

FAX COVER SHEET
James R. Makin, P.C.
 Attorney At Law
 Board Certified in Criminal Law
 Texas Board of Legal Specialization

1900 Broadway @ 3rd
 Beaumont, TX 77701

(409) 833-2827
 Fax (409) 832-4393

DATE: December 19, 2006

TRANSMIT TO FAX # 619-374-2908

TO: Judy Clarke

COMPANY: Federal Death Penalty Resource Counsel

FROM: Law Office of James R. Makin

RE: _____

Ellis Mosher - Cause No. 1:06cr101

Copy of Government Motion

PAGES (Including cover): 7

SENT BY: JULIA

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JAMES R. MAKIN, P.C.
ATTORNEY AT LAW
BOARD CERTIFIED
CRIMINAL LAW
TEXAS BOARD OF LEGAL SPECIALIZATION

1900 Broadway @ 3rd
Beaumont, Texas 77701
Website: jamesrmakin.com

(409) 833-2827
Fax (409) 832-4393
E-mail: jrmakin@yahoo.com

December 19, 2006

Judy Clarke
Federal Death Penalty Resource Counsel
Via Fax 619-374-2908

RE: U.S. vs. Ellis Joseph Mosher; Cause No. 1:06cr101

Ms. Clarke,

For your information, please find attached a copy of the government's Notice of Intent to Seek the Death Penalty that was filed in Ellis Mosher's case.

Additional information will be forwarded to you as it becomes available.

Sincerely,



James R. Makin

JRM/jac
Attachment

"The right of the people...Shall not be violated..."

IV Amendment, U.S. Constitution

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
BEAUMONT DIVISION

UNITED STATES OF AMERICA *
*
V. * NO. 1:06-CR-101
*
ELLIS JOSEPH MOSHER *

NOTICE OF INTENT TO SEEK THE DEATH PENALTY

COMES NOW, the United States of America, by and through the United States Attorney for the Eastern District of Texas, pursuant to Title 18, United States Code, Section 3593(a), and files this Notice of Intent to Seek the Death Penalty, notifying the Court and the Defendant, **ELLIS JOSEPH MOSHER**, that in the event the Defendant is convicted of the offense of murder as alleged in the single count in the Indictment in this case, the Government believes a sentence of death is justified, and will seek a sentence of death.

If the Defendant is convicted, the Government intends to prove the following aggravating factors as the basis for imposition of the death penalty.

A. Statutory Proportionality Factors Enumerated Pursuant to Title 18, United States Code. Section 3591(a)(2)

1. **ELLIS JOSEPH MOSHER** intentionally killed Stanley Moseley (18 U.S.C. §3591(a)(2)(A));
2. **ELLIS JOSEPH MOSHER** intentionally inflicted serious bodily injury that resulted in the death of Stanley Moseley (18 U.S.C. §3591(a)(2)(B));
3. **ELLIS JOSEPH MOSHER** intentionally participated in an act, contemplating

that the life of Stanley Moseley would be taken or intending that lethal force would be used in connection with Stanley Moseley, a person other than a participant in the offense, and Stanley Moseley died as a direct result of the act (18 U.S.C. §3591(a)(2)(C)); or

4. **ELLIS JOSEPH MOSHER** intentionally and specifically engaged in an act of violence, that **ELLIS JOSEPH MOSHER** knew created a grave risk of death to Stanley Moseley, a person other than a participant in the offense, such that **ELLIS JOSEPH MOSHER'S** participation in the act constituted a reckless disregard for human life, and Stanley Moseley died as a direct result of the act (18 U.S.C. §3591 (a)(2)(D)).

