

IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF MISSOURI
WESTERN DIVISION

UNITED STATES OF AMERICA,)
)
 Plaintiff,)
)
 v.) No. 98-00149-03-CR-W-4
)
 ARBOLEDA ORTIZ,)
)
 Defendant.)

SPECIAL VERDICT FORM
DEFENDANT ARBOLEDA ORTIZ

COUNT II - USING OR CARRYING A FIREARM DURING AND IN RELATION TO
A DRUG TRAFFICKING CRIME WHICH RESULTED IN THE MURDER OF
JULIAN COLON

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:

The defendant was eighteen years of age or older at the time
of the offense.

YES ✓

NO

[REDACTED]
Foreperson [REDACTED]

Instructions: If you answered "NO" with respect to the
determination in this section, 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 this Section I, then continue your deliberations in accordance with the court's instructions and proceed to Section II which follows.

II. REQUISITE MENTAL STATE

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

Do you, the jury, unanimously find that the government has established beyond a reasonable doubt that the defendant intentionally aided and abetted the killing of Julian Colon.

YES _____

NO _____



Instructions: If you answered "NO" with respect to 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 determination[s] in this Section II, then proceed to Section III which follows.

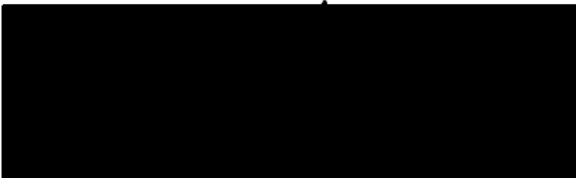
III. STATUTORY AGGRAVATING FACTORS

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

1. Do you, the jury, unanimously find that the government has established beyond a reasonable doubt that the defendant committed the offense in the expectation of the receipt of anything of pecuniary value, as set out in Instruction No. 7?

YES _____

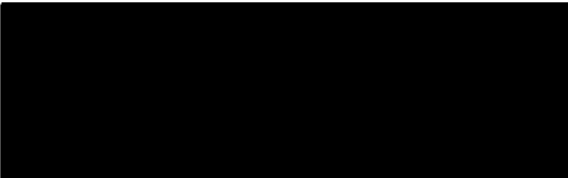
NO _____



2. Do you, the jury, unanimously find that the government has established beyond a reasonable doubt that the defendant committed the offense of murder of Julian Colon after substantial planning and premeditation to cause the death of a person as set out in Instruction No. 7?

YES _____

NO _____

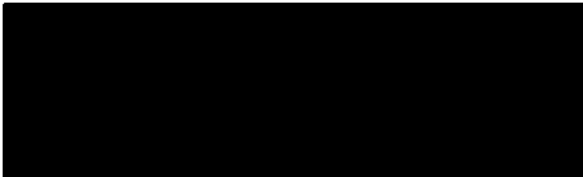


3. Do you, the jury, unanimously find that the government has established beyond a reasonable doubt that the defendant in concert with others intentionally attempted to kill more than one

person in a single criminal episode as set out in Instruction No. 7?

YES

NO



Instructions: If you answered "NO" with respect to all 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 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.

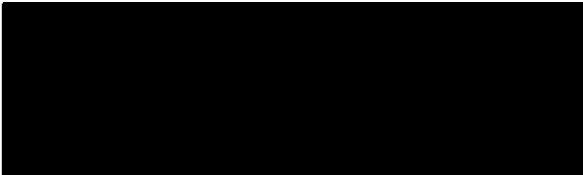
If you found the requisite age in Section I, the requisite mental state in Section II and answered "Yes" with respect to one or more of the aggravating factors in this Section III, proceed to Section IV which follows.

IV. NON-STATUTORY AGGRAVATING FACTORS

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

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

YES

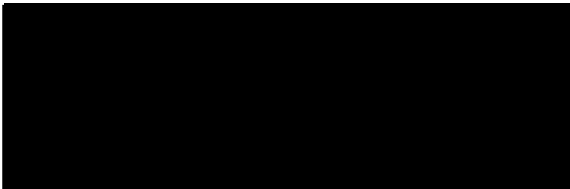


NO _____

2. Do you, the jury, unanimously find that the government has established beyond a reasonable doubt that the defendant's vile conduct in committing the offense, apart from the other aggravating factors, was substantially greater in degree than that described in the definition of the crime?

