

ORIGINAL

CHARLOTTE, N. C.

FEB 10 1998

UNITED STATES DISTRICT COURT FOR THE DISTRICT COURT
WESTERN DISTRICT OF NORTH CAROLINA W. DIST. OF N. C.
CHARLOTTE DIVISION

UNITED STATES OF AMERICA)

DOCKET NO. 3:97CR23-P

v.)

AQUILIA MARCIVICCI BARNETTE)
_____)

**SPECIAL VERDICT FORM REGARDING THE PUNISHMENT
TO BE IMPOSED UPON THE DEFENDANT FOR THE KILLING OF
DONALD LEE ALLEN IN COUNT SEVEN**

I. AGE OF DEFENDANT

Instructions: Answer "YES" or "NO".

Do you, the jury, unanimously find that the government has established beyond a reasonable doubt that:

1. The defendant was eighteen years of age or older at the time of the offense in Count Seven?

YES ✓

NO _____

Instructions: If you answered "NO" with respect to the determination in Section I, then stop your deliberations, cross out Sections II, III, IV, V and VI of this form, and proceed to Section VII. Each juror should then carefully read the statement in Section VII, and sign in the appropriate place

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if the statement accurately reflects the manner in which he or she reached his or her decision. You should then advise the Court that you have reached a decision.

If you answered "YES" with respect to the determination in Section I, then proceed to Section II which follows.

II. REQUISITE MENTAL STATE

Instructions: For each of the following, answer "YES" or "NO".

1. Do you, the jury, unanimously find that the government has proven beyond a reasonable doubt that the defendant intentionally killed Donald Lee Allen in Count Seven?

YES ✓

NO

2. Do you, the jury, unanimously find that the government has proven beyond a reasonable doubt that the defendant intentionally inflicted serious bodily injury which resulted in the death of Donald Lee Allen in Count Seven?

YES ✓

NO

FOREPERSON

3. Do you, the jury, unanimously find that the government has proven beyond a reasonable doubt that the defendant intentionally engaged in conduct intending that Donald Lee Allen be killed and/or that lethal force be employed against Donald Lee Allen which resulted in the death of Donald Lee Allen in Count Seven?

YES ✓

NO _____

[REDACTED]

FOREPERSON

4. Do you, the jury, unanimously find that the government has proven beyond a reasonable doubt that the defendant intentionally engaged in conduct which the defendant knew would create a grave risk of death to a person, other than one of the participants in the offense and resulted in the death of Donald Lee Allen in Count Seven?

YES ✓

NO _____

[REDACTED]

FOREPERSON

Instructions: If you answered "NO" with respect to all of the determinations in this section, then stop your deliberations, cross out Sections III, IV, V and VI of this form, and proceed to Section VII. Each juror should carefully read the statement in Section VII, and sign in the appropriate place if the statement accurately reflects the manner in which he or she reached his or her decision. You should then advise the Court that you have reached a decision.

If you answered "YES" with respect to any one or more of the determinations in Section II, then proceed to Section III which follows.

III. STATUTORY AGGRAVATING FACTORS

Instructions: For each of the following, answer "YES" or "NO".

Do you, the jury, unanimously find that the government has established the existence of the following statutory aggravating factors beyond a reasonable doubt as to Count Seven:

1. Do you the jury unanimously find that the government has proven beyond a reasonable doubt that the defendant committed the offense in Count Seven in the expectation of the receipt of something of pecuniary value?

YES ✓

NO

[REDACTED]

FOREPERSON

2. Do you the jury unanimously find that the government has proven beyond a reasonable doubt that the defendant committed the offense in Count Seven after substantial planning and premeditation to cause the death of Donald Lee Allen?

YES ✓

NO

[REDACTED]

FOREPERSON

Instructions: If you answered "NO" with respect to both of the statutory aggravating factors in this Section III, then stop your deliberations, cross out Sections IV, V and VI of this form, and proceed to Section VII of this form. Each juror should then carefully read the statement in Section VII, and sign in the appropriate place if the statement accurately reflects the manner in which he or she reached his or her decision. You should then advise the Court that you have reached a decision.

If you found the requisite age in Section I, the requisite mental state in Section II and answered "YES" with respect to one or both of the statutory aggravating factors in this Section III, then proceed to Section IV which follows.

IV. NON-STATUTORY AGGRAVATING FACTORS

Instructions: For each of the following, answer "YES" or "NO".

Do you, the jury, unanimously find that the government has established the existence of the following non-statutory aggravating factors beyond a reasonable doubt as to Count Seven:

1. Do you the jury unanimously find that the government has proven beyond a reasonable doubt that the defendant caused harm to the family of Donald Lee Allen as a result of the impact of the killing on the family of Donald Lee Allen?

YES ✓

NO

2. Do you the jury unanimously find that the government has proven beyond a reasonable doubt that the defendant is likely to commit criminal acts of violence in the future which would be a continuing and serious threat to society?

YES ✓

NO



FOR EXHIBIT

3. Do you the jury unanimously find that the government has proven beyond a reasonable doubt that the defendant intentionally killed two people in that in addition to killing Donald Lee Allen, the defendant also killed Robin Williams?

YES ✓

NO



FOR EXHIBIT

Instructions: Regardless of whether you answered "YES" or "NO" with respect to the three non-statutory aggravating factors in this Section IV, then proceed to Section V, which follows.

V. MITIGATING FACTORS

Instructions: For each of the following mitigating factors, in the space provided, indicate the number of jurors who have found the existence of that mitigating factor to be proven by a preponderance of the evidence as to Count Seven.

A finding with respect to a mitigating factor may be made by one or more of the members of the jury, and any member of the jury who finds the existence of a mitigating factor must consider such [a] factor[s] established in considering whether or not a sentence of death shall be imposed, regardless of the number of other jurors who agree that the factor has been established.

The statutory mitigating factors which the defendant contends have been proved by a preponderance of the evidence are:

1. The defendant's capacity to appreciate the wrongfulness of his conduct or to conform his conduct to the requirements of the law was significantly impaired, regardless of whether the capacity was so impaired as to constitute a defense to the charge.

Number of jurors who so find 0.

2. The defendant was under unusual and substantial duress, regardless of whether the duress was of such a degree as to constitute a defense to the charge.

Number of jurors who so find 0.

3. The other factors in the defendant's childhood, background or character mitigate against imposition of the death sentence.

Number of jurors who so find 1.

