

Capital Case Law and Death Penalty Litigation

May 29, 2024

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James Floyd Ammons, Jr.,
Senior Resident Superior Court Judge
14th Judicial District
910-322-7350

PLEASE COMPLETE THIS JUROR QUESTIONNAIRE AND BRING IT WITH YOU WHEN YOU REPORT FOR JURY SERVICE
JUROR QUESTIONNAIRE

THIS QUESTIONNAIRE WILL EXPEDITE JURY SELECTION AND WILL NOT BE USED FOR ANY OTHER PURPOSE
 THANK YOU FOR YOUR COOPERATION.

PLEASE PRINT

PERSONAL INFORMATION

FULL NAME (LAST/FIRST/MIDDLE)		DATE OF BIRTH	PLACE OF BIRTH	RACE	SEX
PART OF COUNTY CURRENTLY RESIDING (NOT ADDRESS)			LIST LEVEL AND EXTENT OF YOUR EDUCATION		

EMPLOYMENT INFORMATION

CURRENT EMPLOYER	LOCATION OF EMPLOYMENT	LENGTH OF EMPLOYMENT
JOB DISCRIPTION AND OCCUPATION		LIST ANY SUPERVISORY RESPONSIBILITIES

MILITARY SERVICE INFORMATION

HAVE YOU SERVE IN THE ARMED FORCES? () YES () NO	DATES	BRANCH AND HIGHEST RANK
DUTIES		

FAMILY HISTORY INFORMATION

CURRENT MARITAL STATUS (single / married / divorced / widowed / separated)	SPOUSE'S NAME	SPOUSE'S CURRENT EMPLOYER
SPOUSE'S OCCUPATION / LENGTH OF EMPLOYMENT / JOB DISCRIPTION		LEVEL AND EXTENT OF EDUCATION

LIST NUMBER OF CHILDEN:	<i>(provide the sex / age / occupation of each child (if any) below. Use back if needed)</i>	
SEX	AGE	OCCUPATION
SEX	AGE	OCCUPATION
SEX	AGE	OCCUPATION
SEX	AGE	OCCUPATION
SEX	AGE	OCCUPATION
SEX	AGE	OCCUPATION

RELIGIOUS/ BUSINESS/ SOCIAL INFORMATION

ARE YOU A MEMBER OF A LOCAL CHURCH, TEMPLE OR OTHER RELIGIOUS ORGANIZATION? () YES () NO	<i>(if yes) GIVE NAME AND LOCATION</i>
DO YOU BELONG TO ANY BUSINESS OR SOCIAL CLUB OR OTHER ORGANIZATION? () YES () NO	<i>(if yes) GIVE NAME OF ORGANIZATION AND ANY OFFICE HELD</i>

GENERAL INFORMATION

HAVE YOU OR ANY MEMBER OF YOUR FAMILY HAD ANY LEGAL TRAINING? () YES () NO	<i>(if Yes) WHERE AND WHEN</i>
HAVE YOU EVER SERVED ON A GRAND JURY, TRIAL JURY IN FEDERAL OR STATE COURT? () YES () NO	<i>(if Yes) WHERE AND WHEN</i>
IF YOU SERVED ON A TRIAL JURY DID THE JURY REACH A VERDICT? () YES () NO	
HAVE YOU, YOUR SPOUCE OR ANY MEMBER OF YOUR FAMILY EVER BEEN A MEMBER OR EMPLOYEE OF A LAW ENFORCEMENT ORGANIZATION? () YES () NO	BY WHOM EMPLOYED
<i>(if Yes) WHO</i>	

HAVE YOU, YOUR SPOUSE OR ANY MEMBER OF YOUR FAMILY EVER BEEN EMPLOYED IN A PRISON, JAIL OR DETENTION CENTER OF ANY SORT? <input type="checkbox"/> YES <input type="checkbox"/> NO		BY WHOM EMPLOYED
<i>(If Yes) WHO</i>		
HAVE YOU, YOUR SPOUSE OR ANY MEMBER OF YOUR FAMILY EVER BEEN EMPLOYED BY THE COURT SYSTEM TO INCLUDE THE DISTRICT ATTORNEY OFFICE / CLERK OF SUPERIOR COURT OFFICE / JUVENILE OFFICE / PROBATION AND OR PAROLE DEPARTMENT? <input type="checkbox"/> YES <input type="checkbox"/> NO		BY WHOM EMPLOYED
<i>(If Yes) WHO</i>		
DO YOU HAVE ANY FRIENDS EMPLOYED IN LAW ENFORCEMENT? <input type="checkbox"/> YES <input type="checkbox"/> NO		BY WHOM EMPLOYED
<i>(If Yes) WHO</i>		
HAVE YOU EVER BE A VICTIM OF A CRIME? <input type="checkbox"/> YES <input type="checkbox"/> NO	HAS ANY MEMBER OF YOUR FAMILY OR CLOSE FRIEND BEEN THE VICTIM OF A CRIME? <input type="checkbox"/> YES <input type="checkbox"/> NO	
HAVE YOU EVER BEEN A WITNESS IN A CRIMINAL CASE? <input type="checkbox"/> YES <input type="checkbox"/> NO	<i>(If Yes) WHO WERE YOU A WITNESS FOR</i> <input type="checkbox"/> THE STATE <input type="checkbox"/> THE DEFENDANT	
HAVE YOU EVER BEEN ARRESTED? <input type="checkbox"/> YES <input type="checkbox"/> NO	<i>(If Yes) WHAT WAS THE CHARGE</i>	
WHAT HAPPENED TO THE CHARGE		
HAVE YOU EVER BEEN A DEFENDANT IN A JURY TRIAL? <input type="checkbox"/> YES <input type="checkbox"/> NO	<i>(If Yes) WHAT WAS THE CHARGE</i>	
WHAT HAPPENED TO THE CHARGE		
HAS ANY MEMBER OF YOUR FAMILY OR A CLOSE FRIEND EVER BEEN THE DEFENDANT IN A TRIAL? <input type="checkbox"/> YES <input type="checkbox"/> NO	<i>(If Yes) WHAT WAS THE CHARGE</i>	
WHAT HAPPENED TO THE CHARGE		
PASTIME ACTIVITIES		
LIST ANY MAGAZINES, PERIODICALS, OR PUBLICATION YOU READ REGULARLY		
DO YOU READ THE NEWSPAPER? <input type="checkbox"/> YES <input type="checkbox"/> NO	<i>(If yes, check one)</i> <input type="checkbox"/> EVERYDAY <input type="checkbox"/> FEW TIMES A WEEK <input type="checkbox"/> ONCE OR TWICE A WEEK <input type="checkbox"/> NOT AT ALL	
LIST YOUR HOBBIES, FAVORITE RECREATIONS OR PASTIMES		
DO YOU REGULARLY WATCH TELEVISION <input type="checkbox"/> YES <input type="checkbox"/> NO	<i>(If Yes)</i> APPROXIMATELY HOW MANY HOURS A WEEK	
LIST YOUR THREE (3) FAVORITE PROGRAM 1 _____		
2. _____ 3. _____		
DATE	NAME <i>(Please Print)</i>	

STATE OF NORTH CAROLINA		FILE NO.
_____ COUNTY		IN THE GENERAL COURT OF JUSTICE SUPERIOR COURT DIVISION
STATE VERSUS	<u>INSTRUCTIONS TO JURORS</u>	
NAME OF DEFENDANT		

You have now been selected as a juror in the above captioned matter. You are hereby instructed to abide by the following rules during the balance of this trial.

I INSTRUCT YOU AS FOLLOWS:

1. It is your duty to serve for the duration of the case(s) unless an emergency arises that makes your continued service impossible.
2. It is your duty not to talk with any of your fellow jurors about the case(s) until instructed to do so by the Court.
3. It is your duty not to talk to the parties, the witnesses or the attorneys about anything.
4. It is your duty not to talk to anyone else or to allow anyone else to talk with you or in your presence about the case(s).
5. If anyone attempts to communicate with you about the case(s) you must report this to me or to the bailiff assigned to this courtroom immediately.
6. It is your duty not to form an opinion about the guilt or innocence of the Defendant or to express any opinion about the case(s).
7. It is your duty to avoid reading, watching or listening to any accounts of the trial.
8. It is your duty not to go to the place where the offense was alleged to have been committed and not to conduct any independent investigation or research of any kind.
9. It is your duty to keep an open mind and not form any opinion about the case(s) until you have heard all of the evidence, the arguments of the attorneys and the Court's instructions on the law.
10. It is your duty to decide the case(s) based on the evidence and the law.