YES _____

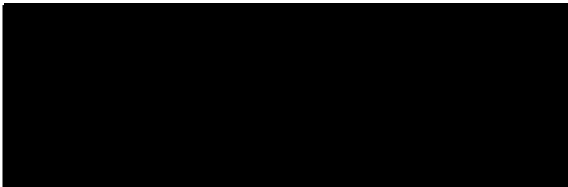
NO _____



3. Do you, the jury, unanimously find that the government has established beyond a reasonable doubt that Julian Colon's personal characteristics as an individual human being and the impact of the death of Julian Colon upon his family makes this crime more worthy of the death penalty than other murders?

YES _____

NO _____



V. MITIGATING FACTORS

Instructions: For each of the following mitigating factors, indicate, in the space provided, the number of jurors who have found the existence of that mitigating factor to be

proven by a preponderance of the evidence.

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 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:

A. Statutory Mitigating Factors

1. Arboleda Ortiz is punishable as a principal only because he aided and abetted in the offense, which was committed by another, but his participation was relatively minor, regardless of whether the participation was so minor as to constitute a defense to the charge.

Number of jurors who so find 0 .

2. Arboleda Ortiz does not have a significant prior history of other criminal conduct.

Number of jurors who so find 9 .

3. Other factors in Arboleda Ortiz's background, record, or character, or any other circumstance of the offenses, that mitigate against imposition of the death sentence. You are permitted to consider anything else about the commission of the crime or about Arboleda Ortiz's background or character that would mitigate

against imposition of the death penalty. If there are any such mitigating factors, whether or not specifically argued by defense counsel, which are established by a preponderance of the evidence, you are free to consider them in your deliberations. Number of jurors who so find 10.

B. Non-Statutory Mitigating Factors

The non-statutory mitigating factors the defendant asserts he has proven by a preponderance of the evidence are:

1. Arboleda Ortiz did not participate in binding Julian Colon with duct tape.

Number of jurors who so find 12.

2. Arboleda Ortiz did not participate in beating Julian Colon.

Number of jurors who so find 10.

3. Arboleda Ortiz did not participate in threatening Julian Colon.

Number of jurors who so find 10.

4. Arboleda Ortiz did not shoot Julian Colon.

Number of jurors who so find 12.

5. If sentenced to life in prison without possibility of parole, Arboleda Ortiz will serve his time peaceably.
Number of jurors who so find 0.

6. Julian Colon risked his own life on November 28, 1998 because of his occupation, his lifestyle and his conduct on that day.
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: Proceed to Section VI and Section VII which follow.