The non-statutory factor(s) in the defendant's background or character, the circumstances of the crime(s), or other relevant fact or circumstance as mitigation are as follows:

The evidence tends to show:

1. The defendant assisted police in locating Donald Allen's body.

Number of jurors who so find 12.

2. The defendant voluntarily turned himself in.

Number of jurors who so find 9.

3. The defendant had no positive family role model during his teenage years.

Number of jurors who so find 6.

4. The defendant grew up in a home which condoned domestic violence and he frequently saw his mother abused.

Number of jurors who so find 5.

5. The defendant was physically and emotionally abused by his father.

Number of jurors who so find 7.

6. The defendant was neglected by his mother when she was drunk and distraught over the break up of her marriage.

Number of jurors who so find 9.

7. The defendant was never allowed to resolve issues of childhood before he was thrust into a caretaker's role of caring for his mother, aunt, brother and aging grandfather when his mother divorced his father.

Number of jurors who so find 3.

8. The defendant has worked consistently since age fifteen and many times worked more than one job.

Number of jurors who so find 5.

9. The defendant grew up in a home where alcohol and drugs were used frequently.

Number of jurors who so find ~~12~~ 12

10. The defendant grew up in a home where violence was prevalent.

Number of jurors who so find 11.

11. After the beating in Atlanta, the defendant lost interest in school and stopped going to school.

Number of jurors who so find 6.

12. The defendant went to church with his grandfather, Jessie.

Number of jurors who so find 11.

13. The defendant pled guilty to two prior convictions and accepted responsibility for them.

Number of jurors who so find 3.

14. The defendant confessed to his friend Steve Austin and Steve's mother, Ann Austin, with regard to the fire incident in April of 1996.

Number of jurors who so find 11.

15. The defendant confessed to the police.

Number of jurors who so find 12.

16. Since his arrest the defendant has been a model inmate.

Number of jurors who so find 12.

Other non-statutory factors which the defendant contends are:

1. An unstable home life and frequent moves during childhood denied the defendant the skills to form normal peer relationships.

Number of jurors who so find 2.

2. The defendant showed remorse by trying to kill himself when he realized what he had done.

Number of jurors who so find 1.

3. The defendant prayed for the souls of his victims.

Number of jurors who so find 4.

4. The defendant exhibited psychological problems as a minor for which his family failed to seek medical attention or treatment.

Number of jurors who so find 6.

5. The defendant cooperated with the police.

Number of jurors who so find 11.

6. The defendant will do well in the structured environment that prison will offer.

Number of jurors who so find 6.

7. The defendant was abandoned by his father at the age of 10 due to the separation of his mother and father.

Number of jurors who so find 1.

8. The defendant was further rejected by his father at age 13 when blood tests revealed Derrick Barnette was not his father or his brother's father.

Number of jurors who so find 2.

9. The defendant attempted suicide prior to the crimes indicating that he was already having psychological problems.

Number of jurors who so find 2.

10. The age of the defendant at the time of the offense.

Number of jurors who so find 2.

11. If the defendant is sentenced to life without the possibility of release he will not be a future danger.

Number of jurors who so find 3.

12. The defendant's mother, young brother, and [children] will be harmed by the emotional trauma of his execution.

Number of jurors who so find 8.

The following extra spaces are provided to write in additional mitigating factors, if any, found by any one or more jurors. If none, write "NONE" and line out the extra spaces with a large "X". If more space is needed, write "CONTINUED" and use the reverse side of this page.

NONE

Number of jurors who so find _____

Number of jurors who so find _____

NONE

Number of jurors who so find _____

Number of jurors who so find _____

Instructions: Regardless of whether or not you choose to make written findings for the mitigating factors in Section V above, proceed to Section VI and Section VII which follow.

VI. DETERMINATION

Based upon consideration of whether the aggravating factor or factors found to exist as to Count Seven sufficiently outweigh any mitigating factor or factors found to exist to justify a sentence of death, or in the absence of any mitigating factors, whether the aggravating factor or factors as to Count Seven are themselves sufficient to justify a sentence of death, indicate your recommendation using either the following form A, B, or C.

A. Death Sentence

Based upon consideration of whether the aggravating factors found to exist sufficiently outweigh any mitigating factor or factors found to exist to justify a sentence of death, or in the absence of any mitigating factors, whether the aggravating factors are themselves sufficient to justify a sentence of death, we recommend by unanimous vote that a sentence of death shall be imposed for the killing of Donald Lee Allen in Count Seven.