Further, I agree, in the event anyone seeks to talk to me about the case(s) or if I develop a personal emergency, I will bring the matter to the attention of the bailiff or the clerk as soon as possible so that it can be brought to the attention of the Court.

As a juror selected to serve in the above case(s), I understand that each juror has the responsibilities set out above and I agree to follow the instructions of the Court regarding these responsibilities until the case(s) is/are completed and I have been discharged from jury service.

This the _____ day of _____, _____.

Signature: _____ Printed Name: _____

Jury Recorder Telephone Number:

Courtroom Clerk's Telephone Number: _____, **Superior Court Judge**

GOOD MORNING/AFTERNOON LADIES AND GENTLEMEN. LET ME WELCOME THOSE OF YOU WHO HAVE BEEN SELECTED TO SERVE AS JURORS FOR THIS CRIMINAL SESSION OF SUPERIOR COURT IN _____ COUNTY. LET ME INTRODUCE MYSELF. I AM _____. I AM A RESIDENT SUPERIOR COURT JUDGE FROM _____ COUNTY AND I LIVE IN _____. I HAVE BEEN ASSIGNED BY THE CHIEF JUSTICE OF THE NORTH CAROLINA SUPREME COURT, TO PRESIDE OVER THIS SESSION OF SUPERIOR COURT AND WE WILL BE TRYING A CRIMINAL CASE.

EACH OF YOU HAS BEEN SUMMONED TO SERVE AS PROSPECTIVE JURORS IN THE TRIAL OF THIS CASE. JURY SERVICE IS A VERY HIGH RESPONSIBILITY OF CITIZENSHIP -----PERHAPS THE HIGHEST. CERTAINLY IT IS AN OBLIGATION OF CITIZENSHIP. IT REPRESENTS YOUR INDIVIDUAL CONTRIBUTION TO OUR DEMOCRATIC WAY OF LIFE. TRIAL BY JURY IS A RIGHT GUARANTEED TO EVERY CITIZEN BY BOTH THE CONSTITUTION OF THE UNITED STATES AND THE CONSTITUTION OF NORTH CAROLINA.

IF YOU ARE SELECTED AS A JUROR AND ARE REQUIRED TO SIT IN THIS CASE, YOU WILL BE CALLED UPON TO DETERMINE THE TRUE FACTS OF THIS CASE INVOLVING THE CRIME(S) CHARGED AND TO RENDER A VERDICT REGARDING THE GUILT OR INNOCENCE OF A FELLOW CITIZEN. THIS IS AN IMPORTANT RESPONSIBILITY AND A HEAVY BURDEN. HOWEVER, IT IS A REQUIREMENT OF CITIZENSHIP, AND IT IS YOUR OPPORTUNITY TO BE A PART OF THE JUDICIAL PROCESS AND OF THE ADMINISTRATION OF JUSTICE BY WHICH THE LEGAL AFFAIRS AND LIBERTIES OF YOUR FELLOW MEN AND WOMEN ARE DETERMINED AND PROTECTED UNDER OUR FORM OF GOVERNMENT.

IF YOU ARE SELECTED AS A JUROR IN THIS CASE AND YOU QUALIFY BY TAKING THE OATH, YOU WILL BECOME , WITH THE OTHER JURORS, THE SOLE JUDGES OF THE WEIGHT TO BE GIVEN ANY EVIDENCE AND THE CREDIBILITY OF EACH WITNESS. YOU WILL, IN EFFECT, BECOME OFFICERS OF THE COURT.

EACH OF YOU MUST UNDERSTAND THAT NEITHER THE COURT, NOR THE PARTIES, NOR THE WITNESSES, NOR THE

LAWYERS MAY HAVE ANY PRIVATE CONTACT OR CONVERSATION WITH YOU DURING THIS TRIAL. THIS SHOULD NOT BE REGARDED AS RUDENESS, BUT AS A WISE PERCAUTION AGAINST IMPROPER CONTACT INFLUENCE.

AS I HAVE INDICATED TO YOU, THIS IS A CRIMINAL SESSION OF SUPERIOR COURT. IN CRIMINAL COURT WE TRY CASES WHERE INDIVIDUALS, WHO WE REFER TO AS DEFENDANTS, HAVE BEEN CHARGED WITH VIOLATIONS OF ONE OR MORE OF OUR CRIMINAL LAWS OR STATUTES.

UNDER OUR SYSTEM OF JUSTICE ANY PERSON CHARGED WITH A CRIME OR CRIMES WHO ENTERS A PLEA OF NOT GUILTY IS NOT REQUIRED TO PROVE HIS/HER INNOCENCE. THAT PERSON IS PRESUMED TO BE INNOCENT. THIS PRESUMPTION OF INNOCENCE REMAINS WITH THE DEFENDANT UNTIL THE JURY SELECTED TO HEAR THE DEFENDANT'S CASE IS CONVINCED, FROM THE FACTS AND THE LAW, BEYOND A REASONABLE DOUBT OF THE DEFENDANT'S GUILT.

THE MERE FACT THAT A DEFENDANT HAS BEEN CHARGED WITH A CRIME OR CRIMES IS NO EVIDENCE

WHATSOEVER OF THE DEFENDANT'S GUILT. A CHARGE IS MERELY THE MECHANICAL OR ADMINISTRATIVE WAY A PERSON CHARGED WITH A CRIME IS BROUGHT TO A TRIAL.

IN A CRIMINAL CASE THE BURDEN OF PROOF RESTS WITH THE STATE OF NORTH CAROLINA TO PRESENT TO THE JURY EVIDENCE THAT THE DEFENDANT IS IN FACT GUILTY OF THE CRIME OR CRIMES CHARGED. THE STATE MUST PROVE TO YOU THAT THE DEFENDANT IS GUILTY BEYOND A REASONABLE DOUBT.

THERE IS NO BURDEN UPON THE DEFENDANT AND THE DEFENDANT DOES NOT HAVE TO PROVE HIS OR HER INNOCENCE.

NOW, LADIES AND GENTLEMEN, UNDER THE LAWS OF THIS STATE, THE PRESIDING JUDGE, IN SUPERIOR COURT, HAS NO AUTHORITY TO DETERMINE THE GUILT OR INNOCENCE OF ANYONE CHARGED WITH A CRIME WHO HAS ENTERED A PLEA OF NOT GUILTY TO THAT CHARGE. THE QUESTION OF A DEFENDANT'S GUILT OR INNOCENCE MUST ALWAYS BE DETERMINED BY A JURY OF TWELVE CITIZENS. IT DOES NOT MATTER WHAT THE CHARGE IS. A DEFENDANT

WHO PLEADS NOT GUILTY, IN SUPERIOR COURT, TO THE OFFENSE OF SPEEDING WILL HAVE HIS OR HER GUILT OR INNOCENCE DETERMINED BY A JURY IN THE SAME MANNER AS ONE CHARGED WITH MURDER OR RAPE OR ROBBERY OR SOME OTHER SERIOUS FELONY.

THE FUNCTION OF THE TRIAL JUDGE IS TO PRESIDE OVER THE TRIAL, TO ASSURE THAT IT IS CONDUCTED IN ACCORDANCE WITH THE RULE OF LAW AND TO ASSURE THAT ALL PARTIES ---THE STATE AND THE DEFENDANT(S) --- RECEIVE A FAIR TRIAL. THE JUDGE WILL ALSO VERY CAREFULLY EXPLAIN THE LAW TO THE JURY SO THAT THE JURORS CAN APPLY THE LAW TO THE TRUE FACTS WHICH THEY FIND FROM THE EVIDENCE AND THEREBY RENDER A VERDICT THAT SPEAKS THE TRUTH. NORMALLY, AFTER THE JURORS HAVE DETERMINED THE QUESTION OF THE DEFENDANT'S GUILT OR INNOCENCE AND HAVE ANNOUNCED THEIR VERDICT --- THE JURORS ARE DISCHARGED. IF THE DEFENDANT IS CONVICTED OF A CRIME BY THE JURY, THE JUDGE ALONE CONDUCTS A SENTENCING HEARING AND IMPOSES WHAT THE JUDGE

DETERMINES TO BE AN APPROPRIATE SENTENCE.

