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U.S. DISTRICT COURT  
EASTERN DISTRICT OF LOUISIANA

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LORETTA G. WHYTE  
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**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF LOUISIANA**

**UNITED STATES OF AMERICA** \* **CRIMINAL DOCKET NO. 04-017**  
  
v. \* **SECTION: "C" (1)**  
  
**JOHN JOHNSON** \* **VIOLATION: 18 U.S.C. § 2113 (a),(e)**  
**HERBERT JONES, JR.** \* **18 U.S.C. § 2**  
**JOSEPH SMITH**  
  
\* \* \*

**NOTICE OF INTENT TO SEEK THE DEATH PENALTY**

Pursuant to Title 18, United States Code, Section 3593(a), the government hereby notifies the Court and **DEFENDANT JOSEPH SMITH**, and his counsel, that in the event of the defendant is convicted of either Count Two or Count Three of the Superseding Indictment, the Government will seek a sentence of death, in that the circumstances of the offenses are such that a sentence of death is justified. Specifically, the government will seek a sentence of death for each of the following counts charged in the superseding indictment, each of which provides for a sentence of death upon a finding of guilt: Count Two, Armed Bank Robbery Resulting in Death in violation of Title 18, United States Code, Section 2113(a) and (e) and Count Three, Use of a Firearm in

\_\_\_ Fee \_\_\_\_\_  
\_\_\_ Process \_\_\_\_\_  
 Dktd \_\_\_\_\_  
\_\_\_ CtRmDep \_\_\_\_\_  
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furtherance of A Crime of Violence Resulting Death in violation of Title 18, United States Code, Section 924 (i).

During a bifurcated capital penalty hearing, the government will rely on the following preliminary intent and age factors to establish eligibility for the death penalty as to each of Counts 2 and 3:

1. The defendant was 18 years of age or older at the time of the offense.
2. The defendant intentionally killed Sidney Zaffuto (18 U.S.C. §3591(a)(2)(A)).
3. The defendant intentionally inflicted serious bodily injury that resulted in the death of Sidney Zaffuto (18 U.S.C. §3591(a)(2)(B)).
4. The defendant intentionally participated in one or more acts, contemplating that the life of a person would be taken or intending that lethal force would be used in connection with a person, other than a participant in the offense, and Sidney Zaffuto died as a direct result of such act or acts (18 U.S.C. §3591(a)(2)(C)).
5. The defendant intentionally and specifically engaged in one or more acts of violence, knowing that the act or acts created a grave risk of death to a person, other than one of the participants in the offense, such that participation in such act or acts constituted a reckless disregard for human life, and Sidney Zaffuto died as a direct result of such act or acts (18 U.S.C. §3591(a)(2)(D)).

### **STATUTORY AGGRAVATING FACTORS**

At any sentencing hearing, it is the intention of the government to rely on the following statutory aggravating factors to justify a sentence of death as to each of Counts 2 and 3:

1. The defendant has previously been convicted of a Federal or 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 (18 U.S.C. §3592(c)(2)).
2. During the commission of the offense, the defendant knowingly created a grave risk of death to one or more persons in addition to the victim of the offense, Sidney Zaffuto (18 U.S.C. §3592(c)(5)).
3. The defendant committed the offense of homicide of Sidney Zaffuto as consideration for the receipt, or in the expectation of the receipt, of anything of pecuniary value (18 U.S.C. §3592(c)(8)).
4. The defendant killed or attempted to kill more than one person in a single criminal episode (18 U.S.C. §3592(c)(16)).

### **NON-STATUTORY AGGRAVATING FACTORS**

In addition to the statutory aggravating factors listed in this notice, the government intends to rely on the following non-statutory aggravating factors to justify a sentence of death.

1. Defendant has a substantial criminal record.
2. Defendant poses a future danger to the lives and safety of other persons as demonstrated by his continuing pattern of violent behavior and low rehabilitative potential.

3. Victim impact evidence concerning the effect of the offense on the victim and his family as evidenced by oral testimony and victim impact statements that describe the loss suffered by them.
4. The defendant took or aided and abetted the taking of a hostage during the commission of the capital offenses charged in the superseding indictment.

Respectfully submitted,



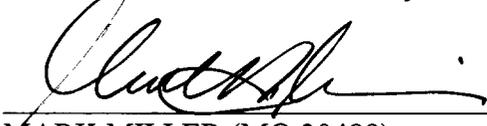
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UNITED STATES ATTORNEY



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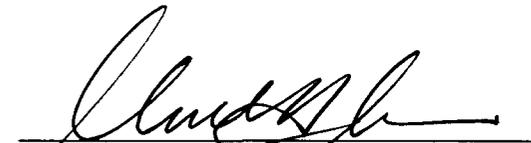
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**CERTIFICATE OF SERVICE**

I hereby certify that on the 1<sup>st</sup> day of February 2005, a true and correct copy of the foregoing notice of intent to seek the death penalty was mailed via first class mail, postage prepaid thereon, to the following attorneys of record:



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