VI. DETERMINATION

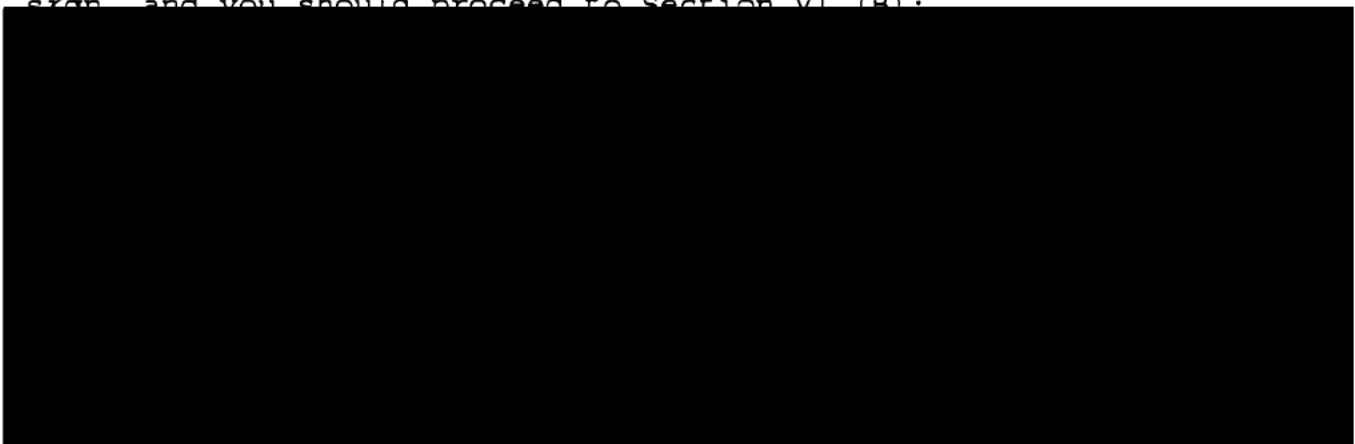
A. Death Sentence

Based upon consideration of whether the aggravating factors found to exist sufficiently outweigh any mitigating factor or factors found to exist, or in the absence of any mitigating factors, whether the aggravating factors are themselves sufficient to justify a sentence of death,

We determine, by unanimous vote, that a sentence of death shall be imposed:

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: May 4, 2000

B. Sentence of Life in Prison Without Possibility of Release

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

YES _____

NO _____

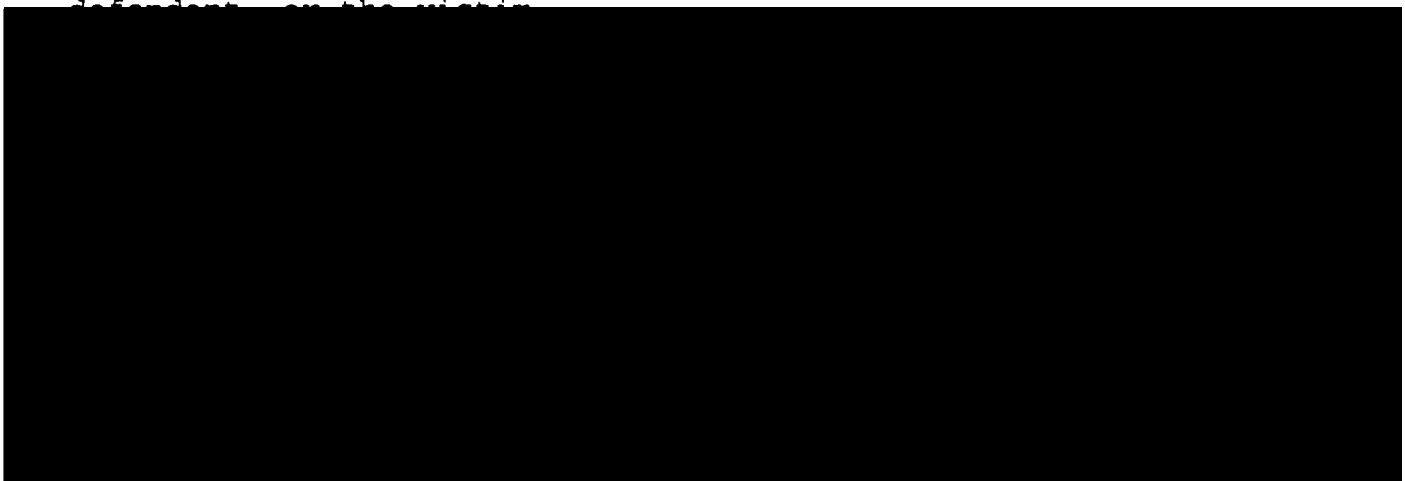
If you answer "YES," sign your names here, and then proceed to Section VII.

FOREPERSON

Date: _____, 2000

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.



Date: May 4, 2000

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UNITED STATES OF AMERICA,)
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DEFENDANT ARBOLEDA ORTIZ

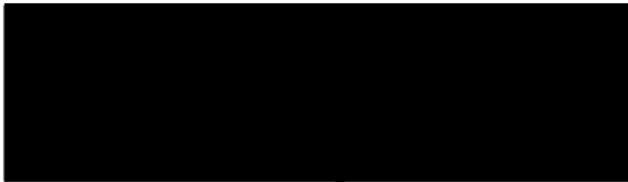
COUNT III - USE OF INTERSTATE COMMERCE FACILITIES IN THE
COMMISSION OF A MURDER-FOR-HIRE SCHEME WHICH RESULTED IN THE
DEATH OF JULIAN COLON

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:

The defendant was eighteen years of age or older at the time
of the offense.