HOWEVER, THERE IS ONE EXCEPTION TO THIS GENERAL RULE WHICH WE WILL TALK ABOUT IN A FEW MINUTES.

SO, LADIES AND GENTLEMEN, IN SUMMARY, IN CRIMINAL CASES THE JURY'S FUNCTION IS TO DETERMINE WHETHER THE DEFENDANT IS GUILTY OR INNOCENT OF THE CRIME CHARGED --- AND IF THE DEFENDANT IS FOUND GUILTY BY THE JURY, THE JUDGE ALONE DETERMINES THE PUNISHMENT.

NOW, AS I HAVE STATED, THERE IS ONE EXCEPTION TO THIS GENERAL RULE. THIS EXCEPTION INVOLVES CASES IN WHICH THE DEFENDANT IS ACCUSED OF MURDER IN THE FIRST DEGREE --- THE MOST SERIOUS CRIME THAT CAN BE COMMITTED UNDER OUR LAW. IN CASES OF THIS ALLEGED CRIME, THE JURY DETERMINES THE QUESTION OF THE DEFENDANT'S GUILT OR INNOCENSE --- AND IF THE JURY FINDS THE DEFENDANT GUILTY OF FIRST DEGREE MURDER, THE SAME JURY WILL ALSO DETERMINE THE SENTENCE TO BE IMPOSED FOR THAT CRIME. THE ONLY AUTHORIZED PUNISHMENTS FOR FIRST DEGREE MURDER ARE: LIFE-IN-

PRISON (WITHOUT THE BENEFIT OF PAROLE) OR THE DEATH PENALTY. THE JURY, NOT THE JUDGE, DECIDES WHICH OF THESE PUNISHMENTS WILL BE IMPOSED FOR A DEFENDANT CONVICTED OF FIRST DEGREE MURDER. IF CALLED UPON TO DO SO, THE JURY WILL FOLLOW A VERY SPECIAL SET OF RULES AND GUIDELINES EXPLAINED TO THEM BY THE JUDGE IN MAKING THIS DECISION. THE UNANIMOUS DECISION OF THE JURY IS BINDING UPON THE JUDGE. THE JUDGE MUST IMPOSE THE PUNISHMENT THAT THE JURY RECOMMENDS.

THE ONLY CRIME UNDER OUR LAW FOR WHICH THE DEATH PENALTY IS AN AUTHORIZED PUNISHMENT IS FIRST DEGREE MURDER. IT IS NOT AUTHORIZED FOR ANY OTHER CRIME AND IT IS NOT AUTHORIZED IN EVERY FIRST DEGREE MURDER CASE. I INSTRUCT YOU THAT THE DEATH PENALTY IS NOT AUTHORIZED --- NOR IS IT APPROPRIATE --- FOR EVERY FIRST DEGREE MURDER CONVICTION. THE LEGISLATURE AND THE NORTH CAROLINA SUPREME COURT HAVE ESTABLISHED SPECIFIC RULES AND SPECIFIC GUIDELINES FOR JURORS TO FOLLOW IN DETERMINING

WHEN DEATH IS AN AUTHORIZED AND AN APPROPRIATE PUNISHMENT FOR A PERSON CONVICTED OF FIRST DEGREE MURDER. THESE GUIDELINES LIKEWISE, GUIDE AND ASSIST THE JURY IN DETERMINING WHEN LIFE-IN-PRISON (WITHOUT PAROLE) IS THE APPROPRIATE PUNISHMENT FOR A PERSON CONVICTED OF FIRST DEGREE MURDER.

IN THE EVENT A DEFENDANT IS CONVICTED BY A JURY IN THIS COURT OF FIRST DEGREE MURDER --- AND THE JURY IS REQUIRED TO PARTICIPATE IN A SENTENCING HEARING TO DETERMINE THE PUNISHMENT TO BE IMPOSED, THE BURDEN IS ON THE STATE THROUGH THE DISTRICT ATTORNEY IN ANY SUCH SENTENCING HEARING TO SATISFY THE JURY UNANIMOUSLY UNDER THE LAW AND THE EVIDENCE AND BEYOND A REASONABLE DOUBT THAT THE APPROPRIATE PUNISHMENT TO BE IMPOSED IS DEATH, BEFORE THE JURY COULD RETURN SUCH A SENTENCE RECOMMENDATION.

LADIES AND GENTLEMEN, OUR LAW EXEMPTS NO QUALIFIED PERSON FROM JURY SERVICE. IN ORDER TO BE QUALIFIED FOR JURY SERVICE, YOU MUST BE (1) A RESIDENT

OF _____ COUNTY; (2) 18 YEARS OF AGE OR OLDER; (3) YOU MUST NOT HAVE SERVED ON A GRAND JURY OR TRIAL JURY IN THIS STATE WITHIN THE LAST TWO YEARS; (4) YOU MUST BE OF SOUND MIND; AND (5) YOU MUST NOT HAVE BEEN PREVIOUSLY CONVICTED OF A FELONY UNLESS YOUR CITIZENSHIP RIGHTS HAVE BEEN RESTORED. IS THERE ANYONE AMONG YOU WHO IS NOT QUALIFIED TO SERVE FOR ANY ONE OF THE REASONS?

NOW, LADIES AND GENTLEMEN, THE COURT RECOGNIZES THAT JURY SERVICE IS NOT CONVENIENT TO ANYONE. HOWEVER, I HAVE NO AUTHORITY TO EXCUSE ANYONE FROM JURY SERVICE BECAUSE OF INCONVENIENCE. IF SITTING ON A PARTICULAR CASE WILL BE AN EXTREME HARDSHIP BECAUSE OF UNUSUAL AND SPECIAL CIRCUMSTANCES --- I WILL GIVE YOU THE OPPORTUNITY TO BRING THAT HARDSHIP TO MY AND THE ATTORNEYS ATTENTION IN JUST A MINUTE. THE COURT RECOGNIZES THAT MANY OF YOU ARE BUSY PEOPLE WITH ACTIVE BUSINESS AND PERSONAL LIVES --- VERY MUCH INVOLVED IN THE AFFAIRS OF YOUR NEIGHBORHOOD,

YOUR COMMUNITY AND THE WORLD. THEREFORE YOU ARE EXACTLY THE KIND OF PEOPLE WHO MAKE GOOD JURORS. YOU ARE INTERESTED IN THE AFFAIRS OF YOUR COMMUNITY. THE BUSIER THAT YOU ARE, PERHAPS THE MORE QUALIFIED YOU ARE TO SERVE. IF WE ASKED FOR VOLUNTEERS TO SERVE, I AM NOT SURE THAT WE WOULD GET MANY, IF ANY, --- NOR AM I SURE THAT WE WANT THE IMPORTANT MATTERS RESOLVED IN THIS COURTROOM TO BE DECIDED ON A VOLUNTEER BASIS. YOUR SERVICE IS AN IMPORTANT CIVIC RESPONSIBILITY. AT THIS TIME I WANT TO EXPRESS TO YOU THE COURT'S SINCERE APPRECIATION FOR YOUR BEING HERE AND FOR YOUR SERVICE TO THE JUDICIAL SYSTEM. ALL OF US INVOLVED IN THE MATTERS BEFORE THE COURT WILL MAKE EVERY EFFORT NOT TO WASTE YOUR TIME.

