

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION

UNITED STATES OF AMERICA

VS.
DEFENDANT (2)

ACTION NO. -CR

ORDER DENYING MOTION TO STRIKE NOTICE OF INTENT TO SEEK DEATH
PENALTY, PARTIALLY GRANTING REQUEST TO COMPEL SPECIFIC INFORMATION
AS TO AGGRAVATING FACTORS, AND PARTIALLY GRANTING MOTION SETTING
OUT FORM AND SUBSTANCE OF NOTICE

Pending before the Court is defendant _____'s Motion to Strike Government's Notice of Intent to Seek the Death Penalty and/or Request to Compel the Government to Give Specific Information as to Aggravating Factors on Which They Intend to Rely and Authorities in Support of Motion, which was filed on June 30, 1995. The government filed a response in opposition to this motion on July 19, and Defendant filed a reply to the government's response on August 1. Also pending before the Court is Defendant's Motion and Brief Setting Out Form and Substance of Notice He Seeks, which was filed on September 5, 1995. The government filed a response in opposition to this motion on September 14. After consideration of these motions, the Court finds that they should be partially granted.

In both of these motions, Defendant contends that the government's Notice of Intent to Seek the Death Penalty, which was filed on February 23, 1995, is insufficient to apprise him of the matters upon which the government will rely at the punishment phase of trial, if any, in support of its contention that Defendant should receive the death penalty. After review of the government's notice, however, the Court finds that it complies with 18 U.S.C. § 3593(a), which requires, inter alia, that the government provide Defendant with notice

“setting forth the aggravating factor or factors that the government, if the defendant is convicted, proposes to prove as justifying a sentence of death.” 18 U.S.C.A. § 3593 (a) (2) (West Supp. 1995). The statute does not require that the notice contain what Defendant seeks, namely, notice of the specific evidentiary details upon which the government will rely to prove that a particular aggravating factor exists. As the government points out, discovery of such evidentiary details is a matter more appropriately left to the discovery process. Furthermore, the Court has already ordered the government to file its witness and exhibit lists ten government working days prior to trial, which will include the names of all persons the government intends to call as witnesses and all exhibits the government intends to offer during the punishment phase of the trial. Finally, the Court notes that in the government’s September 12 response to Defendant’s September 5 motion, the government agrees to file a written notice setting forth the general nature of any punishment evidence the government intends to introduce at trial. The Court believes that notice of the general nature of any evidence expected to be introduced by the government in the punishment phase of trial, if any, will be sufficient to protect Defendant’s constitutional rights.

It is, therefore, ORDERED that Defendant’s June 30 Motion to Strike Government’s Notice of Intent to Seek the Death Penalty [document number 179-1] is hereby DENIED. However, Defendant’s alternative Request to Compel the Government to Give Specific Information as to Aggravating Factors on Which They Intend to Rely [document number 179-2] is hereby PARTIALLY GRANTED, in that no later than 4:30 p.m. on Wednesday, September 20, 1995, the government shall file a written notice with the clerk of the Court informing Defendant of the general nature of any evidence the government expects to introduce at the punishment phase of trial, if any.

It is further ORDERED that Defendant’s September 5 Motion Setting Out Form and

Substance of Notice He Seeks [document number 281-1] is hereby PARTIALLY GRANTED, in that the government shall give the notice required by the preceding paragraph of this order.

SO ORDERED

SIGNED September 19th, 1995

United States District Judge