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UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,) No. CR 02-938-DOC
)
Plaintiff,) SPECIAL VERDICT FORM RE
) DEFENDANT BINGHAM
)
v.)
)
TYLER DAVIS BINGHAM,)
)
Defendant.)
)

OVERALL INSTRUCTIONS FOR FILLING OUT SPECIAL VERDICT FORM:

Below is a series of questions accompanied by instructions. Please read the instructions and place your answers to the questions in the appropriate spaces. As was described in the jury instructions provided by the Court, the questions are grouped into seven sections that are numbered as Sections I - VII. There is a parallel set of instructions and questions for each of Counts Six and Seven; the instructions and questions are the same for both counts. At the bottom of the Special Verdict Form as a whole, your foreperson must sign his juror number in the appropriate space. In addition, in Section VII as to each of Counts Six and Seven, each juror must sign his or her juror number in the appropriate space.

1 SPECIAL VERDICT QUESTIONS REGARDING COUNT SIX (BINGHAM)

2
3 Section I: Age of the Defendant:

4 Instructions: Answer "yes" or "no." Do you, the jury,
5 unanimously find that the government has established beyond a
6 reasonable doubt that defendant Bingham was 18 years of age or
7 older at the time of the offense charged in Count Six of the
8 Indictment?

9 Yes

10 No

11 Instructions: If you answered "no" with respect to the
12 determination in this Section, then stop your deliberations,
13 cross out Sections II, III, IV, V, and VI of this form, and
14 proceed to Section VII. Each juror should then carefully read
15 the statement in Section VII, and sign in the appropriate place
16 if the statement accurately reflects the manner in which you
17 reached your decision. You should then advise the Court that you
18 have reached a decision.

19 If you answered "yes" with respect to the determination in
20 this Section I, then proceed to Section II.

21
22 Section II: Threshold Eligibility Factors:

23 Instructions: For each of the following, answer "yes" or
24 "no."

25 A. Do you, the jury, unanimously find that the government
26 has established beyond a reasonable doubt that the defendant
27 intentionally participated in an act, contemplating that the life
28 of a person would be taken and/or that lethal force would be used

1 in connection with a person, other than one of the participants
2 in the offense, and that the victims died as a direct result of
3 the act?

4 Yes

5 No

6 B. Do you, the jury, unanimously find that the government
7 has established beyond a reasonable doubt that the defendant
8 intentionally and specifically engaged in an act of violence,
9 knowing that the act created a grave risk of death to a person,
10 other than one of the participants in the offense, such that
11 participation in the act constituted a reckless disregard for
12 human life, and that the victims died as a direct result of the
13 act?

14 Yes

15 No

16 Instructions: If you answered "no" with respect to both of
17 the determinations in this Section, then stop your deliberations,
18 cross out Sections III, IV, V, and VI of this form, and proceed
19 to Section VII. Each juror should carefully read the statement
20 in Section VII, and sign in the appropriate place if the
21 statement accurately reflects the manner in which you reached a
22 decision.

23 If you answered "yes" with respect to one or more of the
24 determinations in this Section II, then proceed to Section III.

25
26 Section III: Statutory Aggravating Factors

27 Instructions: For each of the following, answer "yes" or
28 "no."

1 1. Do you, the jury, unanimously find that the government
2 has proved beyond a reasonable doubt that the defendant committed
3 the offense charged in Count Six after having been previously
4 convicted of a federal or state offense punishable by a term of
5 imprisonment of more than one year, involving the use or
6 attempted or threatened use of a firearm (as defined in 18 U.S.C.
7 Section 921) against another person?

8 Yes _____
9 No _____

10 2. Do you, the jury, unanimously find that the government
11 has proved beyond a reasonable doubt that the defendant, in the
12 commission of the offense charged in Count Six, knowingly created
13 a grave risk of death to one or more persons in addition to the
14 victims of the offenses?