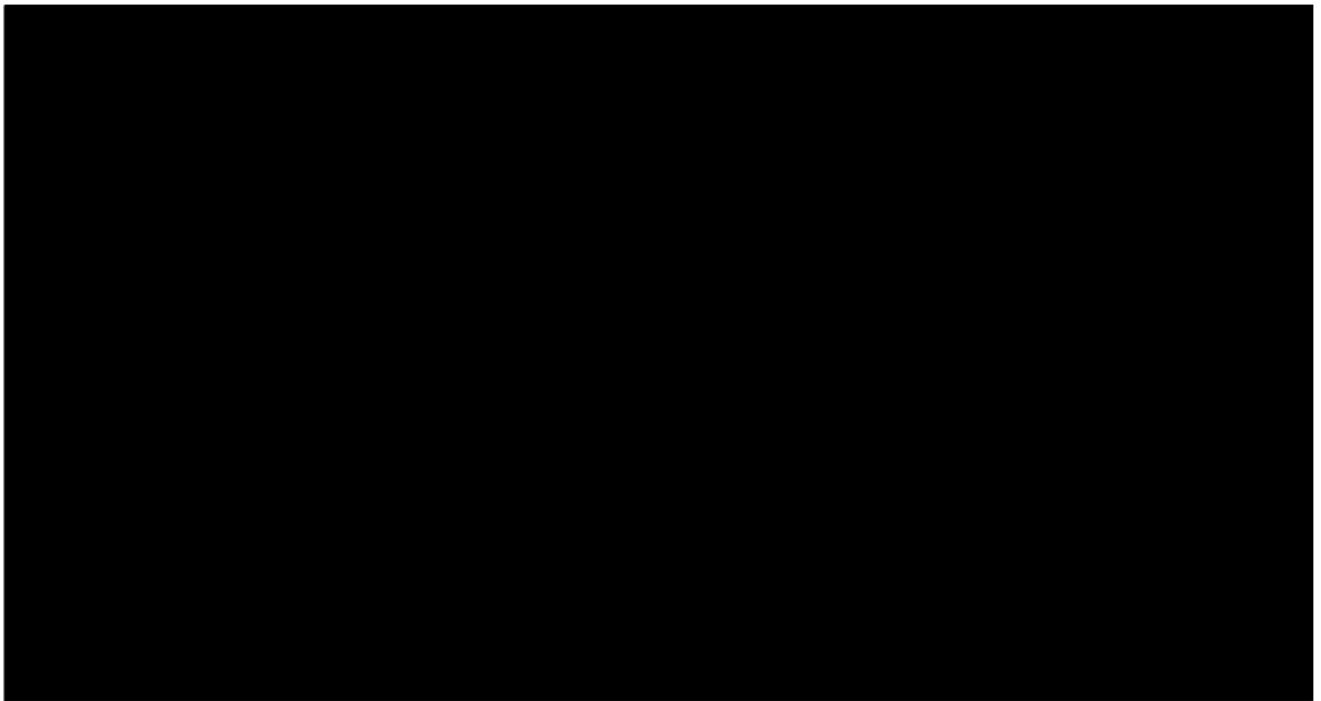
YES

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NO

☐

If you answer "YES", sign your names here, and then proceed to Section VII. If you answer "NO", the foreperson alone should sign, and you should proceed to Section VI (B):



Date: FEBRUARY 10, 1998

B. Sentence of Life in Prison Without Possibility of Release

Based upon consideration of whether the aggravating factors found to exist sufficiently outweigh any mitigating factor or factors found to exist to justify the sentence of death, or in the absence of any mitigating factors, whether the aggravating factors are themselves sufficient to justify a sentence of death, we recommend by unanimous vote that a sentence of life in prison without possibility of release shall be imposed for the killing of Donald Lee Allen in Count Seven.

YES _____

NO _____

If you answer "YES", sign your names here, and then proceed to Section VII. If you answer "NO", the foreperson alone should sign, and you should proceed to Section VI (C):

FOREPERSON

Date: _____, 1998

C. Lesser Sentence

Based upon consideration of whether the aggravating factors found to exist sufficiently outweigh any mitigating factor or factors found to exist to justify a sentence of death, or in the absence of any mitigating factors, whether the aggravating factors are themselves sufficient to justify a sentence of death, we recommend by unanimous vote that the Court sentence the defendant as provided by law up to life in prison without possibility of release for the killing of Donald Lee Allen in Count Seven.

YES _____

NO _____

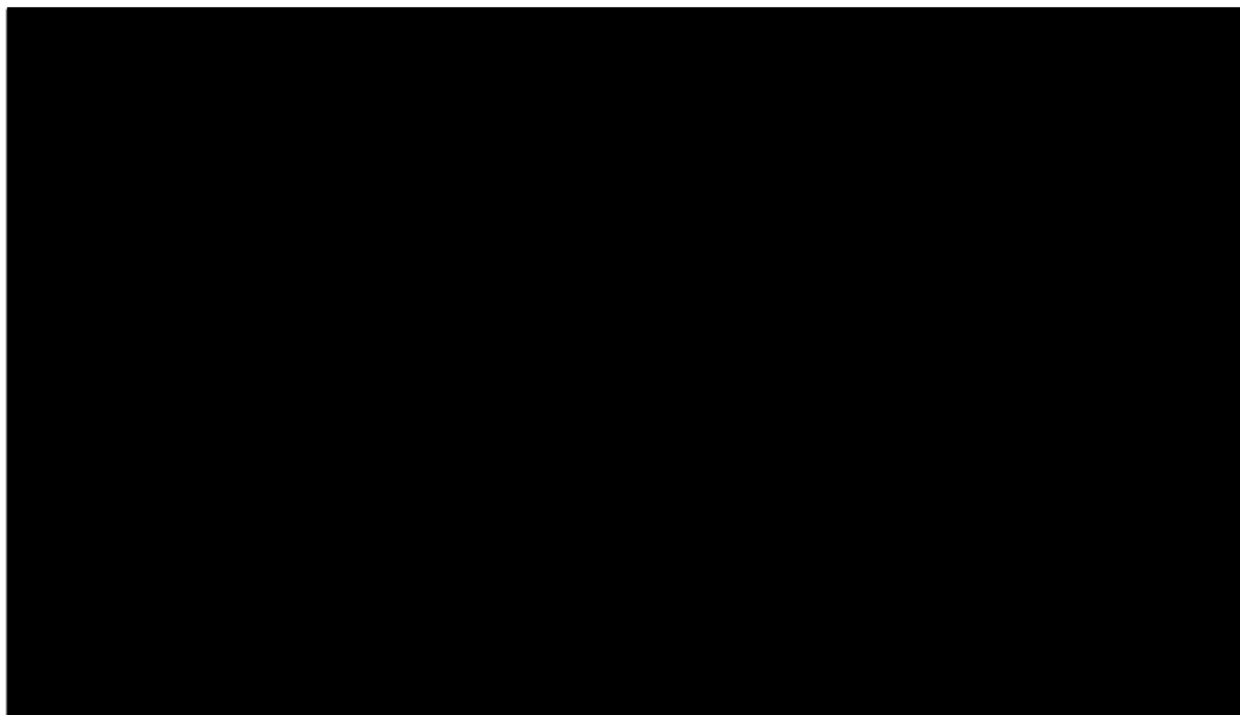
If you answer "YES", sign your names here, and then proceed to Section VII:

FOREPERSON

Date: _____, 1998

VII. CERTIFICATION

By signing below, each juror certifies that consideration of the race, color, religious beliefs, national origin, or sex of the defendant or the victim was not involved in reaching his or her individual decision, and that the individual juror would have made the same recommendation regarding a sentence for the crime or crimes in question no matter what the race, color, religious beliefs, national origin, or sex of the defendant, or the victim, would have been.



Date: FEBRUARY 10, 1998

UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION

UNITED STATES OF AMERICA)	DOCKET NO. 3:97CR23-P
)	
)	
v.)	
)	
)	
AQUILIA MARCIVICCI BARNETTE)	
_____)	

**SPECIAL VERDICT FORM REGARDING THE PUNISHMENT
TO BE IMPOSED UPON THE DEFENDANT FOR THE KILLING OF
DONALD LEE ALLEN IN COUNT EIGHT**

I. AGE OF DEFENDANT

Instructions: Answer "YES" or "NO".

Do you, the jury, unanimously find that the government has established beyond a reasonable doubt that:

1. The defendant was eighteen years of age or older at the time of the offense in Count Eight?

YES ✓

NO



Instructions: If you answered "NO" with respect to the determination in Section I, then stop

your deliberations, cross out Sections II, III, IV, V and VI of this form, and proceed to Section VII. Each juror should then carefully read the statement in Section VII, and sign in the appropriate place if the statement accurately reflects the manner in which he or she reached his or her decision. You should then advise the Court that you have reached a decision.