- 1. HEAR HARDSHIP EXCUSES**
- 2. SWEAR-IN JURORS**

LADIES AND GENTLEMEN, WHILE YOU ARE HERE AS JURORS, BE EXTREMELY CAREFUL AND MINDFUL OF YOUR CONDUCT. YOU MUST REMAIN COMPLETELY OBJECTIVE, FAIR AND OPEN-MINDED AT ALL TIMES. ANY DECISION YOU RENDER MUST BE BASED ENTIRELY UPON THE EVIDENCE PRESENTED IN OPEN COURT AND THE LAW AS I WILL EXPLAIN IT TO YOU. YOU ARE NOT TO OBTAIN ANY INFORMATION FROM ANY OTHER SOURCE ABOUT THE FACTS OF A CASE OR ABOUT THE LAW. THEREFORE, DO NOT DISCUSS THESE CASES WITH ANYONE --- DO NOT DISCUSS THE CASES AMONG YOURSELVES UNTIL YOU ARE PERMITTED TO RETIRE TO DELIBERATE ON YOUR VERDICT WITH YOUR FELLOW JURORS AFTER ALL THE EVIDENCE HAS BEEN PRESENTED AND AFTER I HAVE EXPLAINED THE LAW TO YOU. DO NOT READ ANYTHING IN THE NEWSPAPERS ABOUT THE CASE --- DO NOT WATCH ANYTHING ON TV OR LISTEN TO ANYTHING ON THE RADIO ABOUT THE MATTER. YOU ARE NOT TO BE EXPOSED TO ANY INFORMATION ABOUT THE CASE EXCEPT WHAT YOU HEAR IN OPEN COURT. DO NOT GO TO THE SCENE OF ANY ALLEGED CRIME AND DO NOT CONDUCT YOUR OWN

INVESTIGATION. THAT IS NOT YOUR FUNCTION. DO NOT
READ ANY LAW OR LEGAL ARTICLES ON THE SUBJECT
MATTER OF THE CASE OR ON CAPITAL PUNISHMENT IN
GENERAL. DO NOT SEARCH THE "WEB" OR THE INTERNET
FOR INFORMATION ON CAPITAL PUNISHMENT OR THE LAW
IN GENERAL. THE COURT WILL FULLY EXPLAIN THE LAW
TO YOU. YOU DO NOT NEED TO GO AND LOOK FOR THE
LAW. DO NOT COMMUNICATE WITH THE DEFENDANT, THE
ATTORNEYS, OR THE WITNESSES FOR ANY REASON. I
REPEAT. DO NOT COMMUNICATE WITH THE DEFENDANT,
THE ATTORNEYS, OR THE WITNESSES FOR ANY REASON.
DURING THE PROCEEDINGS DO NOT DISCUSS THE CASE
AMONG YOURSELVES OR WITH ANYONE ELSE UNLESS AND
UNTIL I TELL YOU THAT YOU CAN DO SO. IF ANYONE
ATTEMPTS TO DISCUSS THE MATTER WITH YOU, PLEASE
NOTIFY THE BAILIFF AND THE BAILIFF WILL INFORM ME
AND I WILL TAKE APPROPRIATE ACTION.

TO THE EXTENT THAT ANY PORTION OF A TRIAL IS
PHOTOGRAPHED OR TELEVISED, DO NOT CONCERN
YOURSELF ABOUT THAT. UNDER THE RULES OF THIS COURT

JURORS WILL NOT BE PHOTOGRAPHED NOR FILMED. DO NOT BE CONCERNED ABOUT ANY SUCH PHOTOGRAPHY. THE PUBLIC HAS A RIGHT TO BE MADE AWARE OF WHAT IS TAKING PLACE IN THE COURTROOM AND THE RULES OF THIS COURT PERMIT SOME LIMITED NEWS RECORDING AND COVERAGE OF THIS MATTER. PLEASE REMEMBER THAT YOU ARE NOT TO WATCH ANYTHING ON TV OR LISTEN TO ANYTHING ON THE RADIO OR READ ANYTHING IN THE NEWSPAPER ABOUT THIS CASE.

NOW, LADIES AND GENTLEMEN, THE STATE OF NORTH CAROLINA, THROUGH THE DISTRICT ATTORNEY, HAS CALLED FOR TRIAL IN THIS COURTROOM THE MATTER OF THE STATE OF NORTH CAROLINA VERSES _____.
THE DEFENDANT, _____ HAS BEEN ACCUSED IN A BILL OR BILLS OF INDICTMENT WITH THE OFFENSE(S) OF _____

THIS/THESE _____ OFFENSE(S) ARE ALLEGED TO HAVE OCCURRED ON OR ABOUT _____, _____ HERE IN _____ COUNTY.

THE DEFENDANT, _____, HAS ENTERED (A) PLEA(S) OF NOT GUILTY TO (THIS) (EACH OF THESE) CHARGE(S). UPON THE DEFENDANT'S PLEA(S) OF NOT GUILTY, UNDER OUR SYSTEM OF JUSTICE-----AS I HAVE PREVIOUSLY INFORMED YOU-----THE DEFENDANT, IS PRESUMED TO BE INNOCENT. THE DEFENDANT IS NOT REQUIRED TO PROVE HIS INNOCENCE AND THE FACT THAT THE DEFENDANT HAS BEEN ACCUSED IS NO EVIDENCE WHATSOEVER OF ANY GUILT. AGAIN I SAY, THE DEFENDANT IS PRESUMED INNOCENT. THE BURDEN OF PROOF RESTS ENTIRELY WITH THE STATE OF NORTH CAROLINA THROUGH THE DISTRICT ATTORNEY AND HIS/HER STAFF TO PRESENT COMPETENT EVIDENCE TO SATISFY ALL TWELVE JURORS UNANIMOUSLY OF THE DEFENDANT'S GUILT. BEFORE A JURY COULD RETURN A VERDICT OR VERDICTS OF GUILTY TO ONE OR MORE OF THESE CHARGES, THE STATE HAS THE BURDEN OF SATISFYING EACH JUROR FROM THE EVIDENCE BEYOND A REASONABLE DOUBT THAT THE DEFENDANT IS IN FACT GUILTY OF THE CRIME OR CRIMES CHARGED. IF THE JURY

IS NOT SO SATISFIED OR IF THERE EXISTS A REASONABLE DOUBT AS TO THE DEFENDANT'S GUILT OF ONE, OR MORE, OR ALL OF THESE _____ OFFENSES, THEN IT WOULD BE THE DUTY OF THE JURY TO RETURN A VERDICT OR VERDICTS OF NOT GUILTY TO THAT CHARGES OR THOSE CHARGES.

NOW THESE CASES HAVE BEEN JOINED FOR TRIAL BY THE COURT BECAUSE THE STATE ALLEGES AND CONTENDS THAT THESE MATTERS AROSE OUT OF SOME OF THE SAME FACTS AND CIRCUMSTANCES AND INVOLVE SOME OF THE SAME WITNESSES. THE JURY THAT IS SELECTED WILL BE REQUIRED TO KEEP THESE CHARGES SEPARATE AT THE TIME OF THEIR DELIBERATIONS EVEN THOUGH THEY HAVE BEEN JOINED FOR TRIAL.

I WILL NOW INTRODUCE TO YOU THE PEOPLE WHO WILL BE INVOLVED IN THIS TRIAL. THE DEFENDANT IS _____ . HE/SHE IS SEATED WITH HIS/HER COUNSEL, _____ AND _____. THE STATE IS REPRESENTED BY ADA/AAG _____ AND ADA/AAG _____ .

**CERTAIN OTHER PEOPLE YOU WILL SEE IN AND ABOUT
THIS COURTROOM DURING THIS TRIAL ARE:**

THE CLERK, _____.

THE BAILIFF, _____.

AND THE COURT REPORTER, _____.

**WE WILL BEGIN THE PROCESS OF JURY SELECTION IN
JUST A MOMENT. EACH OF YOU (WILL BE)/(HAS BEEN)
ASKED TO FILL OUT A QUESTIONNAIRE WHICH SHOULD
HELP EXPEDITE THE QUESTIONING WHEN YOU ARE CALLED
TO THE JURY BOX. SINCE THIS CASE INVOLVES THE
ACCUSATION OF FIRST DEGREE MURDER AND THE
POSSIBILITY THAT THE JURY COULD BE REQUIRED TO
PARTICIPATE IN NOT ONLY THE GUILT/INNOCENCE PHASE
OF THE TRIAL, BUT ALSO IN A SENTENCING PROCEEDING ---
IF THE DEFENDANT IS FOUND GUILTY OF FIRST DEGREE
MURDER --- THE JURY SELECTION WILL TAKE LONGER AND
WILL INVOLVE SOME SUBJECTS THAT ARE NOT USUALLY
INQUIRED INTO IN OTHER TYPES OF CASES.**

