

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF NORTH CAROLINA  
Case Number: 3:97CR-23-V

UNITED STATES OF AMERICA

v.

AQUILIA MARCIVICCI BARNETTE,  
Defendant

AUG 15 2002

U.S. DISTRICT COURT  
W. DIST. OF N.C.

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

**I. AGE OF DEFENDANT**

Instructions: Answer "YES" or "NO".

1. Do you, the jury, unanimously find that the government has established beyond a reasonable doubt that the defendant was eighteen years of age or older at the time of the offense in Count Seven?

YES ☒

NO ☐

FOREPERSON

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

YES ✓

NO       

  
FOREPERSON

2. As to the charge in Count Seven, 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?

YES ✓

NO       

  
FOREPERSON

3. As to the charge in Count Seven, 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?

YES ✓

NO \_\_\_\_\_

  
FOREPERSON

4. As to the charge in Count Seven, 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?

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.

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",

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 \_\_\_\_\_

  
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 \_\_\_\_\_

  
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 – COUNT SEVEN**

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 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       

  
FOREPERSON

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 ✓

  
FOREPERSON

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       

  
FOREPERSON



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

Number of jurors who so find 11.

The non-statutory factor[s] in the defendant's background or character, the circumstances of the crime[s], or other relevant facts or circumstances as mitigation which the defendant

contents have been proven by the preponderance of the evidence are as follows:

1. Marc Barnette has accepted full responsibility for his actions.

Number of jurors who so find 1.

2. Marc Barnette has remorse.

Number of jurors who so find 1.

3. Marc Barnette was abused by his father.

Number of jurors who so find 1.

4. Marc Barnette was affected by growing up in a family environment of violence, drugs and alcohol abuse.

Number of jurors who so find 12.

5. Marc Barnette had repeated exposure to violence in the home.

Number of jurors who so find 12.

6. Marc Barnette attempted to protect his brother, Mario, from the damaging effects of parental violence and neglect.

Number of jurors who so find 12.

7. Marc Barnette had a history of untreated emotional problems.

Number of jurors who so find 9.

8. At the time of these crimes, Marc Barnette was experiencing a depressive episode.

Number of jurors who so find 0.

9. Marc Barnette does well in a structured environment.

Number of jurors who so find 2.

10. Marc Barnette cooperated with police.

Number of jurors who so find 12.

11. Marc Barnette can serve a useful purpose to others in a prison environment.

Number of jurors who so find 12.

12. At the time of these offenses, Marc Barnette was experiencing irrational and obsessive thoughts.

Number of jurors who so find 6.

13. Marc Barnette's brother and children will be harmed by his execution.

Number of jurors who so find 0.

In addition, there are three non-statutory mitigating factors which the Court instructs you to find. The Court instructs you that these three mitigating factors have been proven by the preponderance of the evidence and you should so indicate on this verdict form:

1. Marc Barnette was neglected by his mother.

Number of jurors who so find 12.

2. Marc Barnette turned himself in to police.

Number of jurors who so find 12.

3. Marc Barnette has been a model prisoner.

Number of jurors who so find 12.

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 \_\_\_\_\_.

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Number of jurors who so find \_\_\_\_\_.

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Number of jurors who so find \_\_\_\_\_.

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\_\_\_\_\_  
Number of jurors who so find \_\_\_\_\_.

Instructions: Regardless of whether or not you chose to write in additional mitigating factors and findings 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 in themselves sufficient to justify a sentence of death, indicate your recommendation using either the following form A or B.

**A. Death Sentence**

Based upon consideration of whether the aggravating factor or 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 factor(s) are in 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 as to Count Seven.