15 Yes _____
16 No _____

17 3. Do you, the jury, unanimously find that the government
18 has proved beyond a reasonable doubt that the defendant committed
19 the offense charged in Count Six after substantial planning and
20 premeditation to cause the death of a person?

21 Yes _____
22 No _____

23 4. Do you, the jury, unanimously find that the government
24 has proved beyond a reasonable doubt that the defendant killed or
25 attempted to kill more than one person in a single criminal
26 episode?

27 Yes _____
28 No _____

1 Instructions: If you answered "no" with respect to all of
2 the Statutory Aggravating Facts in this Section III, then stop
3 your deliberations, cross out Sections IV, V, and VI, and proceed
4 to Section VII of this form. Each juror should then read the
5 statement in Section VII, and sign in the appropriate place if
6 the statement accurately reflects the manner in which you have
7 reached a decision. You should then advise the Court that you
8 have reached a decision.

9 If you found the requisite age in Section I, the requisite
10 mental state in Section II, and answered "yes" with respect to
11 one or more of the statutory aggravating factors in this Section
12 III, then proceed to Section IV.

13
14 **Section IV: Non-Statutory Aggravating Factors**

15 Instructions: For each of the following, answer "yes" or
16 "no" to the numbered questions below.

17 1. **Future Dangerousness of Defendant.** Do you, the jury,
18 unanimously find that the government has proved beyond a
19 reasonable doubt that the defendant is likely to commit criminal
20 acts of violence in the future that would constitute a continuing
21 and serious threat to the lives and safety of others.

22 Yes _____

23 No _____

24 2. **Contemporaneous Convictions.** Do you, the jury,
25 unanimously find that the government has proved beyond a
26 reasonable doubt that the defendant faces contemporaneous
27 convictions for murder, attempted murder, and conspiracy to
28 commit murder?

1 Yes

2 No

3 3. **Racial Animosity Was a Motive for the Murders.** Do you,
4 the jury, unanimously find that the government has proved beyond
5 a reasonable doubt that the defendant committed the crime charged
6 in Count Six in part from racial animosity against the victims of
7 the crimes?

8 Yes

9 No

10 Instructions: Regardless of whether you answered "yes" or
11 "no" with respect to the non-statutory aggravating factors in
12 this Section IV, proceed to Section V.

13

14 **Section V: Mitigating Factors**

15 Instructions: For each of the following mitigating factors,
16 you have the option to indicate, in the space provided, the
17 number of jurors who have found the existence of the mitigating
18 factor to be proven by a preponderance of the evidence. If you
19 choose not to make these findings, cross out each page of Section
20 V with a large "X" and then continue your deliberations in
21 accordance with the instructions of the Court.

22 1. Allen Benton, an equally culpable participant, will not
23 be punished by death.

24 Number of Jurors who found this mitigating factor: 6

25 2. The violent nature of the D.C. Blacks.

26 Number of Jurors who found this mitigating factor: 6

27 3. Racial tension within the Bureau of Prisons.

28 Number of Jurors who found this mitigating factor: 6

1 4. The mistreatment of children at the California Youth
2 Authority from 1962-65.

3 Number of Jurors who found this mitigating factor: 4

4 5. T.D. Bingham's fatherly support and guidance of his son,
5 Tyler Bingham, and his stepsons, Gary Goni and Brian Miller.

6 Number of Jurors who found this mitigating factor: 0

7 6. T.D. Bingham's life as a father, husband, and member of
8 the work force from March 1981 to June 1985.

9 Number of Jurors who found this mitigating factor: 0

10 7. T.D. Bingham's scheduled 2010 release date, so a
11 sentence of life without the possibility of release is
12 substantial punishment.

13 Number of Jurors who found this mitigating factor: 7

14 8. T.D. Bingham's non-violent and incident-free record in
15 prison over the last seven years.

16 Number of Jurors who found this mitigating factor: 4

17 9. Other factors in T.D. Bingham's background, record or
18 character, or any other circumstance of the offenses that
19 mitigate against imposition of the death sentence.