**NOW, LADIES AND GENTLEMEN, THERE MAY BE TWO
PARTS TO THIS TRIAL. THE FIRST FUNCTION OF THE JURY IS**

**TO DETERMINE WHETHER THE DEFENDANT,
_____, IS GUILTY OR NOT GUILTY OF THE
CHARGE(S) OF FIRST DEGREE MURDER (AND THE OTHER
CHARGES). THIS IS REFERRED TO AS THE GUILT/INNOCENCE
PART OF THE TRIAL. IF AFTER HEARING ALL THE
EVIDENCE, THE JURY FINDS THE DEFENDANT,
_____, NOT GUILTY OF FIRST DEGREE
MURDER, OR IF THE JURY FINDS THE DEFENDANT GUILTY
ONLY OF SOME LESSER CHARGE, THE JURY'S FUNCTION IS
COMPLETE. THE JURY'S JOB IS OVER AND THE JURORS
WILL BE RELEASED FROM ANY FURTHER PARTICIPATION IN
THE CASE. IF THE DEFENDANT HAS BEEN ACQUITTED BY
THE JURY VERDICT, THE DEFENDANT WILL BE DISCHARGED.
IF THE DEFENDANT HAS BEEN CONVICTED ONLY OF SOME
LESSER CRIME, THE COURT WILL DETERMINE THE
APPROPRIATE PUNISHMENT FOR THAT LESSER CRIME AND
THE COURT WILL IMPOSE A SENTENCE WITHOUT THE JURY.**

**HOWEVER, AS I HAVE PREVIOUSLY SAID, IF THE JURY
HAS FOUND THE DEFENDANT GUILTY OF FIRST DEGREE
MURDER, THEN THE JURORS MUST CONTINUE TO**

PARTICIPATE FURTHER IN THE TRIAL IN A SEPARATE SENTENCING HEARING. THIS IS CALLED THE SENTENCING PHASE OF A FIRST DEGREE MURDER CASE. AT THIS SENTENCING PHASE OF THE TRIAL, THE JURORS WILL HEAR ADDITIONAL EVIDENCE ABOUT THE OFFENSE AND ABOUT THE DEFENDANT TO DETERMINE WHETHER THE DEFENDANT SHOULD BE PUNISHED BY A SENTENCE OF LIFE-IN-PRISON (WITHOUT PAROLE) OR BY DEATH. AS I HAVE INSTRUCTED YOU EARLIER, THE NORTH CAROLINA LEGISLATURE AND THE NORTH CAROLINA SUPREME COURT HAVE INDICATED THAT A SENTENCE OF DEATH IS NEITHER AUTHORIZED NOR APPROPRIATE FOR EVERY PERSON CONVICTED OF FIRST DEGREE MURDER. IT DEPENDS UPON THE CIRCUMSTANCES SURROUNDING THE CRIME AND THE DEFENDANT. EVERY CASE IS DIFFERENT.

THE LEGISLATURE HAS LISTED IN OUR STATUTES A SERIES OF CIRCUMSTANCES UNDER WHICH, IF ONE OR MORE OF THESE IS FOUND BY A JURY TO EXIST IN A CASE IN WHICH THE DEFENDANT HAS BEEN CONVICTED OF FIRST DEGREE MURDER, THE JURY WOULD BE AUTHORIZED TO

CONSIDER DEATH AS A POSSIBLE PUNISHMENT IN THE CASE.
THESE ARE CALLED AGGRAVATING CIRCUMSTANCES. EVEN
IF THE DEFENDANT IS CONVICTED OF FIRST DEGREE
MURDER A SENTENCE OF DEATH IS NOT AUTHORIZED
UNLESS THE JURY FINDS THAT THERE EXIST, IN ADDITION
TO FACTS THAT MAKE UP FIRST DEGREE MURDER WHICH
ARE CALLED ELEMENTS OF THE CRIME --- FURTHER
ADDITIONAL FACTS THAT WOULD CONSTITUTE ONE OR
MORE AGGRAVATING CIRCUMSTANCES AS DEFINED BY THE
LEGISLATURE. ONE OF THE FIRST RESPONSIBILITIES OF
THE JURY IN A SENTENCING HEARING, AFTER CONSIDERING
ADDITIONAL EVIDENCE AND RE-EVALUATING THE
EVIDENCE THAT WAS HEARD DURING THE FIRST PHASE OF
THE TRIAL, IS TO DETERMINE WHETHER OR NOT ONE OR
MORE AGGRAVATING CIRCUMSTANCES LISTED IN OUR
STATUTES EXIST IN THE CASE. IF THE JURY FAILS TO FIND
ANY SUCH AGGRAVATING CIRCUMSTANCES, THEN DEATH IS
NOT AN AUTHORIZED PUNISHMENT IN THE CASE AND THE
JURY MUST RECOMMEND A SENTENCE OF LIFE IN PRISON.

IF A SENTENCING HEARING IS HELD AND IF THE JURY

DETERMINES THAT THERE EXISTS IN THE CASE ONE OR MORE AGGRAVATING CIRCUMSTANCES, THEN THE LAW PROVIDES A SPECIFIC SET OF GUIDELINES WHICH THE JURORS MUST FOLLOW IN DETERMINING AN APPROPRIATE SENTENCE RECOMMENDATION, INCLUDING AN EXAMINATION OF ANY MITIGATING CIRCUMSTANCES AND A WEIGHING OF ALL THE CIRCUMSTANCES IN DECIDING THE APPROPRIATE PUNISHMENT. THE LEGISLATURE HAS LISTED IN OUR STATUTES A SERIES OF MITIGATING CIRCUMSTANCES, THESE ARE FACTS, WHICH IF ONE OR MORE OF THE JURORS DETERMINES EXISTS IN A CASE --- WOULD TEND TO SUGGEST THAT THE LESSER PUNISHMENT OF LIFE-IN-PRISSON (WITHOUT PAROLE) WOULD BE MORE APPROPRIATE. IF A SENTENCING HEARING IS NECESSARY, THE COURT WILL CAREFULLEY AND FULLY DEFINE THE GUIDELINES THAT YOU MUST FOLLOW IN EXAMINING AND WEIGHING ALL THE CIRCUMSTANCES TO ARRIVE AT A SENTENCE RECOMMENDATION.

NOW, LADIES AND GENTLEMEN, I HAVE NOT EVEN ATTEMPTED TO FULLY EXPLAIN ALL THE ASPECTS OF THE

LAW TO YOU THAT COULD OR MIGHT ARISE DURING THE TRIAL OF THIS CASE. I HAVE SIMPLY ATTEMPTED TO SUMMARIZE SOME OF THE LEGAL PROCEDURES THAT ARE, OR MAY BE REQUIRED IN A CASE SUCH AS THIS, SO THAT YOU WILL HAVE SOME GENERAL IDEA REGARDING YOUR RESPONSIBILITIES. AS THE TRIAL PROGRESSES I WILL BE EXPLAINING THE LAW TO YOU IN GREATER DETAIL. PLEASE, DO NOT BE CONCERNED IF YOU DO NOT FULLY UNDERSTAND EVERYTHING THAT I HAVE SAID TO YOU THUS FAR. THESE INSTRUCTIONS WILL BE REPEATED AND EXPANDED UPON MANY TIMES THROUGHOUT THE TRIAL AT SUCH TIME AS YOU ARE IN NEED OF FURTHER INSTRUCTION.

CONTENTIONS:

LADIES AND GENTLEMEN, THE STATE CONTENDS THAT THE DEFENDANT WILL BE CONVICTED BY THE JURY OF FIRST DEGREE MURDER AND THAT THE SAME JURY WILL THEREAFTER BE REQUIRED TO PARTICIPATE IN A SENTENCING HEARING TO RECOMMEND A PUNISHMENT.