YES 12

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: August 13, 2002



**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 factor or factors are in 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 VII:

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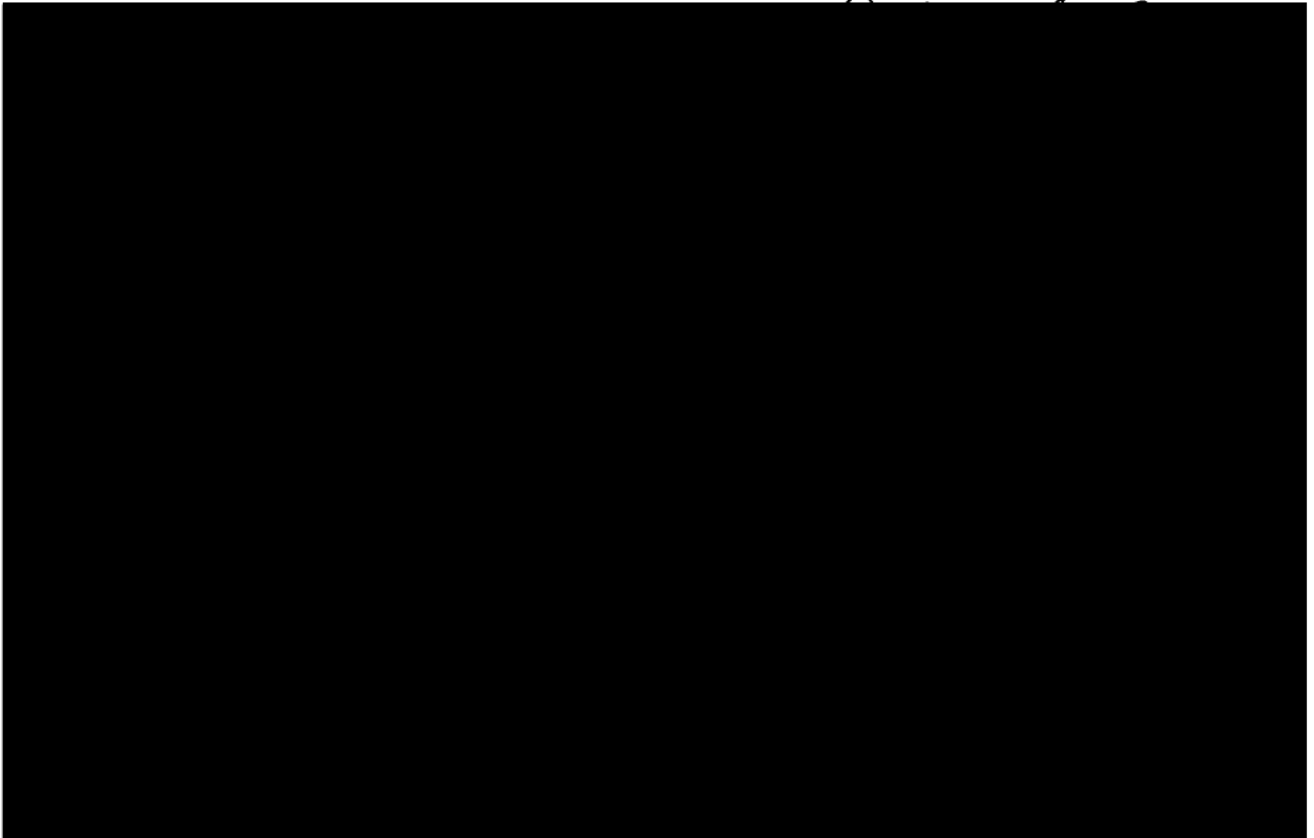
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FOREPERSON

Date: \_\_\_\_\_, 2002

## 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 in question no matter what the race, color, religious beliefs, national origin or sex of the defendant or the victim might have been.



Date: August 13, 2002

WHEN THE JURY HAS COMPLETED ITS WORK AS TO EACH COUNT AND FILLED  
OUT THE VERDICT SHEETS ACCORDINGLY, THE JURY WILL RETURN TO THE  
COURTROOM.

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF NORTH CAROLINA  
Case Number: 3:97CR-23-V

UNITED STATES OF AMERICA )

v. )

AQUILIA MARCIVICCI BARNETTE, )  
Defendant )  
\_\_\_\_\_ )

FILED  
CLERK

MAY 13 2002

U. S. DISTRICT COURT  
WESTERN DISTRICT OF NORTH CAROLINA

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

**I. AGE OF DEFENDANT**

Instructions: Answer "YES" or "NO".

1. Do you, the jury, unanimously find that the government has established beyond a reasonable doubt that the defendant was eighteen years of age or older at the time of the offense in Count Eight?

