

1 DEBRA W. YANG
 United States Attorney
 2 STEVEN D. CLYMER
 Special Assistant United States Attorney
 3 Chief, Criminal Division
 GREGORY W. JESSNER (California State Bar No. 121920)
 4 JOEY W. BLANCH (California State Bar No. 186487)
 STEPHEN G. WOLFE (California State Bar No. 116400)
 5 Assistant United States Attorneys
 Organized Crime and Terrorism Section
 6 1500 United States Courthouse
 312 North Spring Street
 7 Los Angeles, California 90012
 Telephone: (213) 894-0511/3315/7408
 8 Facsimile: (213) 894-3713
 E-mail: Steve.Wolfe@usdoj.gov
 9 Attorneys for Plaintiff
 UNITED STATES OF AMERICA

11 UNITED STATES DISTRICT COURT

12 FOR THE CENTRAL DISTRICT OF CALIFORNIA

13	UNITED STATES OF AMERICA,)	No. CR 02-938-GHK
)	
14	Plaintiff,)	<u>GOVERNMENT'S NOTICE OF INTENT</u>
)	<u>TO SEEK THE DEATH PENALTY</u>
15	v.)	<u>AGAINST DEFENDANT SCHWYHART</u>
)	
16	JASON LEE SCHWYHART,)	
)	
17	Defendant.)	
)	

18 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 JASON LEE SCHWYHART
 21 ("defendant") that the Government believes the circumstances of
 22 the offenses charged in Counts Six and Seven of the Indictment
 23 are such that, in the event of a conviction, a sentence of death
 24 is justified under Chapter 228 (Sections 3591 through 3598) of
 25 Title 18 of the United States Code, and that the Government will
 26 seek the sentence of death for the following offenses: (1)
 27 commission of a violent crime in aid of racketeering activity, to
 28

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

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

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

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

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

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

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

22 The defendant intentionally and specifically engaged in an act of
 23 violence knowing that the act created a grave risk of death to a
 24 person, other than one of the participants in the offense, such
 25 that participation in the act constituted a reckless disregard
 26 for human life, and Frank Joyner [Count Six], and Abdul Salaam
 27 [Count Seven] died as a direct result of the act. 18 U.S.C.

1 § 3591(a)(2)(D).

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

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

6 1. **Previous Conviction of Violent Felony Involving**
7 **Firearm**

8 The defendant committed the offenses charged after having been
9 previously convicted of a Federal or State offense punishable by
10 a term of imprisonment of more than one year, involving the use
11 or attempted or threatened use of a firearm (as defined in 18
12 U.S.C. § 921) against another person, to wit, conviction for
13 robbery in the first degree in the Circuit Court of Stone County,
14 Missouri on September 29, 1989, in Case No. CR 689-259F; and
15 conviction for armed bank robbery in United States District Court
16 for the Western District of Missouri on April 24, 1989, in Case
17 No. 88-05012-01-CR-SW-4. 18 U.S.C. § 3592(c)(2).

18 2. **Grave Risk of Death to Additional Persons**

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

23 3. **Substantial Planning and Premeditation**

24 The defendant committed the offense after substantial planning
25 and premeditation to cause the death of a person. 18 U.S.C. §
26 3592(c)(9).

27

28

4. Multiple Killings or Attempted Killings

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

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

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

1. Future Dangerousness of the Defendant

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. Continuing Pattern of Violence

The defendant has engaged in a continuing pattern of violence, attempted violence, and threatened violence, including, at least, the crimes alleged against defendant in the Indictment, and the crimes of which the defendant was previously convicted, as described in ¶ B.1. of this Notice.

b. Escape Risk and Institutional Misconduct

The defendant poses a future danger to the lives and safety of other persons, as demonstrated by his escape risk and institutional misconduct, including, at least, defendant's escape from a juvenile facility in North Dakota on August 18, 1990, for which defendant was convicted as a juvenile of escape in the United States District Court for the District of North Dakota on February 12, 1991, in Case No. J1-90-27-01, repeated acts of

1 institutional misconduct while in the custody of the United
2 States Bureau of Prisons or United States Marshals Service, and
3 violation of supervised release conditions while on federal
4 supervised release.

5 c. Lack of Remorse

6 The defendant has demonstrated a lack of remorse for the capital
7 offenses committed in this case, as indicated by defendant's
8 statements and actions during the course of and following the
9 offenses alleged in the Indictment.

10 2. Contemporaneous Convictions

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

13 3. Racial Animosity Was a Motive for the Murders

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

16 The Government further gives notice that in support of
17 imposition of the death penalty it intends to rely upon all the
18 evidence admitted by the Court at the guilt phase of the trial
19 and the offenses of conviction as described in the Indictment as
20 they relate to the background and character of the defendant,
21 JASON LEE SCHWYHART, his moral culpability, and the nature and

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1 | circumstances of the offenses charged in the Indictment.

2 | DATE: March 4, 2005 Respectfully submitted,

3 | DEBRA W. YANG
4 | United States Attorney

5 | STEVEN D. CLYMER
6 | Special Assistant United States Attorney
7 | Chief, Criminal Division

8 | 
9 | _____

10 | GREGORY W. JESSNER
11 | JOEY W. BLANCH
12 | STEPHEN G. WOLFE
13 | Assistant United States Attorneys
14 | Organized Crime and Terrorism Section

15 | Attorneys for Plaintiff
16 | United States of America

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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 NOTICE OF INTENT TO SEEK THE DEATH PENALTY AGAINST DEFENDANT SCHWYHART

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 3/4/05, at Los Angeles, California. I certify under penalty of perjury that the foregoing is true and correct.



CAREY P. CRONIN