ON THE OTHER HAND, THE DEFENDANT CONTENDS THAT THE DEFENDANT IS NOT GUILTY OF THIS CHARGE OF

FIRST DEGREE MURDER, THAT HE WILL NOT BE CONVICTED OF THIS CHARGE OF FIRST DEGREE MURDER AND THAT THE JURY WILL NOT BE REQUIRED TO PARTICIPATE IN A SENTENCING HEARING. THE DEFENDANT IS PRESUMED TO BE INNOCENT. CERTAINLY NO ONE KNOWS AT THIS POINT WHAT THE OUTCOME OF THIS CASE WILL BE. THEREFORE, THE ENTIRE PROCEDURE MUST BE EXPLAINED TO YOU DURING JURY SELECTION. YOU WILL BE ASKED QUESTIONS ABOUT YOUR ABILITY AND WILLINGNESS TO FOLLOW THE LEGAL PROCEDURES THAT I HAVE OUTLINED, IN THE EVENT YOU SIT ON THE JURY AND THOSE PROCEDURES BECOME NECESSARY. EACH OF YOU SHOULD EXPECT TO BE ASKED IF YOU HAVE ANY PERSONAL OR RELIGIOUS FEELINGS ABOUT THE CONCEPT OF CAPITAL PUNISHMENT. PLEASE ANSWER THESE QUESTIONS HONESTLY, OPENLY AND FREELY. YOUR OATH AS A JUROR REQUIRES THAT YOU ANSWER THESE QUESTIONS HONESTLY, OPENLY AND FREELY. THERE ARE NO RIGHT OR WRONG ANSWERS TO THESE QUESTIONS. THERE IS NO RIGHT WAY OR WRONG WAY TO FEEL ABOUT THE SUBJECT OF THE DEATH PENALTY. THE LAW DOES NOT

**COMPEL OR EXPECT OUR CITIZENS TO HAVE SPECIFIC
OPINIONS OR VIEWS ON ANY SUBJECT --- INCLUDING THIS
ONE. NO ONE WILL TRY TO CHANGE YOUR OPINION ABOUT
ANY SUBJECT. YOUR VIEWS AND OPINIONS ARE RESPECTED
BY ALL OF US.**

**THE PURPOSE OF ANY QUESTION THAT WILL BE ASKED
OF YOU WILL BE TO DETERMINE WHETHER OR NOT YOU
CAN BE ENTIRELY FAIR TO BOTH SIDES IN THIS CASE AND
WHETHER OR NOT YOU WILL IMPARTIALLY APPLY THE
LAW TO THE FACTS IN THIS CASE. THE CLERK WILL CALL
TWELVE JURORS TO THE JURY BOX.**

**[DIVIDE JURORS INTO PANELS OF 12 OR SO. HOLD PANEL #1
IN JUROR ROOM. HOLD PANELS #2 & #3 IN JUROR ASSEMBLY
ROOM. RELEASE OTHER PANELS TO CALL BACK NEXT DAY.
GIVE ALL JURORS SHEET WITH PANEL NUMBER AND
CONTACT PHONE NUMBERS (BOTH RECORDER AND REAL
PERSON NUMBER.)]**

PRELIMINARY INSTRUCTIONS TO EACH PANEL

AS YOU KNOW, THE DEFENDANT(S) IN THIS CASE IS/ARE ACCUSED OF MURDER IN THE FIRST DEGREE. THIS IS A CRIME FOR WHICH THE DEATH PENALTY MAY BE IMPOSED. IN THE EVENT THAT THE DEFENDANT(S) IS/ARE CONVICTED OF MURDER IN THE FIRST DEGREE, THE COURT WILL CONDUCT A SEPARATE SENTENCING PROCEEDING TO DETERMINE WHETHER THE DEFENDANT(S) SHOULD BE SENTENCED TO DEATH OR LIFE IMPRISONMENT (WITHOUT PAROLE). (1) (THIS PROCEEDING MAY BE CONDUCTED BEFORE THE TRIAL JURY OR ANOTHER JURY). THIS PROCEEDING WILL BE CONDUCTED, IF NECESSARY, AS SOON AS PRACTICAL AFTER ANY VERDICT OF FIRST DEGREE MURDER IS RETURNED. IF THAT TIME COMES, THE SENTENCING JURY WILL RECEIVE SEPARATE SENTENCING INSTRUCTIONS.

HOWEVER, PRIOR TO THAT TIME THE ONLY CONCERN OF THE TRIAL JURY IS TO DETERMINE WHETHER THE DEFENDANT(S) IS/ARE GUILTY OF THE CRIME(S) CHARGED OR OF ANY LESSER INCLUDED OFFENSES ABOUT WHICH IT IS INSTRUCTED.

- (1) THE PARENTHETICAL PHRASE, WITHOUT PAROLE, MUST BE USED FOR OFFENSES OCCURRING ON OR AFTER OCTOBER 1, 1994.**

UNDER NORTH CAROLINA LAW, WHERE A PERSON IS CHARGED WITH FIRST DEGREE MURDER, THAT PERSON, AS WOULD BE TRUE WITH ANY OTHER CHARGE, IS PRESUMED TO BE INNOCENT. THE PRESUMPTION OF INNOCENCE WOULD REMAIN WITH THAT PERSON UNLESS AND UNTIL THE STATE OVERCOMES THAT PRESUMPTION BY PROVING BEYOND A REASONABLE DOUBT THAT THE PERSON IS, IN FACT, GUILTY.

THE STATE MUST PROVE TO THE UNANIMOUS SATISFACTION OF THE JURY AND BEYOND A REASONABLE DOUBT THE ACCUSATION IS TRUE AND THAT THE DEFENDANT IS THEREFORE GUILTY BEFORE A JURY MAY RETURN A VERDICT OF GUILTY.

WHERE A PERSON IS CHARGED WITH FIRST DEGREE MURDER THE STATE MAY CHOOSE TO PROCEED ON ONE OR BOTH OF TWO LEGAL THEORIES IN ATTEMPTING TO MEET ITS BURDEN OF PROOF. ONE OF THOSE LEGAL THEORIES IS CALLED PREMEDITATED FIRST DEGREE MURDER. UNDER THE THEORY OF PREMEDITATED FIRST DEGREE MURDER THE STATE MUST PROVE THAT THE PERSON CHARGED KILLED ANOTHER PERSON WITH THE SPECIFIC INTENT TO KILL AND WITH PREMEDITATION, DELIBERATION AND MALICE.

THESE TERMS HAVE SPECIFIC LEGAL MEANING. I AM NOT GOING INTO DETAIL ABOUT THEIR MEANING AT THIS POINT. I AM SIMPLY GOING TO EXPLAIN THAT, UNDER THE THEORY OF PREMEDITATED FIRST DEGREE MURDER, THE STATE MUST PROVE THAT A DEFENDANT KILLED ANOTHER PERSON WITH THE SPECIFIC INTENT TO KILL AND THAT THIS INTENT WAS FORMED AT SOME TIME PRIOR, BEFORE THE ACT RESULTING IN DEATH. THE TIME PERIOD INVOLVED MAY HAVE BEEN VERY SHORT OR MAY HAVE BEEN OVER A LONG PERIOD OF TIME. THE STATE HAS TO SHOW THAT THERE WAS SOME PLANNING, SOME THOUGHT, SOME PREMEDITATION PRIOR TO THE SPECIFIC INTENT TO KILL BEING CARRIED OUT.

DELIBERATION MEANS THAT THE STATE MUST PROVE THAT A DEFENDANT ACTED IN A COOL STATE OF BLOOD OR COOL STATE OF MIND. THIS DOES NOT

MEAN THAT THE STATE MUST SHOW A TOTAL ABSENCE OF EMOTION. IT SIMPLY MEANS THAT THE STATE MUST PROVE THAT THE KILLING WAS NOT THE RESULT OF SOME SUDDENLY AROUSED PASSION OR EMOTION.

MALICE MEANS WHAT IT ORDINARILY MEANS, BUT IT ALSO MEANS, AMONG OTHER THINGS, THAT CONDITION OF MIND THAT PROMPTS A PERSON TO TAKE THE LIFE OF ANOTHER INTENTIONALLY AND WITHOUT ANY LEGAL CAUSE, JUSTIFICATION OR EXCUSE.

IF THE STATE PROVES THESE THINGS BEYOND A REASONABLE DOUBT AND TO THE UNANIMOUS SATISFACTION OF THE JURY, IT WOULD HAVE MET ITS BURDEN OF PROOF AS TO THE THEORY OF PREMEDITATED FIRST DEGREE MURDER.

THE STATE MAY ALSO PROCEED ON THE

THEORY OF FELONY FIRST DEGREE MURDER OR THE STATE MAY PROCEED ON BOTH OF THESE THEORIES.

UNDER THE THEORY OF FELONY FIRST DEGREE MURDER THE STATE MUST PROVE BEYOND A REASONABLE DOUBT AND TO THE UNANIMOUS SATISFACTION OF THE JURY THAT A DEFENDANT WAS COMMITTING OR ATTEMPTING TO COMMIT A SPECIFIC FELONY SUCH AS DISCHARGING A FIREARM INTO AN OCCUPIED VEHICLE OR OTHER SERIOUS FELONY, AND THAT, DURING THE COMMISSION OF OR ATTEMPT TO COMMIT THAT FELONY A DEFENDANT KILLED ANOTHER PERSON.