YES ✓
NO



Instructions: If you answered "NO" with respect to the
determination in this section, 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 this Section I, then continue your deliberations in accordance with the court's instructions and proceed to Section II which follows.

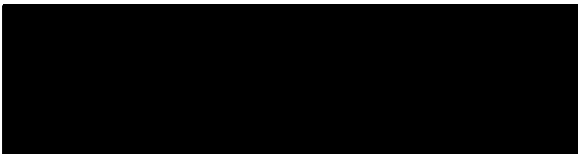
II. REQUISITE MENTAL STATE

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

Do you, the jury, unanimously find that the government has established beyond a reasonable doubt that the defendant intentionally aided and abetted the killing of Julian Colon.

YES ✓

NO



Instructions: If you answered "NO" with respect to 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 determination[s] in this 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 established beyond a reasonable doubt that the defendant committed the offense in the expectation of the receipt of anything of pecuniary value, as set out in Instruction No. 7?

YES _____

NO _____

2. Do you, the jury, unanimously find that the government has established beyond a reasonable doubt that the defendant committed the offense of murder of Julian Colon after substantial planning and premeditation to cause the death of a person as set out in Instruction No. 7?

YES _____

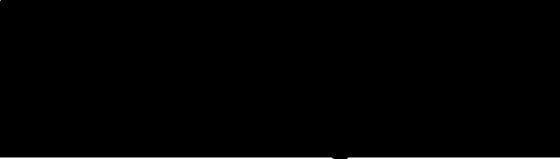
NO _____

3. Do you, the jury, unanimously find that the government has established beyond a reasonable doubt that the defendant in concert with others intentionally attempted to kill more than one

person in a single criminal episode as set out in Instruction No. 7?

YES ✓

NO _____



Instructions: If you answered "NO" with respect to all 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 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.

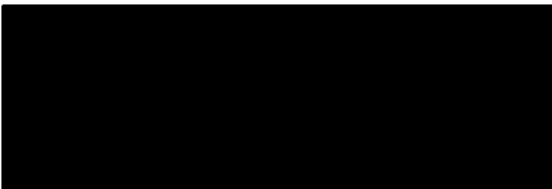
If you found the requisite age in Section I, the requisite mental state in Section II and answered "Yes" with respect to one or more of the aggravating factors in this Section III, proceed to Section IV which follows.

IV. NON-STATUTORY AGGRAVATING FACTORS

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

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

YES ✓

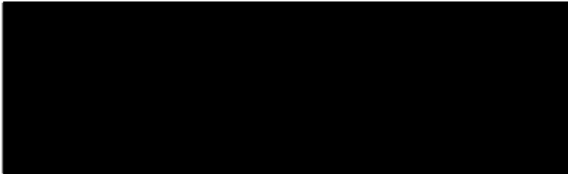


NO _____

2. Do you, the jury, unanimously find that the government has established beyond a reasonable doubt that the defendant's vile conduct in committing the offense, apart from the other aggravating factors, was substantially greater in degree than that described in the definition of the crime?

YES _____

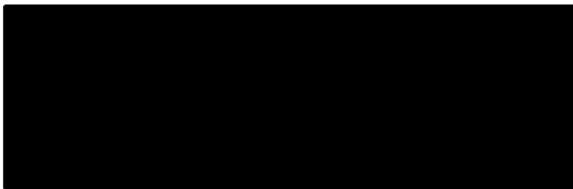
NO _____



3. Do you, the jury, unanimously find that the government has established beyond a reasonable doubt that Julian Colon's personal characteristics as an individual human being and the impact of the death of Julian Colon upon his family makes this crime more worthy of the death penalty than other murders?

YES _____

NO _____



V. MITIGATING FACTORS

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

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 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:

A. Statutory Mitigating Factors

1. Arboleda Ortiz is punishable as a principal only because he aided and abetted in the offense, which was committed by another, but his participation was relatively minor, regardless of whether the participation was so minor as to constitute a defense to the charge.