YES ☒

NO ☐

\_\_\_\_\_  
FOREPERSON

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

YES ✓

NO       

  
FOREPERSON

2. As to the charge in Count Eight, 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?

YES ✓

NO       

  
FOREPERSON

3. As to the charge in Count Eight, 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?

YES ✓

NO \_\_\_\_\_

FOREPERSON

4. As to the charge in Count Eight, 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?

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.

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",

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

YES ☒

NO ☐

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 Eight after substantial planning and premeditation to cause the death of Donald Lee Allen?

YES ☒

NO ☐

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 – COUNT EIGHT

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 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 ☐

  
FOREPERSON

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 ☒

  
FOREPERSON

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 ☐

  
FOREPERSON

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 the 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 0.

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

Number of jurors who so find 11.

The non-statutory factor[s] in the defendant's background or character, the circumstances of the crime[s], or other relevant facts or circumstances as mitigation which the defendant

contends have been proven by the preponderance of the evidence are as follows:

1. Marc Barnette has accepted full responsibility for his actions.

Number of jurors who so find 1.

2. Marc Barnette has remorse.

Number of jurors who so find 1.

3. Marc Barnette was abused by his father.

Number of jurors who so find 1.

4. Marc Barnette was affected by growing up in a family environment of violence, drugs and alcohol abuse.

Number of jurors who so find 12.

5. Marc Barnette had repeated exposure to violence in the home.

Number of jurors who so find 12.

6. Marc Barnette attempted to protect his brother, Mario, from the damaging effects of parental violence and neglect.

Number of jurors who so find 12.

7. Marc Barnette had a history of untreated emotional problems.

Number of jurors who so find 9.

8. At the time of these crimes, Marc Barnette was experiencing a depressive episode.

Number of jurors who so find 0.

9. Marc Barnette does well in a structured environment.

Number of jurors who so find 2.

10. Marc Barnette cooperated with police.

Number of jurors who so find 12.

11. Marc Barnette can serve a useful purpose to others in a prison environment.

Number of jurors who so find 12.

12. At the time of these offenses, Marc Barnette was experiencing irrational and obsessive thoughts.

Number of jurors who so find 6.

13. Marc Barnette's brother and children will be harmed by his execution.

Number of jurors who so find 0.

In addition, there are three non-statutory mitigating factors which the Court instructs you to find. The Court instructs you that these three mitigating factors have been proven by the preponderance of the evidence and you should so indicate on this verdict form:

1. Marc Barnette was neglected by his mother.

Number of jurors who so find 12.

2. Marc Barnette turned himself in to police.

Number of jurors who so find 12.

3. Marc Barnette has been a model prisoner.

Number of jurors who so find 12.

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 \_\_\_\_\_.

\_\_\_\_\_  
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Number of jurors who so find \_\_\_\_\_.

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Number of jurors who so find \_\_\_\_\_.

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Number of jurors who so find \_\_\_\_\_.

Instructions: Regardless of whether or not you chose to write in additional mitigating factors and findings 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 in themselves sufficient to justify a sentence of death, indicate your recommendation using either the following form A or B.