THE PRIMARY DIFFERENCE BETWEEN PREMEDITATED FIRST DEGREE MURDER AND FELONY FIRST DEGREE MURDER IS THAT AS TO PREMEDITATED FIRST DEGREE MURDER THE STATE MUST PROVE THE SPECIFIC INTENT TO KILL IN ADDITION TO PREMEDITATION, DELIBERATION AND

**MALICE, WHILE AS TO FELONY FIRST DEGREE
MURDER THE STATE DOES NOT HAVE TO PROVE A
SPECIFIC INTENT TO KILL ONLY THAT A DEFENDANT
WAS COMMITTING A SPECIFIED FELONY AND
DURING THE COMMISSION OF THAT FELONY, THE
DEFENDANT KILLED ANOTHER PERSON.**

**UNDER OUR LAW A DEFENDANT MAY BE FOUND
GUILTY OF FIRST DEGREE MURDER ON THE THEORY
OF PREMEDITATED FIRST DEGREE MURDER, FELONY
FIRST DEGREE MURDER OR BOTH WHERE THE
EVIDENCE AND THE LAW SUPPORT SUCH A FINDING.**

**WHERE A DEFENDANT IS CHARGED WITH FIRST
DEGREE MURDER ON EITHER OR BOTH OF THESE
THEORIES AND THAT DEFENDANT IS FOUND NOT
GUILTY THAT OBVIOUSLY ENDS THE PROCEEDING
FOR THE JURY. ALSO, WHERE A DEFENDANT IS
FOUND GUILTY OF SOME LESSER OFFENSE THE**

RESPONSIBILITY OF THE JURY WOULD END ONCE THAT DETERMINATION IS MADE AND PUNISHMENT WOULD BE THE RESPONSIBILITY OF THE COURT.

WHERE A DEFENDANT IS FOUND GUILTY OF FIRST DEGREE MURDER, EITHER ON THE THEORY OF PREMEDITATED FIRST DEGREE MURDER, FELONY FIRST DEGREE MURDER OR BOTH, THAT FINDING OF GUILT AS TO FIRST DEGREE MURDER DOES NOT ANSWER THE QUESTION OF WHAT IS THE APPROPRIATE PUNISHMENT IN THAT PARTICULAR CASE. THE QUESTION OF WHAT IS APPROPRIATE AS A PUNISHMENT IN THAT CASE CAN ONLY BE DETERMINED BY THE JURY IN THE SECOND PHASE OF THE PROCEEDING WHICH IS CALLED THE SENTENCING OR PENALTY PHASE.

IF A PENALTY PHASE IS REACHED IN A PARTICULAR CASE, THE JURY IN THAT CASE WOULD BE REQUIRED TO CONSIDER ANY AND ALL EVIDENCE

**PRESENTED AS TO AGGRAVATING CIRCUMSTANCES
AND MITIGATING CIRCUMSTANCES IN DETERMINING
WHETHER TO RECOMMEND A SENTENCE OF LIFE
IMPRISONMENT WITHOUT PAROLE OR TO
RECOMMEND A SENTENCE OF DEATH.**

**WE USE THE WORD RECOMMENDATION, BUT
UNDER OUR LAW THE RECOMMENDATION OF THE
JURY IS BINDING UPON THE COURT. IN OTHER
WORDS, THE COURT MUST IMPOSE THE SENTENCE
RECOMMENDED BY THE JURY. DO EACH OF YOU
UNDERSTAND THAT?**

**I AM GOING TO TALK WITH YOU ABOUT THOSE
TWO TERMS, AGGRAVATING CIRCUMSTANCES AND
MITIGATING CIRCUMSTANCES. I AM GOING TO
DEFINE FOR YOU OR EXPLAIN TO YOU, GENERALLY
SPEAKING, WHAT THOSE TERMS MEAN UNDER
NORTH CAROLINA LAW.**

**UNDER THE LAW, GENERALLY SPEAKING, AN
AGGRAVATING CIRCUMSTANCE IS A FACT OR A
GROUP OF FACTS WHICH TEND TO MAKE A SPECIFIC
FIRST DEGREE MURDER PARTICULARLY DESERVING
OF THE ULTIMATE PUNISHMENT OF DEATH.**

**UNDER THE LAW THE STATE HAS THE BURDEN
OF PROVING THAT ONE OR MORE OF THE
AGGRAVATING CIRCUMSTANCES LISTED IN THE
LAW EXISTS IN A PARTICULAR CASE. THE STATE
MUST PROVE THIS BEYOND A REASONABLE DOUBT
AND THE JURY MUST UNANIMOUSLY SO FIND
BEFORE THE JURY MAY CONSIDER THAT
AGGRAVATING CIRCUMSTANCE. DO YOU
UNDERSTAND THAT GENERAL DEFINITION OF
AGGRAVATING CIRCUMSTANCES?**

**BEFORE I GIVE YOU A GENERAL DEFINITION OF
WHAT A MITIGATING CIRCUMSTANCE IS UNDER OUR
LAW LET ME TELL YOU WHAT IT IS NOT. A**

MITIGATING CIRCUMSTANCE IS NOT A FACTOR THAT CONSTITUTES A DEFENSE OR A JUSTIFICATION OR EXCUSE FOR A FIRST DEGREE MURDER. NOR IS A MITIGATING CIRCUMSTANCE A FACTOR WHICH REDUCES A FIRST DEGREE MURDER TO SOME LESSER DEGREE OF MURDER. RATHER, UNDER OUR LAW, A MITIGATING CIRCUMSTANCE IS, GENERALLY SPEAKING, A FACT OR A GROUP OF FACTS WHICH MAY BE CONSIDERED AS EXTENUATING IN THAT SPECIFIC FIRST DEGREE MURDER, OR A FACTOR WHICH MAY REDUCE THE MORAL CULPABILITY FOR THAT SPECIFIC FIRST DEGREE MURDER, OR A FACTOR THAT TENDS TO MAKE THAT SPECIFIC FIRST DEGREE MURDER LESS DESERVING OF THE ULTIMATE PUNISHMENT OF DEATH.

ALSO, A MITIGATING CIRCUMSTANCE MAY BE ANY ASPECT OF A DEFENDANT'S BACKGROUND OR

CHARACTER OR RECORD, OR MAY INVOLVE ANY OF THE CIRCUMSTANCES SURROUNDING THAT SPECIFIC FIRST DEGREE MURDER WHICH A DEFENDANT OFFERS AS A BASIS FOR A SENTENCE LESS THAN DEATH. DO YOU UNDERSTAND THAT GENERAL DEFINITION OF MITIGATING CIRCUMSTANCES?

THERE ARE SUBSTANTIAL DIFFERENCES UNDER NORTH CAROLINA LAW WITH REGARD TO AGGRAVATING CIRCUMSTANCES ON THE ONE HAND AND MITIGATING CIRCUMSTANCES ON THE OTHER HAND. THESE DIFFERENCES BASICALLY INVOLVE THREE QUESTIONS:

- 1. WHO HAS THE BURDEN OF PROOF AS TO A PARTICULAR KIND OF CIRCUMSTANCE, AGGRAVATING OR MITIGATING?**
- 2. WHAT STANDARD OR DEGREE OF PROOF IS REQUIRED BY THE LAW AS TO A PARTICULAR KIND OF CIRCUMSTANCE, AGGRAVATING OR MITIGATING?**

3. FINALLY, AS TO A PARTICULAR KIND OF CIRCUMSTANCE, AGGRAVATING OR MITIGATING, IS UNANIMITY REQUIRED? IN OTHER WORDS, DO ALL TWELVE JURORS HAVE TO AGREE THAT A PARTICULAR KIND OF CIRCUMSTANCE, AGGRAVATING OR MITIGATING, EXISTS BEFORE THE JURY MAY CONSIDER THAT PARTICULAR KIND OF CIRCUMSTANCE?