Number of jurors who so find 0.

2. Arboleda Ortiz does not have a significant prior history of other criminal conduct.

Number of jurors who so find 9.

3. Other factors in Arboleda Ortiz's background, record, or character, or any other circumstance of the offenses, that mitigate against imposition of the death sentence. You are permitted to consider anything else about the commission of the crime or about Arboleda Ortiz's background or character that would mitigate against imposition of the death penalty. If there are any such mitigating factors, whether or not

specifically argued by defense counsel, which are established by a preponderance of the evidence, you are free to consider them in your deliberations.

Number of jurors who so find 3.

B. Non-Statutory Mitigating Factors

The non-statutory mitigating factors the defendant asserts he has proven by a preponderance of the evidence are:

1. Arboleda Ortiz did not participate in binding Julian Colon with duct tape.

Number of jurors who so find 12.

2. Arboleda Ortiz did not participate in beating Julian Colon.

Number of jurors who so find 10.

3. Arboleda Ortiz did not participate in threatening Julian Colon.

Number of jurors who so find 0.

4. Arboleda Ortiz did not shoot Julian Colon.

Number of jurors who so find 12.

5. If sentenced to life in prison without possibility of parole, Arboleda Ortiz will serve his time peaceably.

Number of jurors who so find 0.

6. Julian Colon risked his own life on November 28, 1998 because of his occupation, his lifestyle and his conduct on that day.

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: Proceed to Section VI and Section VII which follow.

VI. DETERMINATION

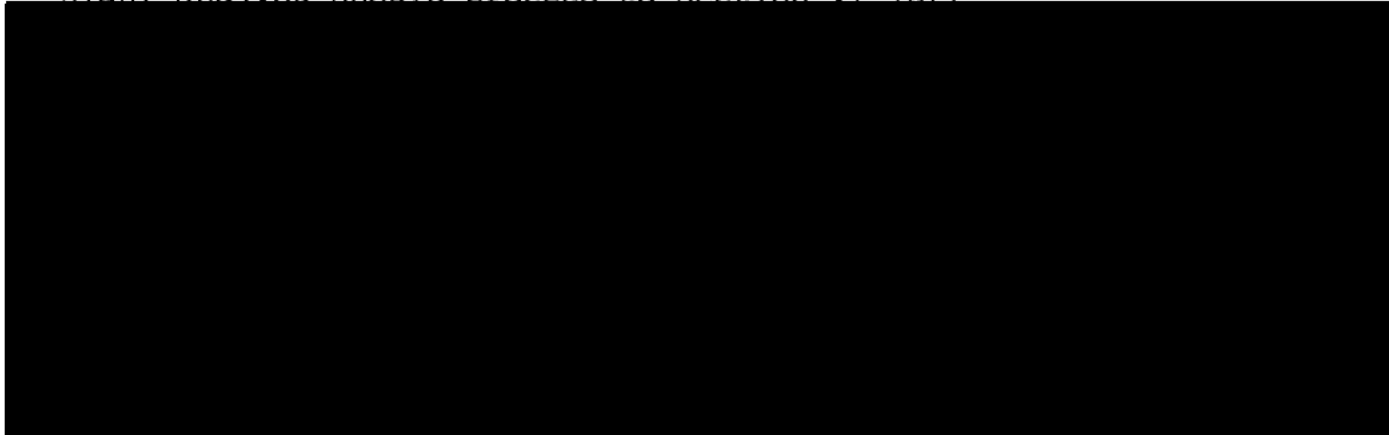
A. **Death Sentence**

Based upon consideration of whether the aggravating factors found to exist sufficiently outweigh any mitigating factor or factors found to exist, or in the absence of any mitigating factors, whether the aggravating factors are themselves sufficient to justify a sentence of death,

We determine, by unanimous vote, that a sentence of death shall be imposed:

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: May 4, 2000

B. Sentence of Life in Prison Without Possibility of Release

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

YES _____

NO _____

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

FOREPERSON

Date: _____, 2000

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.



Date: May 4, 2000