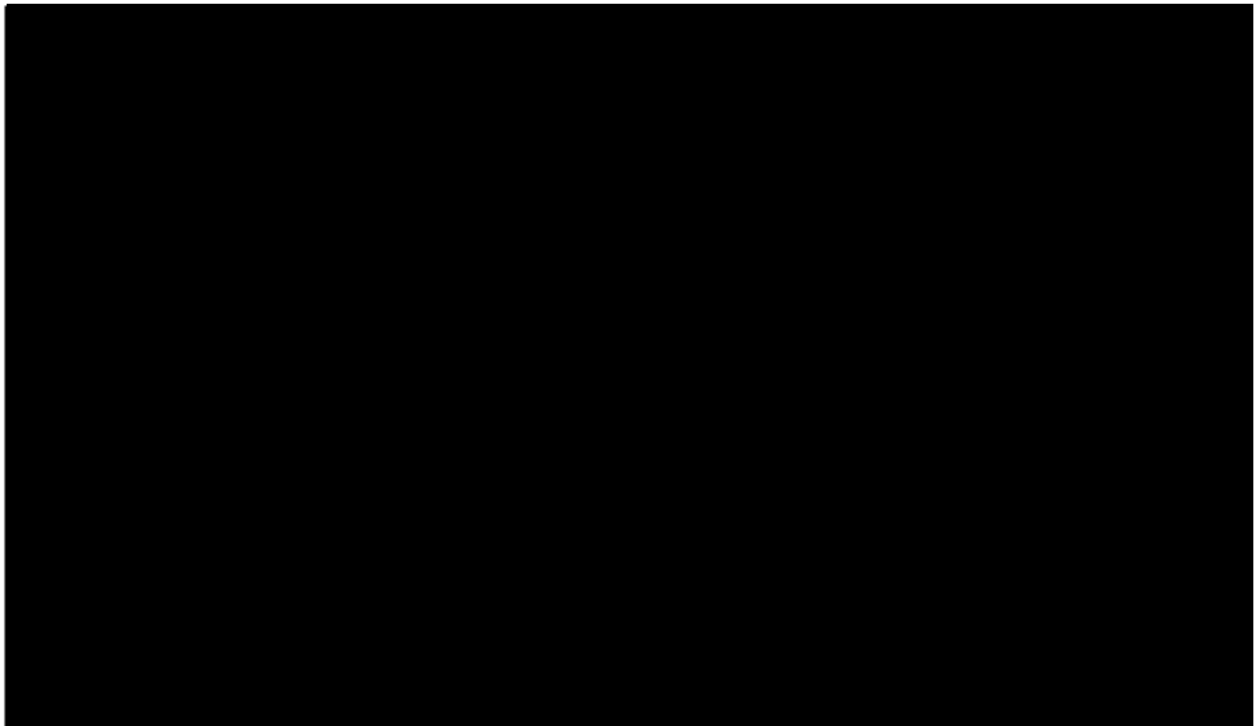
A. Death Sentence

Based upon consideration of whether the aggravating factor or 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 factor(s) are in 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 as to Count Eight.

YES   L  /  

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):



FOREPERSON

Date: August 13, 2002

**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 factor or factors are in 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 VII:

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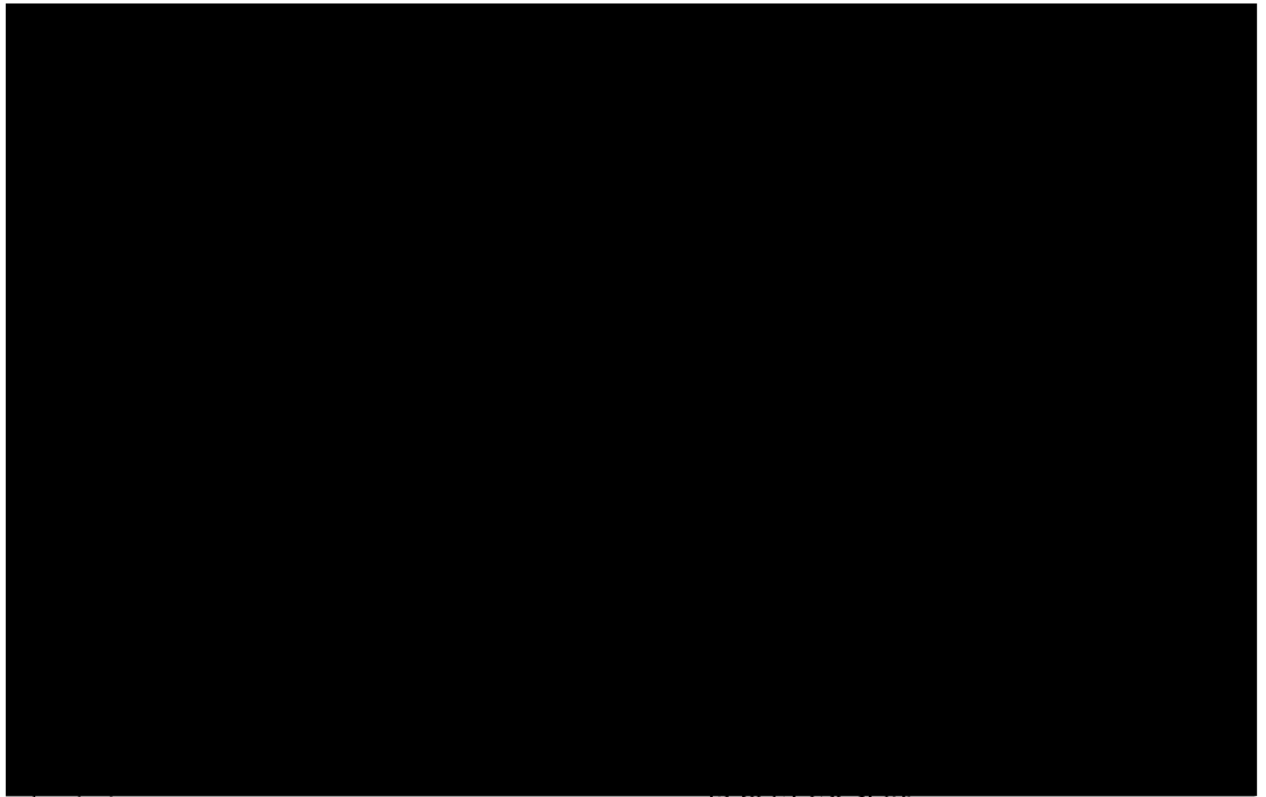
\_\_\_\_\_