If you answered "YES" with respect to the determination in Section I, then proceed to Section II which follows.

II. REQUISITE MENTAL STATE

Instructions: For each of the following, answer "YES" or "NO".

1. Do you, the jury, unanimously find that the government has proven beyond a reasonable doubt that the defendant intentionally killed Donald Lee Allen in Count Eight?

YES ✓

NO _____



2. Do you, the jury, unanimously find that the government has proven beyond a reasonable doubt that the defendant intentionally inflicted serious bodily injury which resulted in the death of Donald Lee Allen in Count Eight?

YES ✓

NO _____



3. Do you, the jury, unanimously find that the government has proven beyond a reasonable doubt that the defendant intentionally engaged in conduct intending that Donald Lee Allen be killed and/or that lethal force be employed against Donald Lee Allen which resulted in the death of Donald Lee Allen in Count Eight?

YES ✓


NO _____


FOREPERSON

4. Do you, the jury, unanimously find that the government has proven beyond a reasonable doubt that the defendant intentionally engaged in conduct which the defendant knew would create a grave risk of death to a person, other than one of the participants in the offense and resulted in the death of Donald Lee Allen in Count Eight?

YES ✓

NO _____


FOREPERSON

Instructions: If you answered "NO" with respect to all of the determinations in this section, then stop your deliberations, cross out Sections III, IV, V and VI of this form, and proceed to Section VII. Each juror should carefully read the statement in Section VII, and sign in the appropriate place if the statement accurately reflects the manner in which he or she reached his or her decision. You should then advise the Court that you have reached a decision.

Instructions: If you answered "NO" with respect to both of the statutory aggravating factors in this Section III, then stop your deliberations, cross out Sections IV, V and VI of this form, and proceed to Section VII of this form. Each juror should then carefully read the statement in Section VII, and sign in the appropriate place if the statement accurately reflects the manner in which he or she reached his or her decision. You should then advise the Court that you have reached a decision.

If you found the requisite age in Section I, the requisite mental state in Section II and answered "YES" with respect to any one or both of the statutory aggravating factors in this Section III, then proceed to Section IV which follows.

IV. NON-STATUTORY AGGRAVATING FACTORS

Instructions: For each of the following, answer "YES" or "NO".

Do you, the jury, unanimously find that the government has established the existence of the following non-statutory aggravating factors beyond a reasonable doubt as to Count Eight:

1. Do you the jury unanimously find that the government has proven beyond a reasonable doubt that the defendant caused harm to the family of Donald Lee Allen as a result of the impact of the killing on the family of Donald Lee Allen?

YES ✓

NO

2. Do you the jury unanimously find that the government has proven beyond a reasonable doubt that the defendant is likely to commit criminal acts of violence in the future which would be a continuing and serious threat to society?

YES ✓

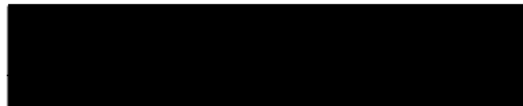
NO



3. Do you the jury unanimously find that the government has proven beyond a reasonable doubt that the defendant intentionally killed two people in that in addition to killing Donald Lee Allen, the defendant also killed Robin Williams?

YES ✓

NO



Instructions: Regardless of whether you answered "YES" or "NO" with respect to the three non-statutory aggravating factors in this Section IV, then proceed to Section V, which follows.

V. MITIGATING FACTORS

Instructions: For each of the following mitigating factors, in the space provided, indicate the number of jurors who have found the existence of that mitigating factor to be proven by a preponderance of the evidence as to Count Eight.

A finding with respect to a mitigating factor may be made by one or more of the members of the jury, and any member of the jury who finds the existence of a mitigating factor must consider such [a] factor[s] established in considering whether or not a sentence of death shall be imposed, regardless of the number of other jurors who agree that the factor has been established:

The statutory mitigating factors which the defendant contends have been proved by a preponderance of the evidence are:

1. The defendant's capacity to appreciate the wrongfulness of his conduct or to conform his conduct to the requirements of the law was significantly impaired, regardless of whether the capacity was so impaired as to constitute a defense to the charge.

Number of jurors who so find 6.

2. The defendant was under unusual and substantial duress, regardless of whether the duress was of such a degree as to constitute a defense to the charge.

Number of jurors who so find 6.

3. The other factors in the defendant's childhood, background or character mitigate against imposition of the death sentence.

Number of jurors who so find 1.

The non-statutory factor(s) in the defendant's background or character, the circumstances of the crime(s), or other relevant fact or circumstance as mitigation are as follows:

The evidence tends to show:

1. The defendant assisted police in locating Donald Allen's body.

Number of jurors who so find 12.

2. The defendant voluntarily turned himself in.

Number of jurors who so find 6.

3. The defendant had no positive family role model during his teenage years.

Number of jurors who so find 5.

4. The defendant grew up in a home which condoned domestic violence and he frequently saw his mother abused.

Number of jurors who so find 5.

5. The defendant was physically and emotionally abused by his father.

Number of jurors who so find 7.

6. The defendant was neglected by his mother when she was drunk and distraught over the break up of her marriage.

Number of jurors who so find 8.

7. The defendant was never allowed to resolve issues of childhood before he was thrust into a caretaker's role of caring for his mother, aunt, brother and aging grandfather when his mother divorced his father.

Number of jurors who so find 3.

8. The defendant has worked consistently since age fifteen and many times worked more than one job.

Number of jurors who so find 6.

9. The defendant grew up in a home where alcohol and drugs were used frequently.

Number of jurors who so find 12.

10. The defendant grew up in a home where violence was prevalent.

Number of jurors who so find 10.

11. After the beating in Atlanta, the defendant lost interest in school and stopped going to school.

Number of jurors who so find 5.

12. The defendant went to church with his grandfather, Jessie.

Number of jurors who so find 12.

13. The defendant pled guilty to two prior convictions and accepted responsibility for them.

Number of jurors who so find 4.

14. The defendant confessed to his friend Steve Austin and Steve's mother, Ann Austin, with regard to the fire incident in April of 1996.

Number of jurors who so find 11.

15. The defendant confessed to the police.

Number of jurors who so find 12.

16. Since his arrest the defendant has been a model inmate.

Number of jurors who so find 12.

