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UNITED STATES DISTRICT COURT

FOR THE CENTRAL DISTRICT OF CALIFORNIA

13	UNITED STATES OF AMERICA,)	No. 54 CR 02-938-DOC
)	
14	Plaintiff,)	<u>GOVERNMENT'S SUPPLEMENTAL</u>
)	<u>NOTICE OF INTENT TO SEEK THE</u>
15	v.)	<u>DEATH PENALTY AGAINST</u>
)	<u>DEFENDANT MILLS</u>
16	BARRY BYRON MILLS,)	
)	
17	Defendant.)	
)	

NOTICE OF INTENT TO SEEK THE DEATH PENALTY

19 The United States of America, pursuant to 18 U.S.C.
 20 § 3593(a), notifies the Court and defendant BARRY BYRON MILLS
 21 ("defendant") that the Government believes the circumstances of
 22 the offenses charged in Counts Six and Seven of the First
 23 Superseding Indictment are such that, in the event of a
 24 conviction, a sentence of death is justified under Chapter 228
 25 (Sections 3591 through 3598) of Title 18 of the United States
 26 Code, and that the Government will seek the sentence of death for
 27 the following offenses: (1) commission of a violent crime in aid
 28

1 of racketeering activity, to wit, the murder of Frank Joyner, in
2 violation of Title 18, United States Code, Section 1959(a)(1)
3 [Count Six]; and (2) commission of a violent crime in aid of
4 racketeering activity, to wit, the murder of Abdul Salaam, in
5 violation of Title 18, United States Code, Section 1959(a)(1)
6 [Count Seven], each of which carries a possible sentence of
7 death.

8 The Government proposes to prove the following factors as
9 justifying a sentence of death.

10 A. Statutory Proportionality Factors Enumerated under 18
11 U.S.C. § 3591(a)(2)

12 The following statutory proportionality factors apply to
13 each of Counts Six and Seven.

14 1. **Intentional Acts to Take Life or Use Lethal Force**

15 The defendant intentionally participated in an act, contemplating
16 that the life of a person would be taken or intending that lethal
17 force would be used in connection with a person, other than one
18 of the participants in the offense, and Frank Joyner [Count Six]
19 and Abdul Salaam [Count Seven] died as a direct result of the
20 act. 18 U.S.C. § 3591(a)(2)(C).

21 2. **Intentional Acts of Violence Creating Grave Risk of**
22 **Death**

23 The defendant intentionally and specifically engaged in an act of
24 violence knowing that the act created a grave risk of death to a
25 person, other than one of the participants in the offense, such
26 that participation in the act constituted a reckless disregard
27 for human life, and Frank Joyner [Count Six] and Abdul Salaam

1 [Count Seven] died as a direct result of the act. 18 U.S.C. §
2 3591(a)(2)(D).

3 B. Statutory Aggravating Factors Enumerated under 18
4 U.S.C. § 3592(c)

5 The following statutory aggravating factors apply to each of
6 Counts Six and Seven.

7 1. **Death during commission of another crime**

8 The death, or injury resulting in death, occurred during the
9 commission or attempted commission of, or during the immediate
10 flight from the commission of an offense under one of the
11 following Sections, to wit, 18 U.S.C. § 1118, Murder by a Federal
12 prisoner serving a life term. 18 U.S.C. § 3592(c)(1).

13 2. **Previous Conviction of Violent Felony Involving**
14 **Firearm**

15 The defendant committed the offense charged after having been
16 previously convicted of a Federal or State offense punishable by
17 a term of imprisonment of more than one year, involving the use
18 or attempted or threatened use of a firearm (as defined in 18
19 U.S.C. § 921) against another person, to wit, conviction for
20 robbery in the first degree in Sonoma County, California Superior
21 Court on January 30, 1970, in Case No. 5961-C; and conviction for
22 armed bank robbery in United States District Court for the
23 Eastern District of California on December 30, 1976, in Case No.
24 F-76-209-CR. 18 U.S.C. § 3592(c)(2).

25

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1 3. **Previous conviction of offense for which a**
2 **sentence of death or life imprisonment was authorized**

3 The defendant committed the offense charged after having been
4 previously been convicted of another Federal or State offense
5 resulting in the death of a person, for which a sentence of life
6 imprisonment or death was authorized by statute, to wit,
7 conviction for conspiracy to commit murder and first degree
8 murder in United States District Court for the Northern District
9 of Georgia on December 14, 1981, in Case No. CR-80-322-A. 18
10 U.S.C. § 3592(c) (3).

11 4. **Grave Risk of Death to Additional Persons**

12 The defendant, in the commission of the offense, and in escaping
13 apprehension for the violation of the offense, knowingly created
14 a grave risk of death to one or more persons in addition to the
15 victim of the offense. 18 U.S.C. § 3592(c) (5).

16 5. **Substantial Planning and Premeditation**

17 The defendant committed the offense after substantial planning
18 and premeditation to cause the death of a person. 18 U.S.C. §
19 3592(c) (9).

20 6. **Multiple Killings or Attempted Killings.**

21 The defendant intentionally killed or attempted to kill more than
22 one person in a single criminal episode. 18 U.S.C. §
23 3592(c) (16).

24 C. Other, Non-Statutory, Aggravating Factors Identified
25 under 18 U.S.C. § 3593(a) (2)

26 The following non-statutory aggravating factors apply to
27 each of Counts Six and Seven.

2. Contemporaneous Convictions

The defendant faces contemporaneous convictions for multiple murders, attempted murders, and other serious acts of violence.

3. Racial Animosity Was a Motive for the Murders

The defendant committed the crimes charged in part from racial animosity against the victims of the crimes.

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 First Superseding Indictment as they relate to the background and character of the defendant, BARRY BYRON MILLS, his moral culpability, and the nature and circumstances of the offenses charged in the First Superseding Indictment.

DATE: August 26, 2005 Respectfully submitted,

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[Handwritten signature of Stephen G. Wolfe]
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CERTIFICATE OF SERVICE

I, CAREY P. CRONIN, declare:

That I am a citizen of the United States and resident or employed in Los Angeles County, California; that my business address is the Office of United States Attorney, United States Courthouse, 312 North Spring Street, Los Angeles, California 90012; that I am over the age of eighteen years, and am not a party to the above-entitled action;

That I am employed by the United States Attorney for the Central District of California who is a member of the Bar of the United States District Court for the Central District of California, at whose direction I served a copy of:

GOVERNMENT'S SUPPLEMENTAL NOTICE OF INTENT TO SEEK THE DEATH PENALTY AGAINST DEFENDANT MILLS

service was:

Placed in a closed envelope, for collection and interoffice delivery addressed as follows:

Placed in a sealed envelope for collection and mailing via United States Mail, addressed as follows:

By hand delivery addressed as follows:

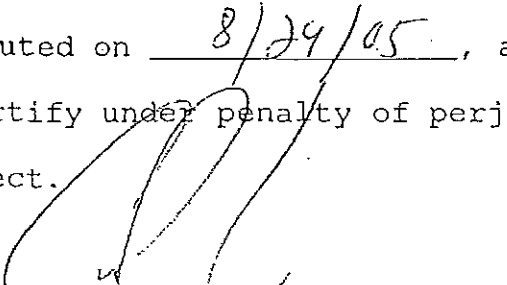
By facsimile as follows:

By messenger as follows:

By federal express as follows:

SEE ATTACHMENT

This Certificate is executed on 8/29/05, at Los Angeles, California. I certify under penalty of perjury that the foregoing is true and correct.


CAREY P. CRONIN