FOREPERSON

Date: \_\_\_\_\_, 2002

## 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 in question no matter what the race, color, religious beliefs, national origin or sex of the defendant or the victim might have been.



Date: August 13, 2002

WHEN THE JURY HAS COMPLETED ITS WORK AS TO EACH COUNT AND FILLED OUT THE VERDICT SHEETS ACCORDINGLY, THE JURY WILL RETURN TO THE COURTROOM.

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF NORTH CAROLINA  
Case Number: 3:97CR-23-V

UNITED STATES OF AMERICA

v.

AQUILIA MARCIVICCI BARNETTE,  
Defendant

AUG 15 2002

U. S. DISTRICT COURT  
WESTERN DISTRICT OF NORTH CAROLINA

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

**I. AGE OF DEFENDANT**

Instructions: Answer "YES" or "NO".

1. As to the charge in Count Eleven, do you, the jury, unanimously find that the government has established beyond a reasonable doubt that the defendant was eighteen years of age or older at the time of the offense?

YES ☒

NO ☐

FOREPERSON

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.

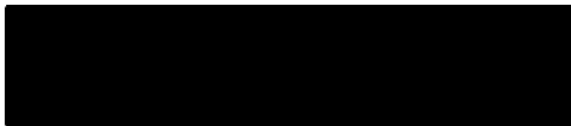
**II. REQUISITE MENTAL STATE**

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

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

YES ✓

NO       

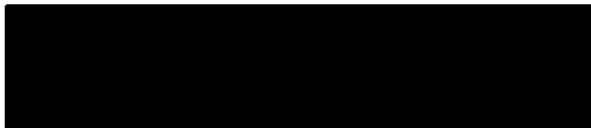


FOREPERSON

2. As to the charge in Count Eleven, 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?

YES ✓

NO       



FOREPERSON

3. As to the charge in Count Eleven, 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?

YES ✓

NO \_\_\_\_\_

FOREPERSON

4. As to the charge in Count Eleven, 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?

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.



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",

1. Do you, the jury, unanimously find that the government has proven beyond a reasonable doubt that the defendant committed the offense in Count Eleven while knowingly creating a grave risk of death to one or more persons in addition to the intended victim, namely, Bertha Williams and Sonji Hill?

YES ✓

NO \_\_\_\_\_

  
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 Eleven after substantial planning and premeditation to cause the death of Robin Williams?

YES ✓

NO \_\_\_\_\_

  
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 – COUNT ELEVEN

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 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       

  
FOREPERSON

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 ✓

  
FOREPERSON

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       

  
FOREPERSON

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

Number of jurors who so find 11.

The non-statutory factor[s] in the defendant's background or character, the circumstances of the crime[s], or other relevant facts or circumstances as mitigation which the defendant

contends have been proven by the preponderance of the evidence are as follows:

1. Marc Barnette has accepted full responsibility for his actions.

Number of jurors who so find 1.

2. Marc Barnette has remorse.

Number of jurors who so find 1.

3. Marc Barnette was abused by his father.

Number of jurors who so find 1.

4. Marc Barnette was affected by growing up in a family environment of violence, drugs and alcohol abuse.

Number of jurors who so find 12.