Other non-statutory factors which the defendant contends are:

1. An unstable home life and frequent moves during childhood denied the defendant the skills to form normal peer relationships.

Number of jurors who so find 3.

2. The defendant showed remorse by trying to kill himself when he realized what he had done.

Number of jurors who so find 1.

3. The defendant prayed for the souls of his victims.

Number of jurors who so find 3.

4. The defendant exhibited psychological problems as a minor for which his family failed to seek medical attention or treatment.

Number of jurors who so find 5.

5. The defendant cooperated with the police.

Number of jurors who so find 12.

6. The defendant will do well in the structured environment that prison will offer.

Number of jurors who so find 5.

7. The defendant was abandoned by his father at the age of 10 due to the separation of his mother and father.

Number of jurors who so find 3.

8. The defendant was further rejected by his father at age 13 when blood tests revealed Derrick Barnette was not his father or his brother's father.

Number of jurors who so find 4.

9. The defendant attempted suicide prior to the crimes indicating that he was already having psychological problems.

Number of jurors who so find 6.

10. The age of the defendant at the time of the offense.

Number of jurors who so find 2.

11. If the defendant is sentenced to life without the possibility of release he will not be a future danger.

Number of jurors who so find 2.

12. The defendant's mother, young brother, and [children] will be harmed by the emotional trauma of his execution.

Number of jurors who so find 9.

The following extra spaces are provided to write in additional mitigating factors, if any, found by any one or more jurors. If none, write "NONE" and line out the extra spaces with a large "X". If more space is needed, write "CONTINUED" and use the reverse side of this page.

NONE

Number of jurors who so find _____

Number of jurors who so find _____

NONE

Number of jurors who so find _____

Number of jurors who so find _____

Instructions: Regardless of whether or not you choose to make written findings for the mitigating factors in Section V above, proceed to Section VI and Section VII which follow.

VI. DETERMINATION

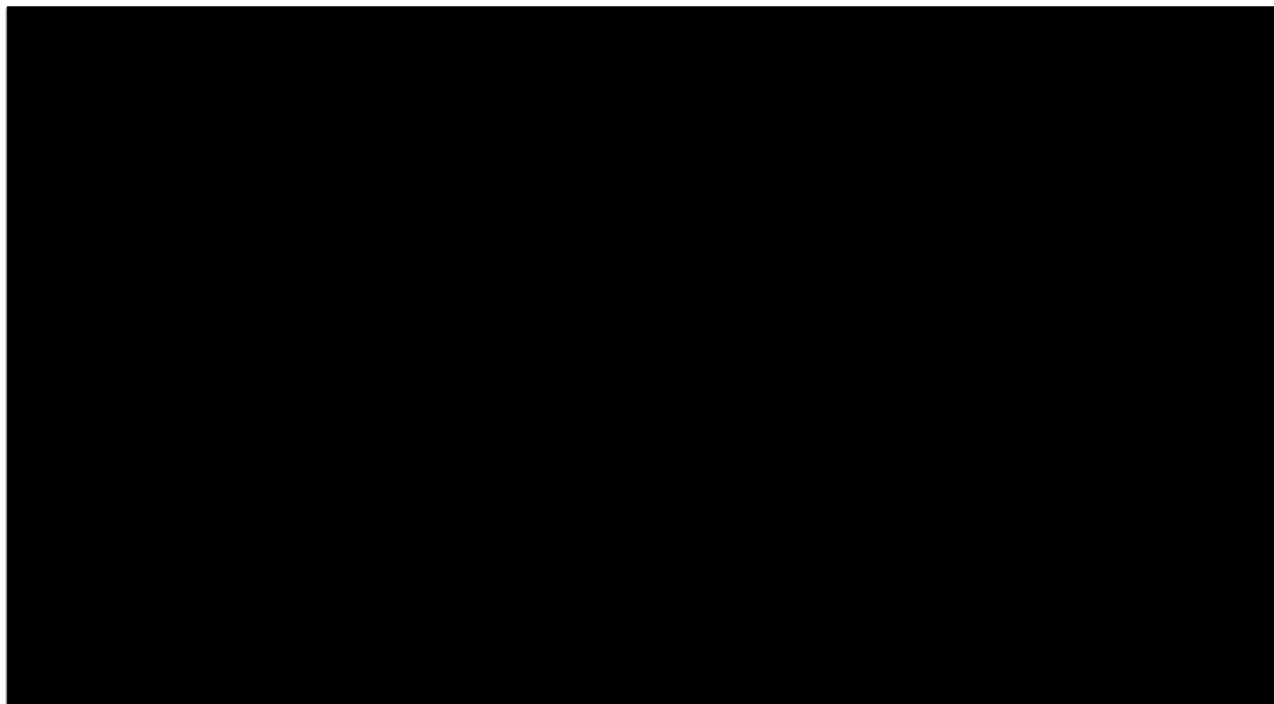
Based upon consideration of whether the aggravating factor or factors found to exist as to Count Eight sufficiently outweigh any mitigating factor or factors found to exist to justify a sentence of death, or in the absence of any mitigating factors, whether the aggravating factor or factors as to Count Eight are themselves sufficient to justify a sentence of death, indicate your recommendation using either the following form A, B, or C.

A. Death Sentence

Based upon consideration of whether the aggravating factors found to exist sufficiently outweigh any mitigating factor or factors found to exist to justify a sentence of death, or in the absence of any mitigating factors, whether the aggravating factors are themselves sufficient to justify a sentence of death, we recommend by unanimous vote that a sentence of death shall be imposed for the killing of Donald Lee Allen in Count Eight.

YES ✓NO

If you answer "YES", sign your names here, and then proceed to Section VII. If you answer "NO", the foreperson alone should sign, and you should proceed to Section VI (B):

Date: FEBRUARY 18, 1998

B. Sentence of Life in Prison Without Possibility of Release

Based upon consideration of whether the aggravating factors found to exist sufficiently outweigh any mitigating factor or factors found to exist to justify a sentence of death, or in the absence of any mitigating factors, whether the aggravating factors are themselves sufficient to justify a sentence of death, we recommend by unanimous vote that a sentence of life in prison without possibility of release shall be imposed for the killing of Donald Lee Allen in Count Eight.

YES _____

NO _____

If you answer "YES", sign your names here, and then proceed to Section VII. If you answer "NO", the foreperson alone should sign, and you should proceed to Section VI (C):

FOREPERSON

Date: _____, 1998

C. Lesser Sentence

Based upon consideration of whether the aggravating factors found to exist sufficiently outweigh any mitigating factor or factors found to exist to justify a sentence of death, or in the absence of any mitigating factors, whether the aggravating factors are themselves sufficient to justify a sentence of death, we recommend by unanimous vote that the Court sentence the defendant as provided by law up to life in prison without possibility of release for the killing of Donald Lee Allen in Count Eight.