20 Number of Jurors who found this mitigating factor: 6

21 Instructions: Regardless of whether you chose to make
22 written findings for the Mitigating Factors of Section V above,
23 proceed to Section VI and Section VII.

24
25 **Section VI: Determination**

26 Based upon consideration of whether the aggravating factors
27 found to exist sufficiently outweigh any mitigating factors found
28 to exist, or in the absence of any mitigating factors, whether

1 the aggravating factors are themselves sufficient to justify a
2 sentence of death, and whether death is therefore the appropriate
3 sentence in this case:

4 **A. Death Sentence**

5 We determine, by unanimous vote, that a sentence of death
6 shall be imposed.

7 Yes _____
8 No ✓

9 If you answer "yes," the foreperson must sign here, and you must
10 then proceed to Section VII. If you answer "no," the foreperson
11 must sign and you must then proceed to Section VIB.

12 #5 / 52
13 Foreperson

14 Date: 09/15/06

15 **B. Sentence of Life in Prison Without Possibility of Release**

16 We determine, by unanimous vote, that a sentence of life
17 imprisonment without possibility of release shall be imposed.

18 Yes _____
19 No ✓

20 If you answer "yes," the foreperson must sign here, and you must
21 then proceed to Section VII.

22 _____
23 Foreperson

24 Date: _____

26 **Section VII: Certification**

27 By signing his or her juror number below, each juror
28 certifies that consideration of the race, color, religious

1 beliefs, national origin or sex of the defendants or any victims
2 was not involved in reaching his or her individual decision, and
3 that the individual juror would have made the same recommendation
4 regarding a sentence for the crimes in question regardless of the
5 race, color, religious beliefs, national origin, or sex of the
6 defendants or the victims.

| | | |
|----|---------------|-----------------|
| 7 | <u>#1 227</u> | <u>#7 - 55</u> |
| 8 | <u>#2 197</u> | <u>#8 - 225</u> |
| 9 | <u>#3 173</u> | <u>#9 - 31</u> |
| 10 | <u>#4 81</u> | <u>#10 - 40</u> |
| 11 | <u>#5 52</u> | <u>#11 206</u> |
| 12 | <u>#6 216</u> | <u>#12 - 3</u> |

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1 SPECIAL VERDICT QUESTIONS REGARDING COUNT SEVEN (BINGHAM)

2
3 Section I: Age of the Defendant:

4 Instructions: Answer "yes" or "no." Do you, the jury,
5 unanimously find that the government has established beyond a
6 reasonable doubt that defendant Bingham was 18 years of age or
7 older at the time of the offense charged in Count Seven of the
8 Indictment?

9 Yes

10 No

11 Instructions: If you answered "no" with respect to the
12 determination in this Section, then stop your deliberations,
13 cross out Sections II, III, IV, V, and VI of this form, and
14 proceed to Section VII. Each juror should then carefully read
15 the statement in Section VII, and sign in the appropriate place
16 if the statement accurately reflects the manner in which you
17 reached your decision. You should then advise the Court that you
18 have reached a decision.

19 If you answered "yes" with respect to the determination in
20 this Section I, then proceed to Section II.

21
22 Section II: Threshold Eligibility Factors:

23 Instructions: For each of the following, answer "yes" or
24 "no."

25 A. Do you, the jury, unanimously find that the government
26 has established beyond a reasonable doubt that the defendant
27 intentionally participated in an act, contemplating that the life
28 of a person would be taken and/or that lethal force would be used

1 in connection with a person, other than one of the participants
2 in the offense, and that the victims died as a direct result of
3 the act?

4 Yes _____
5 No _____

6 B. Do you, the jury, unanimously find that the government
7 has established beyond a reasonable doubt that the defendant
8 intentionally and specifically engaged in an act of violence,
9 knowing that the act created a grave risk of death to a person,
10 other than one of the participants in the offense, such that
11 participation in the act constituted a reckless disregard for
12 human life, and that the victims died as a direct result of the
13 act?