5. Marc Barnette had repeated exposure to violence in the home.

Number of jurors who so find 12.

6. Marc Barnette attempted to protect his brother, Mario, from the damaging effects of parental violence and neglect.

Number of jurors who so find 12.

7. Marc Barnette had a history of untreated emotional problems.

Number of jurors who so find 9.

8. At the time of these crimes, Marc Barnette was experiencing a depressive episode.

Number of jurors who so find 0.

9. Marc Barnette does well in a structured environment.

Number of jurors who so find 2.

10. Marc Barnette cooperated with police.

Number of jurors who so find 12.

11. Marc Barnette can serve a useful purpose to others in a prison environment.

Number of jurors who so find 12.

12. At the time of these offenses, Marc Barnette was experiencing irrational and obsessive thoughts.

Number of jurors who so find 6.

13. Marc Barnette's brother and children will be harmed by his execution.

Number of jurors who so find 0.



In addition, there are three non-statutory mitigating factors which the Court instructs you to find. The Court instructs you that these three mitigating factors have been proven by the preponderance of the evidence and you should so indicate on this verdict form:

1. Marc Barnette was neglected by his mother.

Number of jurors who so find 12.

2. Marc Barnette turned himself in to police.

Number of jurors who so find 12.

3. Marc Barnette has been a model prisoner.

Number of jurors who so find 12.

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 \_\_\_\_\_~~

~~\_\_\_\_\_~~

~~Number of jurors who so find \_\_\_\_\_~~

~~\_\_\_\_\_~~

~~Number of jurors who so find \_\_\_\_\_~~

Instructions: Regardless of whether or not you chose to write in additional mitigating factors and findings 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 in themselves sufficient to justify a sentence of death, indicate your recommendation using either the following form A or B.

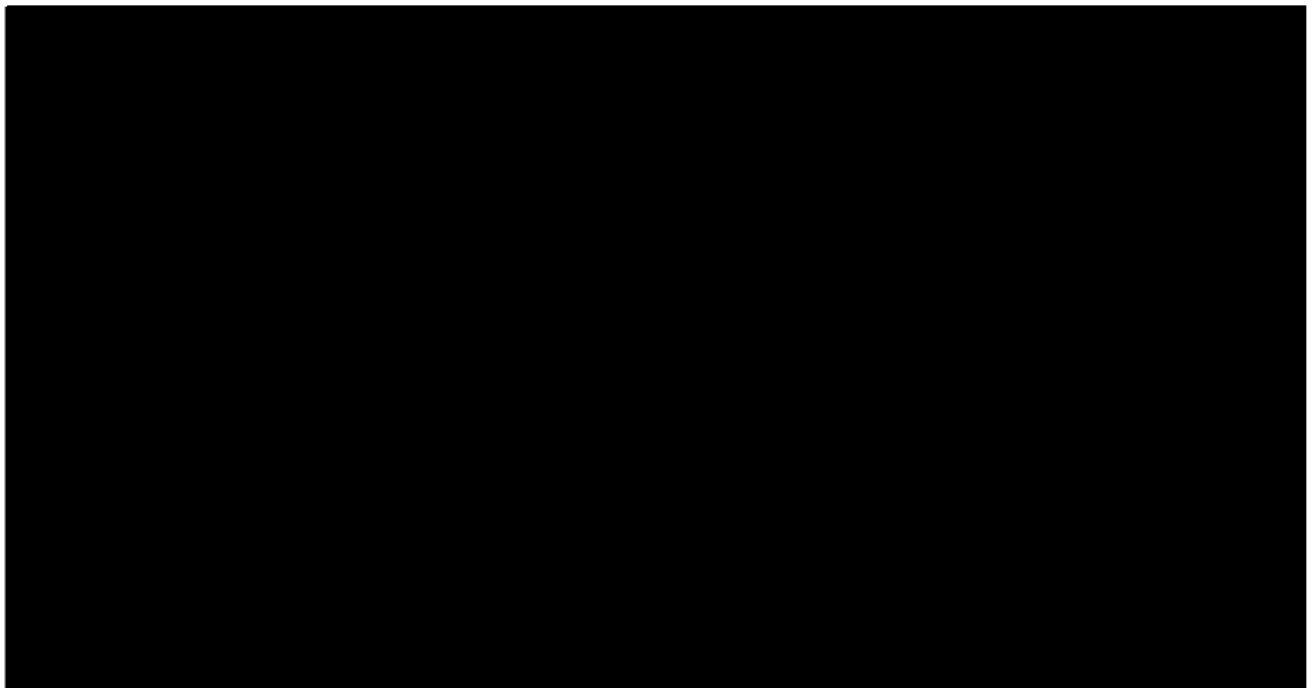
A. Death Sentence

Based upon consideration of whether the aggravating factor or 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 factor(s) are in 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 as to 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):