YES _____

NO _____

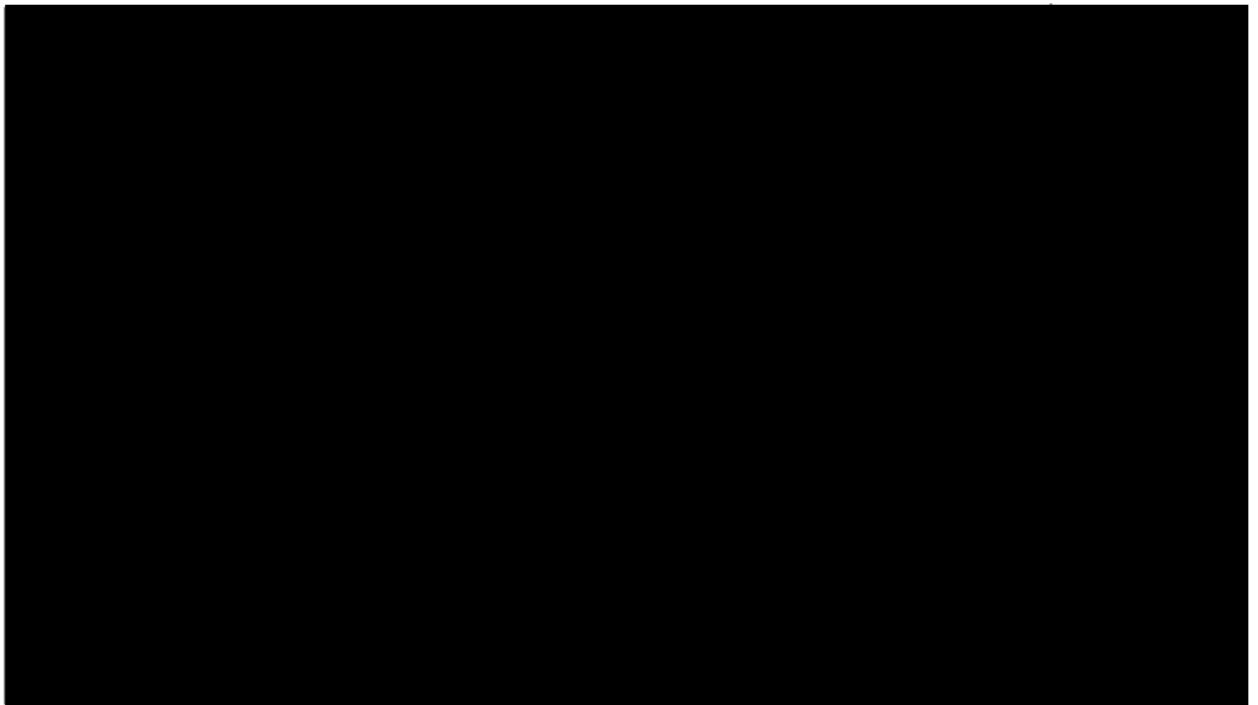
If you answer "YES", sign your names here, and then proceed to Section VII:

FOREPERSON

Date: _____, 1998

VII. CERTIFICATION

By signing below, each juror certifies that consideration of the race, color, religious beliefs, national origin, or sex of the defendant or the victim was not involved in reaching his or her individual decision, and that the individual juror would have made the same recommendation regarding a sentence for the crime or crimes in question no matter what the race, color, religious beliefs, national origin, or sex of the defendant, or the victim, would have been.



Date: FEBRUARY 10, 1998

UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION

UNITED STATES OF AMERICA)

DOCKET NO. 3:97CR23-P

v.)

AQUILIA MARCIVICCI BARNETTE)
_____)

**SPECIAL VERDICT FORM REGARDING THE PUNISHMENT
TO BE IMPOSED UPON THE DEFENDANT FOR THE KILLING OF
ROBIN WILLIAMS IN COUNT ELEVEN**

I. AGE OF DEFENDANT

Instructions: Answer "YES" or "NO".

Do you, the jury, unanimously find that the government has established beyond a reasonable doubt that:

1. The defendant was eighteen years of age or older at the time of the offense in Count Eleven?

YES ✓

NO _____



Instructions: If you answered "NO" with respect to the determination in Section I, then stop your deliberations, cross out Sections II, III, IV, V and VI of this form, and proceed to Section VII.

Each juror should then carefully read the statement in Section VII, and sign in the appropriate place if the statement accurately reflects the manner in which he or she reached his or her decision. You should then advise the Court that you have reached a decision.

If you answered "YES" with respect to the determination in Section I, then proceed to Section II which follows.

II. REQUISITE MENTAL STATE

Instructions: For each of the following, answer "YES" or "NO".

1. Do you, the jury, unanimously find that the government has proven beyond a reasonable doubt that the defendant intentionally killed Robin Williams in Count Eleven?

YES ✓

NO _____

[REDACTED]
FOREPERSON

2. Do you, the jury, unanimously find that the government has proven beyond a reasonable doubt that the defendant intentionally inflicted serious bodily injury which resulted in the death of Robin Williams in Count Eleven?

YES ✓

NO _____

[REDACTED]
FOREPERSON

3. Do you, the jury, unanimously find that the government has proven beyond a reasonable doubt that the defendant intentionally engaged in conduct intending that Robin Williams be killed and/or that lethal force be employed against Robin Williams which resulted in the death of Robin Williams in Count Eleven?

YES

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NO

☐

[REDACTED]

4. Do you, the jury, unanimously find that the government has proven beyond a reasonable doubt that the defendant intentionally engaged in conduct which the defendant knew would create a grave risk of death to a person, other than one of the participants in the offense and resulted in the death of Robin Williams in Count Eleven?

YES

☒

NO

☐

[REDACTED]

Instructions: If you answered "NO" with respect to all of the determinations in this section, then stop your deliberations, cross out Sections III, IV, V and VI of this form, and proceed to Section VII. Each juror should carefully read the statement in Section VII, and sign in the appropriate place if the statement accurately reflects the manner in which he or she reached his or her decision. You should then advise the Court that you have reached a decision.

If you answered "YES" with respect to one or more of the determinations in Section II, then proceed to Section III which follows.