14 Yes _____
15 No _____

16 Instructions: If you answered "no" with respect to both of
17 the determinations in this Section, then stop your deliberations,
18 cross out Sections III, IV, V, and VI of this form, and proceed
19 to Section VII. Each juror should carefully read the statement
20 in Section VII, and sign in the appropriate place if the
21 statement accurately reflects the manner in which you reached a
22 decision.

23 If you answered "yes" with respect to one or more of the
24 determinations in this Section II, then proceed to Section III.

25

26 **Section III: Statutory Aggravating Factors**

27 Instructions: For each of the following, answer "yes" or
28 "no."

1 1. Do you, the jury, unanimously find that the government
2 has proved beyond a reasonable doubt that the defendant committed
3 the offense charged in Count Seven after having been previously
4 convicted of a federal or state offense punishable by a term of
5 imprisonment of more than one year, involving the use or
6 attempted or threatened use of a firearm (as defined in 18 U.S.C.
7 Section 921) against another person?

8 Yes _____

9 No _____

10 2. Do you, the jury, unanimously find that the government
11 has proved beyond a reasonable doubt that the defendant, in the
12 commission of the offense charged in Count Seven, knowingly
13 created a grave risk of death to one or more persons in addition
14 to the victims of the offenses?

15 Yes _____

16 No _____

17 3. Do you, the jury, unanimously find that the government
18 has proved beyond a reasonable doubt that the defendant committed
19 the offense charged in Count Seven after substantial planning and
20 premeditation to cause the death of a person?

21 Yes _____

22 No _____

23 4. Do you, the jury, unanimously find that the government
24 has proved beyond a reasonable doubt that the defendant killed or
25 attempted to kill more than one person in a single criminal
26 episode?

27 Yes _____

28 No _____

1 Instructions: If you answered "no" with respect to all of
2 the Statutory Aggravating Factors in this Section III, then stop
3 your deliberations, cross out Sections IV, V, and VI, and proceed
4 to Section VII of this form. Each juror should then read the
5 statement in Section VII, and sign in the appropriate place if
6 the statement accurately reflects the manner in which you have
7 reached a decision. You should then advise the Court that you
8 have reached a decision.

9 If you found the requisite age in Section I, the requisite
10 mental state in Section II, and answered "yes" with respect to
11 one or more of the statutory aggravating factors in this Section
12 III, then proceed to Section IV.

13
14 **Section IV: Non-Statutory Aggravating Factors**

15 Instructions: For each of the following, answer "yes" or
16 "no" to the numbered questions below.

17 1. **Future Dangerousness of Defendant.** Do you, the jury,
18 unanimously find that the government has proved beyond a
19 reasonable doubt that the defendant is likely to commit criminal
20 acts of violence in the future that would constitute a continuing
21 and serious threat to the lives and safety of others.

22 Yes _____

23 No ✓

24 2. **Contemporaneous Convictions.** Do you, the jury,
25 unanimously find that the government has proved beyond a
26 reasonable doubt that the defendant faces contemporaneous
27 convictions for murder, attempted murder, and conspiracy to
28 commit murder?

1 Yes

2 No

3 3. **Racial Animosity Was a Motive for the Murders.** Do you,
4 the jury, unanimously find that the government has proved beyond
5 a reasonable doubt that the defendant committed the crime charged
6 in Count Seven in part from racial animosity against the victims
7 of the crimes?

8 Yes

9 No

10 Instructions: Regardless of whether you answered "yes" or
11 "no" with respect to the non-statutory aggravating factors in
12 this Section IV, proceed to Section V.

13

14 **Section V: Mitigating Factors**

15 Instructions: For each of the following mitigating factors,
16 you have the option to indicate, in the space provided, the
17 number of jurors who have found the existence of the mitigating
18 factor to be proven by a preponderance of the evidence. If you
19 choose not to make these findings, cross out each page of Section
20 V with a large "X" and then continue your deliberations in
21 accordance with the instructions of the Court.