FOREPERSON

Date: August 13, 2002

**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 factor or factors are in 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 as to 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 VII:

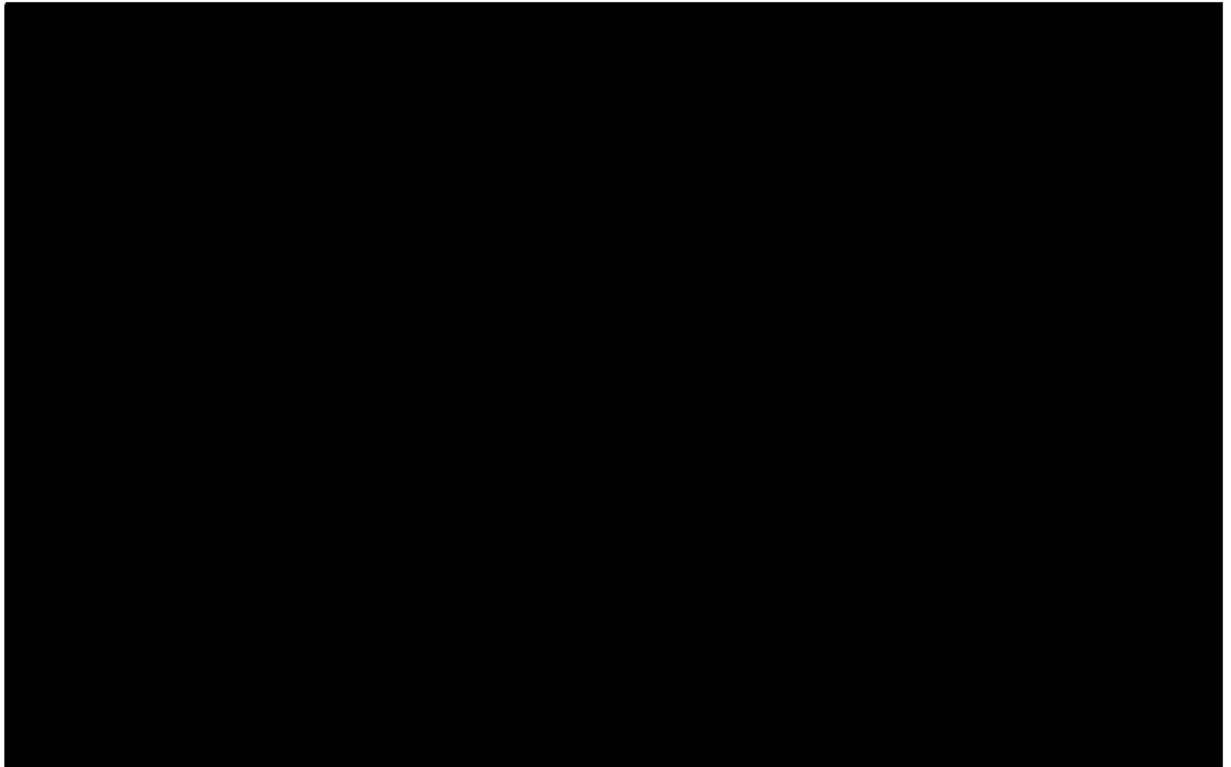
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____

FOREPERSON

Date: \_\_\_\_\_, 2002

**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 in question no matter what the race, color, religious beliefs, national origin or sex of the defendant or the victim might have been.



FOREPERSON

Date: August 13, 2002

WHEN THE JURY HAS COMPLETED ITS WORK AS TO EACH COUNT AND FILLED OUT THE VERDICT SHEETS ACCORDINGLY, THE JURY WILL RETURN TO THE COURTROOM.