III. STATUTORY AGGRAVATING FACTORS

Instructions: For each of the following, answer "YES" or "NO".

Do you, the jury, unanimously find that the government has established the existence of the following statutory aggravating factors beyond a reasonable doubt as to Count Eleven:

1. Do you the jury unanimously find that the government has proven beyond a reasonable doubt that in the commission of the offense in Count Eleven, the defendant knowingly created a grave risk of death to one or more persons in addition to the intended victim of the offense?

YES ✓

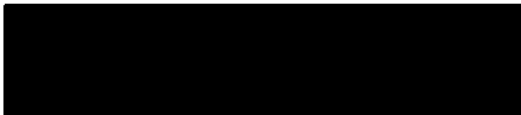
NO



2. Do you the jury unanimously find that the government has proven beyond a reasonable doubt that the defendant committed the offense in Count Eleven after substantial planning and premeditation to cause the death of Robin Williams.

YES ✓

NO



Instructions: If you answered "NO" with respect to both of the statutory aggravating factors in this Section III, then stop your deliberations, cross out Sections IV, V and VI of this form, and proceed to Section VII of this form. Each juror should then carefully read the statement in Section VII, and sign in the appropriate place if the statement accurately reflects the manner in which he or she reached his or her decision. You should then advise the Court that you have reached a decision.

If you found the requisite age in Section I, the requisite mental state in Section II and answered "YES" with respect to any one or both of the statutory aggravating factors in this Section III, then proceed to Section IV which follows.

IV. NON-STATUTORY AGGRAVATING FACTORS

Instructions: For each of the following, answer "YES" or "NO".

Do you, the jury, unanimously find that the government has established the existence of the following non-statutory aggravating factors beyond a reasonable doubt as to Count Eleven:

1. Do you the jury unanimously find that the government has proven beyond a reasonable doubt that the defendant caused harm to the family of Robin Williams as a result of the impact of the killing on the family of Robin Williams?

YES ✓

NO

2. Do you the jury unanimously find that the government has proven beyond a reasonable doubt that the defendant is likely to commit criminal acts of violence in the future which would be a continuing and serious threat to society?

YES ✓
NO _____

[REDACTED]

[REDACTED]

3. Do you the jury unanimously find that the government has proven beyond a reasonable doubt that the defendant intentionally killed two people in that in addition to killing Robin Williams, the defendant also killed Donald Lee Allen?

YES ✓
NO _____

[REDACTED]

Instructions: Regardless of whether you answered "YES" or "NO" with respect to the three non-statutory aggravating factors in this Section IV, then proceed to Section V, which follows.

V. MITIGATING FACTORS

Instructions: For each of the following mitigating factors, in the space provided, indicate the number of jurors who have found the existence of that mitigating factor to be proven by a preponderance of the evidence as to Count Eleven.

A finding with respect to a mitigating factor may be made by one or more of the members of the jury, and any member of the jury who finds the existence of a mitigating factor may consider such [a] factor[s] established in considering whether or not a sentence of death shall be imposed, regardless of the number of other jurors who agree that the factor has been established:

The statutory mitigating factors which the defendant contends have been proved by a preponderance of the evidence are:

1. The defendant's capacity to appreciate the wrongfulness of his conduct or to conform his conduct to the requirements of the law was significantly impaired, regardless of whether the capacity was so impaired as to constitute a defense to the charge.

Number of jurors who so find 0.

2. The defendant was under unusual and substantial duress, regardless of whether the duress was of such a degree as to constitute a defense to the charge.

Number of jurors who so find 0.

3. The other factors in the defendant's childhood, background or character mitigate against imposition of the death sentence.

Number of jurors who so find 1.

The non-statutory factor(s) in the defendant's background or character, the circumstances of the crime(s), or other relevant fact or circumstance as mitigation are as follows:

The evidence tends to show:

1. The defendant assisted police in locating Donald Allen's body.

Number of jurors who so find 1.

2. The defendant voluntarily turned himself in.

Number of jurors who so find 6.

3. The defendant had no positive family role model during his teenage years.

Number of jurors who so find 3.

4. The defendant grew up in a home which condoned domestic violence and he frequently saw his mother abused.

Number of jurors who so find 6.

5. The defendant was physically and emotionally abused by his father.

Number of jurors who so find 7.

6. The defendant was neglected by his mother when she was drunk and distraught over the break up of her marriage.

Number of jurors who so find 8.

7. The defendant was never allowed to resolve issues of childhood before he was thrust into a caretaker's role of caring for his mother, aunt, brother and aging grandfather when his mother divorced his father.

Number of jurors who so find 3.

8. The defendant has worked consistently since age fifteen and many times worked more than one job.

Number of jurors who so find 3.

9. The defendant grew up in a home where alcohol and drugs were used frequently.

Number of jurors who so find 11.

10. The defendant grew up in a home where violence was prevalent.

Number of jurors who so find 8.

11. After the beating in Atlanta, the defendant lost interest in school and stopped going to school.

Number of jurors who so find 5.

12. The defendant went to church with his grandfather, Jessie.

Number of jurors who so find 11.

13. The defendant pled guilty to two prior convictions and accepted responsibility for them.

Number of jurors who so find 3.

14. The defendant confessed to his friend Steve Austin and Steve's mother, Ann Austin, with regard to the fire incident in April of 1996.

Number of jurors who so find 11.

15. The defendant confessed to the police.

Number of jurors who so find 12.

16. Since his arrest the defendant has been a model inmate.

Number of jurors who so find 12.

Other non-statutory factors which the defendant contends are:

1. An unstable home life and frequent moves during childhood denied the defendant the skills to form normal peer relationships.

Number of jurors who so find 3.

2. The defendant showed remorse by trying to kill himself when he realized what he had done.

Number of jurors who so find 1.

3. The defendant prayed for the souls of his victims.

Number of jurors who so find 3.

4. The defendant exhibited psychological problems as a minor for which his family failed to seek medical attention or treatment.

Number of jurors who so find 5.

5. The defendant cooperated with the police.

Number of jurors who so find 12.

6. The defendant will do well in the structured environment that prison will offer.

Number of jurors who so find 5.

7. The defendant was abandoned by his father at the age of 10 due to the separation of his mother and father.

Number of jurors who so find 4.

8. The defendant was further rejected by his father at age 13 when blood tests revealed Derrick Barnette was not his father or his brother's father.

Number of jurors who so find 4.

9. The defendant attempted suicide prior to the crimes indicating that he was already having psychological problems.

Number of jurors who so find 2.