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

1. **ELLIS JOSEPH MOSHER** has previously been convicted of a federal offense punishable by a term of imprisonment of more than 1 year, involving the use or attempted or threatened use of a firearm, as defined in 18 U.S.C. §921, against another person, namely, on or about April 4, 1996, **ELLIS JOSEPH MOSHER** was convicted in the United States District Court for the District of Maryland of two counts of Kidnapping, and one count of Use and Carrying a Firearm During and in Relation to a Crime of Violence in Case Number 1:95CR00483-001 (18 U.S.C. §3592(c)(2));

2. **ELLIS JOSEPH MOSHER** committed the offense after substantial planning and premeditation to cause the death of Stanley Moseley (18 U.S.C. §3592(c)(9));

C. Non-statutory Aggravating Factors Enumerated Pursuant to Title 18, United States Code, Section 3593(a)

1. **Future Dangerousness.** **ELLIS JOSEPH MOSHER** represents a continuing

danger to the lives and safety of other persons. The Defendant is likely to commit criminal acts of violence in the future that would constitute a continuing and serious threat to the lives and safety of others, as evidenced by, at least, one or more of the following:

a. Specific Threats of Violence

ELLIS JOSEPH MOSHER has made specific threats of violence to injure or kill others, including, at least, threats to Bureau of Prisons staff and to the victims of crimes for which he has been convicted.

b. Continuing pattern of violence

ELLIS JOSEPH MOSHER has engaged in a continuing pattern of violence, attempted violence, and threatened violence, including, at least, the crime alleged against Defendant in the Indictment; the crimes of which the Defendant was previously convicted, as described in ¶ B.1 of this Notice; his conviction in 2001 of robbery and use of a firearm in the commission of a felony; his conviction in 1992 of breaking and entering; his convictions in 1993 of breaking and entering (2 offenses); and additional acts of violence not resulting in a conviction, including, at least,

the assault of Carteret County Sheriff's Deputy Stefan Hellersperk, on or about November 10, 1995, in Beaufort, North Carolina, by pointing a firearm at Deputy Stefan Hellersperk; the kidnapping and robbery of Elbert Jones, on or about November 10, 1995, in Morehead City, North Carolina, by use of a firearm; the kidnapping and robbery of Joseph Mitchum, on or about November 14, 1995, in Leesburg, Virginia, by use of a firearm; the attempted assault of Harper's Ferry West Virginia Chief of Police Charles Wyndham, on or about November 14, 1995, by drawing a pistol from a holster.

c. Institutional Misconduct

ELLIS JOSEPH MOSHER poses a future danger to the lives and safety of other persons, as demonstrated by his repeated acts of institutional misconduct while in the custody of various state and local correction or detention agencies, or the United States Bureau of Prisons, or United States Marshals Service.

d. Lack of Remorse

The Defendant has demonstrated a lack of remorse for the capital offense committed in this case, as indicated by Defendant's statements and actions during the course of and following the offense alleged in the Indictment, including his admission, without remorse, to having killed Stanley Moseley.

2. **Victim Impact Evidence.** The Defendant caused injury, harm, and loss to the victim, Stanley Moseley's, family because of the victim's personal characteristics as an individual human being and the impact of his death upon the victim's family. *See Payne v. Tennessee*, 501 U.S. 808, 825-26 (1991).

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 offense of conviction as described in the Indictment as it relates to the background and character of the Defendant, **ELLIS JOSEPH MOSHER**, his moral culpability, and the nature and circumstances of the offense charged in the Indictment.

Respectfully submitted,

MATTHEW D. ORWIG
UNITED STATES ATTORNEY

/s/ Joseph R. Batte
Joseph R. Batte
Assistant U. S. Attorney
TBN#01918070
350 Magnolia, Suite 150
Beaumont, Texas 77701
(409) 839-2538
(409) 839-2550 fax

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Notice of Intent to Seek the Death Penalty has been furnished to Counsel for Defendant, Ellis Joseph Mosher, by electronic transmission on this 11th day of December, 2006.

/s/ Joseph R. Batte
JOSEPH R. BATTE
ASSISTANT UNITED STATES ATTORNEY