year, involving the use or attempted or threatened use of a firearm against another person. Lavin Matthews pleaded guilty and was convicted on or about October 13, 1992 in Kings County, New York for Attempted Robbery In The First Degree. The conviction resulted from an event that occurred on or about March 12, 1991 at the Park Place Subway Station in Brooklyn, New York. While armed with a pistol, Lavin Matthews attempted to rob personal property from a person and shot the person with a pistol. Furthermore, Lavin Matthews pleaded guilty and was convicted on or about November 6, 1992 in New York County, New York for Attempted Burglary In The First Degree. The conviction resulted from an event that occurred on or about August 12, 1992 inside an apartment located at 2 West 129th Street, New York, New York. Lavin Matthews, Christopher McMillian and several others, while armed with pistols, forced their way into Shamar Pratt's apartment and fired gunshots at Shamar Pratt. Both of these convictions are for felony offenses punishable by imprisonment for a term exceeding one year [Section 3592(c)(2)].

2. Lavin Matthews committed the offenses described in Counts Four and Five of the superseding indictment after having previously been convicted of two State offenses punishable by

a term of imprisonment of more than one year, committed on different occasions, involving the infliction of, and attempted infliction of, serious bodily injury upon another person. Lavin Matthews pleaded guilty and was convicted on or about October 13, 1992 in Kings County, New York for Attempted Robbery In The First Degree. The conviction resulted from an event that occurred on or about March 12, 1991 at the Park Place Subway Station in Brooklyn, New York. While armed with a pistol, Lavin Matthews attempted to rob personal property from a person and shot the person with a pistol. Furthermore, Lavin Matthews pleaded guilty and was convicted on or about November 6, 1992 in New York County, New York for Attempted Burglary In The First Degree. The conviction resulted from an event that occurred on or about August 12, 1992 inside an apartment located at 2 West 129th Street, New York, New York. Lavin Matthews, Christopher McMillian and several others, while armed with pistols, forced their way into Shamar Pratt's apartment and fired gunshots at Shamar Pratt. Both of these convictions are for felony offenses punishable by imprisonment for a term exceeding one year [Section 3592(c)(4)].

3. Lavin Matthews committed the offenses described in Counts Four and Five of the superseding indictment in an especially heinous, cruel and depraved manner in that it involved torture and serious physical abuse to Carlton Rose. Carlton Rose's hands were bound behind his back and his feet were tied together. Carlton Rose was brutally beaten and cut about the face and head. After a black garbage bag was tied over Carlton Rose's head, Carlton Rose was strangled with a scarf-like instrument. Carlton Rose died from strangulation and asphyxiation [Section 3592(c)(6)].

4. Lavin Matthews committed the offenses described in Counts Four and Five of the superseding indictment as consideration for the receipt and in the expectation of the receipt of something of pecuniary value, that is, narcotics, money and personal property [Section 3592(c)(8)].

5. Lavin Matthews committed the offenses described in Counts Four and Five of the superseding indictment after substantial planning and premeditation to cause the death of Carlton Rose [Section 3592(c)(9)].

AS TO COUNTS TWO, FOUR AND FIVE:

A. Other, Non-Statutory Aggravating Factors Enumerated Pursuant To Title 21, United States Code, Sections 848(h)(1)(B) & 848(k), AND Pursuant to Title 18, United States Code, Section 3593(a), (c), & (d), and Section 3592:

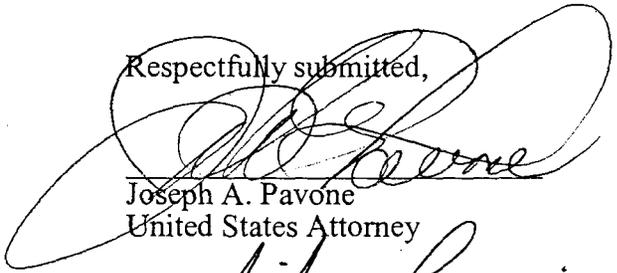
1. On or about March 24, 1998, in Cumberland County, Fayetteville, North Carolina, Lavin Matthews and others, while armed with firearms including a sawed-off shotgun, did forcibly rob Rochell Graham in her residence and in the presence of Graham's young daughter of U.S. Currency and personal property. During the course of this armed robbery, defendant and the others bound and tied Rochell Graham's hands and feet while they blindfolded her. At gunpoint, defendant and the others then ordered Rochell Graham and her child to lay on the floor.

2. On or about January 7, 2000, in Binghamton, New York, Lavin Matthews and others, while armed with a pistol, planned and committed the armed robbery of Tiffany Ward, Willis Bicham and Tiawanna Willard in a residential Binghamton apartment. Defendant and the others robbed the victims of narcotics, U.S. Currency, and personal property. During the course of the robbery, Willis Bicham was hit in the head with the pistol and required medical attention at a hospital.

3. Victim impact, as evidenced by the impact of the murder of Carlton Rose upon Carlton Rose's family and the injury, harm and loss suffered by the Rose family.

The government further gives notice that in support of imposition of the death penalty, it intends to rely upon all the evidence admitted by the Court at the guilt phase of the trial and the offenses of conviction, as described in the superseding indictment, as they relate to the background, character and moral culpability of defendant Lavin Matthews, and the nature and circumstances of the offenses charged in the superseding indictment.

Respectfully submitted,

A large, stylized handwritten signature in black ink, appearing to read 'J. Pavone', written over a horizontal line.

Joseph A. Pavone
United States Attorney

Dated: September 25, 2002

A handwritten signature in black ink, appearing to read 'M. Lovric', written over a horizontal line.

Miroslav Lovric
Assistant U.S. Attorney