10. The age of the defendant at the time of the offense.

Number of jurors who so find 3.

11. If the defendant is sentenced to life without the possibility of release he will not be a future danger.

Number of jurors who so find 1.

12. The defendant's mother, young brother, and [children] will be harmed by the emotional trauma of his execution.

Number of jurors who so find 9.

The following extra spaces are provided to write in additional mitigating factors, if any, found by any one or more jurors. If none, write "NONE" and line out the extra spaces with a large "X". If more space is needed, write "CONTINUED" and use the reverse side of this page.

NONE

Number of jurors who so find _____

Number of jurors who so find _____

NONE

Number of jurors who so find _____

Number of jurors who so find _____

Instructions: Regardless of whether or not you choose to make written findings for the mitigating factors in Section V above, proceed to Section VI and Section VII which follow.

VI. DETERMINATION

Based upon consideration of whether the aggravating factor or factors found to exist as to Count Eleven sufficiently outweigh any mitigating factor or factors found to exist to justify a sentence of death, or in the absence of any mitigating factors, whether the aggravating factor or factors as to Count Eleven are themselves sufficient to justify a sentence of death, indicate your recommendation using either the following form A, B, or C.

A. Death Sentence

Based upon consideration of whether the aggravating factors found to exist sufficiently outweigh any mitigating factor or factors found to exist to justify a sentence of death, or in the absence of any mitigating factors, whether the aggravating factors are themselves sufficient to justify a sentence of death, we recommend by unanimous vote that a sentence of death shall be imposed for the killing of Robin Williams in Count Eleven.

YES ✓NO

If you answer "YES", sign your names here, and then proceed to Section VII. If you answer "NO", the foreperson alone should sign, and you should proceed to Section VI (B):

Date: FEBRUARY 10, 1998

B. Sentence of Life in Prison Without Possibility of Release

Based upon consideration of whether the aggravating factors found to exist sufficiently outweigh any mitigating factor or factors found to exist to justify a sentence of death, or in the absence of any mitigating factors, whether the aggravating factors are themselves sufficient to justify a sentence of death, we recommend by unanimous vote that a sentence of life in prison without possibility of release shall be imposed for the killing of Robin Williams in Count Eleven.

YES _____

NO _____

If you answer "YES", sign your names here, and then proceed to Section VII. If you answer "NO", the foreperson alone should sign, and you should proceed to Section VI (C):

_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
	FOREPERSON

Date: _____, 1998

C. Lesser Sentence

Based upon consideration of whether the aggravating factors found to exist sufficiently outweigh any mitigating factor or factors found to exist to justify a sentence of death, or in the absence of any mitigating factors, whether the aggravating factors are themselves sufficient to justify a sentence of death, we recommend by unanimous vote that the Court sentence the defendant as provided by law up to life in prison without possibility of release for the killing of Robin Williams in Count Eleven.

YES _____

NO _____

If you answer "YES", sign your names here, and then proceed to Section VII:

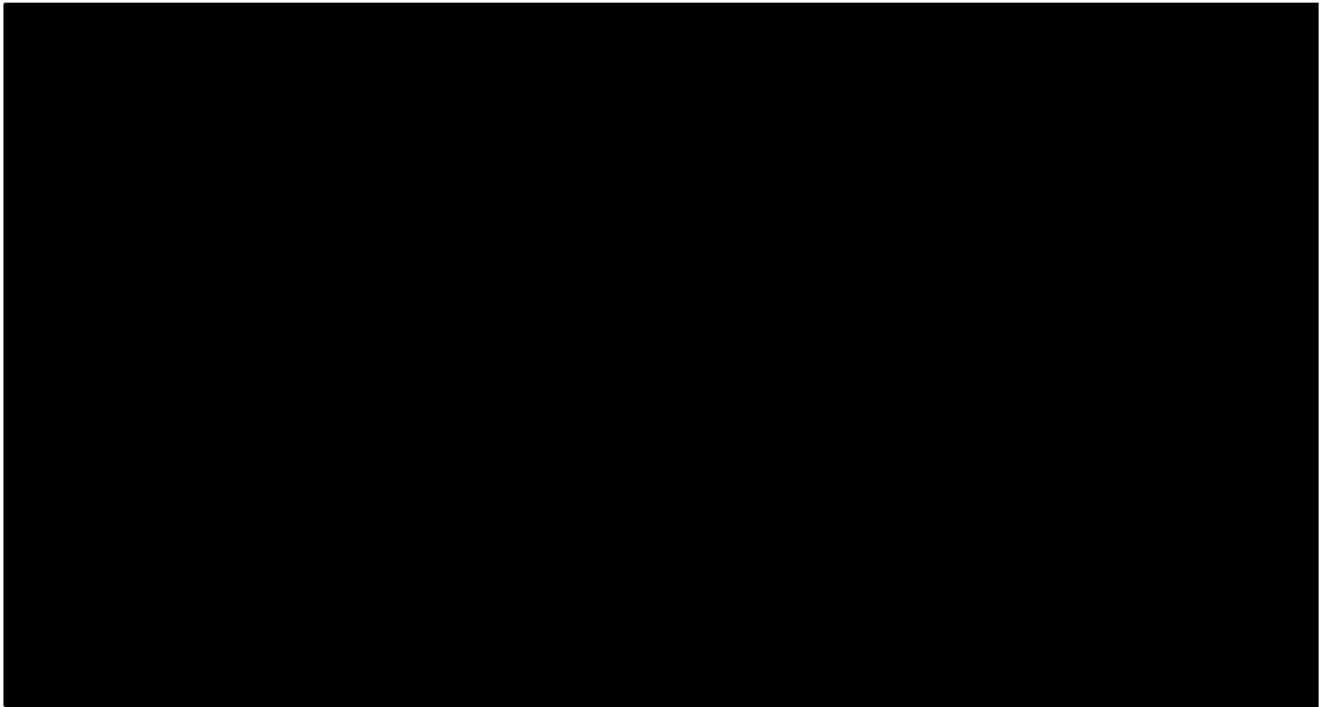
_____	_____
_____	_____
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_____	_____
_____	_____

FOREPERSON

Date: _____, 1998

VII. CERTIFICATION

By signing below, each juror certifies that consideration of the race, color, religious beliefs, national origin, or sex of the defendant or the victim was not involved in reaching his or her individual decision, and that the individual juror would have made the same recommendation regarding a sentence for the crime or crimes in question no matter what the race, color, religious beliefs, national origin, or sex of the defendant, or the victim, would have been.



Date: FEBRUARY 10, 1998