22 1. Allen Benton, an equally culpable participant, will not
23 be punished by death.

24 Number of Jurors who found this mitigating factor: 6

25 2. The violent nature of the D.C. Blacks.

26 Number of Jurors who found this mitigating factor: 6

27 3. Racial tension within the Bureau of Prisons.

28 Number of Jurors who found this mitigating factor: 6

1 4. The mistreatment of children at the California Youth
2 Authority from 1962-65.

3 Number of Jurors who found this mitigating factor: 4

4 5. T.D. Bingham's fatherly support and guidance of his son,
5 Tyler Bingham, and his stepsons, Gary Goni and Brian Miller.

6 Number of Jurors who found this mitigating factor: 0

7 6. T.D. Bingham's life as a father, husband, and member of
8 the work force from March 1981 to June 1985.

9 Number of Jurors who found this mitigating factor: 0

10 7. T.D. Bingham's scheduled 2010 release date, so a
11 sentence of life without the possibility of release is
12 substantial punishment.

13 Number of Jurors who found this mitigating factor: 7

14 8. T.D. Bingham's non-violent and incident-free record in
15 prison over the last seven years.

16 Number of Jurors who found this mitigating factor: 4

17 9. Other factors in T.D. Bingham's background, record or
18 character, or any other circumstance of the offenses that
19 mitigate against imposition of the death sentence.

20 Number of Jurors who found this mitigating factor: 6

21 Instructions: Regardless of whether you chose to make
22 written findings for the Mitigating Factors of Section V above,
23 proceed to Section VI and Section VII.

24
25 **Section VI: Determination**

26 Based upon consideration of whether the aggravating factors
27 found to exist sufficiently outweigh any mitigating factors found
28 to exist, or in the absence of any mitigating factors, whether

1 the aggravating factors are themselves sufficient to justify a
2 sentence of death, and whether death is therefore the appropriate
3 sentence in this case:

4 **A. Death Sentence**

5 We determine, by unanimous vote, that a sentence of death
6 shall be imposed.

7 Yes _____

8 No

9 If you answer "yes," the foreperson must sign here, and you must
10 then proceed to Section VII. If you answer "no," the foreperson
11 must sign and you must then proceed to Section VIB.

12 #5 / 52

13 Foreperson

14 Date: 09/15/06

15 **B. Sentence of Life in Prison Without Possibility of Release**

16 We determine, by unanimous vote, that a sentence of life
17 imprisonment without possibility of release shall be imposed.

18 Yes _____

19 No

20 If you answer "yes," the foreperson must sign here, and you must
21 then proceed to Section VII.

22 _____
23 Foreperson

24 Date: _____

25
26 **Section VII: Certification**

27 By signing his or her juror number below, each juror
28 certifies that consideration of the race, color, religious

1 beliefs, national origin or sex of the defendants or any victims
2 was not involved in reaching his or her individual decision, and
3 that the individual juror would have made the same recommendation
4 regarding a sentence for the crimes in question regardless of the
5 race, color, religious beliefs, national origin, or sex of the
6 defendants or the victims.

| | | |
|----|---------------|-----------------|
| 7 | <u>#1 227</u> | <u>#7 - 58</u> |
| 8 | <u>#2 197</u> | <u>#8 - 225</u> |
| 9 | <u>#3 173</u> | <u>#9 - 31</u> |
| 10 | <u>#4 81</u> | <u>#10 - 40</u> |
| 11 | <u>#5 52</u> | <u>#11 236</u> |
| 12 | <u>#6 216</u> | <u>#12 - 3</u> |

13
14 Signature (Juror Number) of Foreperson as to Overall Verdict Form

15 Re Defendant Bingham

16 Foreperson: #5 / 52

17 Date: 09/15/06

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