I AM GOING TO EXPLAIN THOSE DIFFERENCES TO YOU. YOU WILL RECALL THAT, AS TO AGGRAVATING CIRCUMSTANCES I EXPLAINED THAT THE STATE HAS THE BURDEN OF PROOF. YOU WILL ALSO RECALL THAT I EXPLAINED THE STATE'S BURDEN IS ALWAYS PROOF BEYOND A REASONABLE DOUBT. THAT IS THE HIGHEST BURDEN OF PROOF KNOWN TO THE LAW. IT MEANS THAT THE STATE MUST FULLY SATISFY OR ENTIRELY CONVINCING THE JURY THAT AN AGGRAVATING CIRCUMSTANCE EXISTS. YOU WILL ALSO RECALL THAT I EXPLAINED THAT ANY TIME THE STATE HAS THE BURDEN OF PROOF, UNANIMITY IS ALWAYS REQUIRED. ALL

TWELVE JURORS MUST UNANIMOUSLY AGREE THAT THE STATE HAS PROVEN BEYOND A REASONABLE DOUBT THAT AN AGGRAVATING CIRCUMSTANCE EXISTS BEFORE THAT AGGRAVATING CIRCUMSTANCE MAY BE CONSIDERED.

NOW, AS TO MITIGATING CIRCUMSTANCES, THE FIRST DIFFERENCE IS THAT A DEFENDANT HAS THE BURDEN OF PROOF.

THE SECOND DIFFERENCE IS THAT, AS TO MITIGATING CIRCUMSTANCES, THE BURDEN PLACED UPON A DEFENDANT BY THE LAW IS A LESSER OR LOWER BURDEN OF PROOF. IT IS NOT PROOF BEYOND A REASONABLE DOUBT. ALL THAT THE LAW REQUIRES IS THAT A DEFENDANT SATISFY ONE OR MORE MEMBERS OF THE JURY THAT A MITIGATING CIRCUMSTANCE EXISTS BY A PREPONDERANCE OF THE EVIDENCE. UNDER THIS

LOWER STANDARD OF A PREPONDERANCE OF THE EVIDENCE ALL THAT A DEFENDANT IS REQUIRED TO DO IS SATISFY ONE OR MORE MEMBERS OF THE JURY THAT A MITIGATING CIRCUMSTANCE IS MORE LIKELY THAN NOT TO EXIST.

I HAVE ALLUDED TO THE THIRD AND FINAL DIFFERENCE AND THAT IS THAT, AS TO MITIGATING CIRCUMSTANCES, UNANIMITY IS NOT REQUIRED. A DEFENDANT DOES NOT HAVE TO SATISFY ALL TWELVE MEMBERS OF THE JURY THAT A MITIGATING CIRCUMSTANCE EXISTS. ALL THAT THE LAW REQUIRES IS THAT A DEFENDANT SATISFY ONE OR MORE MEMBERS OF THE JURY, BY THAT LOWER STANDARD OF A PREPONDERANCE OF THE EVIDENCE, THAT A MITIGATING CIRCUMSTANCE EXISTS BEFORE THE JURY MAY CONSIDER THAT MITIGATING CIRCUMSTANCE. DO EACH OF YOU UNDERSTAND THESE DIFFERENCES?

I INSTRUCT YOU THAT UNDER NORTH CAROLINA LAW THE DEATH PENALTY IS NOT THE APPROPRIATE PUNISHMENT IN ALL CASES IN WHICH A DEFENDANT IS FOUND GUILTY OF FIRST DEGREE MURDER. THIS IS TRUE UNDER OUR LAW WHERE A DEFENDANT HAS BEEN FOUND GUILTY OF PREMEDITATED FIRST DEGREE MURDER, FELONY FIRST DEGREE MURDER OR BOTH. IN FACT, NORTH CAROLINA LAW CONTEMPLATES THAT LIFE IMPRISONMENT WITHOUT PAROLE IS THE APPROPRIATE PUNISHMENT FOR SOMEONE WHO HAS BEEN CONVICTED OF FIRST DEGREE MURDER UNLESS AND UNTIL THE STATE PROVES THREE THINGS.

THE STATE WOULD HAVE TO PROVE EACH OF THESE THREE THINGS BEYOND A REASONABLE DOUBT AND, AS TO EACH OF THESE THREE THINGS

UNANIMITY IS REQUIRED. IF THE STATE FAILS TO MEET ITS BURDEN OF PROOF AS TO ANY ONE OF THESE THREE THINGS THE JURY IN THAT PARTICULAR CASE WOULD HAVE A DUTY UNDER THE LAW AT WHATEVER POINT IT MAKES THAT DETERMINATION TO RECOMMEND A SENTENCE OF LIFE IMPRISONMENT WITHOUT PAROLE.

POTENTIALLY IT INVOLVES A THREE STEP PROCESS AS FAR AS THE STATE'S BURDEN OF PROOF IS CONCERNED. I AM GOING TO WALK YOU THROUGH THOSE THREE STEPS WHERE THE STATE HAS A BURDEN OF PROOF. WE HAVE ALREADY BEEN OVER THE FIRST STEP BUT I AM GOING TO GO OVER IT WITH YOU AGAIN.

IN THE FIRST STEP THE STATE WOULD HAVE TO PROVE BEYOND A REASONABLE DOUBT, AND THE JURY WOULD HAVE TO UNANIMOUSLY SO FIND, THAT ONE OR MORE OF THE AGGRAVATING

CIRCUMSTANCES LISTED IN OUR LAW EXISTS IN THAT PARTICULAR CASE.

IF THE STATE MEETS IT'S BURDEN OF PROOF AS TO THIS STEP, THEN AND ONLY THEN WOULD THE JURY GO TO THE SECOND STEP. IF THE STATE FAILS TO MEET IT'S BURDEN OF PROOF AS TO THIS FIRST STEP THE JURY IN THAT CASE WOULD HAVE A DUTY UNDER THE LAW AT THAT POINT TO RECOMMEND A SENTENCE OF LIFE IMPRISONMENT WITHOUT PAROLE. DO EACH OF YOU UNDERSTAND THIS FIRST STEP?

IN THE SECOND STEP, IF A SECOND STEP IS REACHED, THE STATE WOULD HAVE TO PROVE BEYOND A REASONABLE DOUBT AND THE JURY WOULD HAVE TO UNANIMOUSLY SO FIND, THAT ANY MITIGATING CIRCUMSTANCE OR CIRCUMSTANCES FOUND TO EXIST IN THE CASE BY ONE OR MORE

MEMBERS OF THE JURY BY THE LOWER OR LESSER STANDARD OF A PREPONDERANCE OF THE EVIDENCE, IS OR ARE INSUFFICIENT, THAT IS TO SAY INADEQUATE, TO OUTWEIGH ANY AGGRAVATING CIRCUMSTANCE UNANIMOUSLY FOUND BEYOND A REASONABLE DOUBT IN THAT FIRST STEP.

IF THE STATE MEETS IT'S BURDEN OF PROOF IN THE SECOND STEP, THEN AND ONLY THEN WOULD THE JURY GO TO THE THIRD STEP. IF THE STATE FAILS TO MEET ITS BURDEN OF PROOF IN THIS SECOND STEP THE JURY IN THAT CASE WOULD HAVE A DUTY AT THAT POINT TO RECOMMEND A SENTENCE OF LIFE IMPRISONMENTN WITHOUT PAROLE. DO EACH OF YOU UNDERSTAND THE SECOND STEP?

IN THE THIRD STEP, IF A THIRD STEP IS REACHED, THE STATE WOULD HAVE TO PROVE BEYOND A REASONABLE DOUBT, AND THE JURY .

WOULD HAVE TO UNANIMOUSLY SO FIND, THAT ANY AGGRAVATING CIRCUMSTANCE OR CIRCUMSTANCES UNANIMOUSLY FOUND BY THE JURY BEYOND A REASONABLE DOUBT IN THE FIRST STEP IS OR ARE SUFFICIENTLY SUBSTANTIAL ENOUGH TO CALL FOR THE IMPOSITION OF THE DEATH PENALTY WHEN CONSIDERED WITH ANY MITIGATING CIRCUMSTANCE OR CIRCUMSTANCES FOUND BY ONE OR MORE MEMBERS OF THE JURY BY THE LOWER OR LESSER STANDARD OF THE PREPONDERANCE OF THE EVIDENCE.

IF THE STATE MEETS ITS BURDEN OF PROOF IN THIS THIRD STEP, THE LAW CONTEMPLATES AND THE JURY WOULD HAVE A DUTY TO RECOMMEND A SENTENCE OF DEATH. HOWEVER, IF THE STATE FAILS TO MEET ITS BURDEN OF PROOF IN THIS THIRD STEP THE JURY IN THAT CASE WOULD HAVE A

DUTY TO RECOMMEND AT THAT POINT A SENTENCE OF LIFE IMPRISONMENT WITHOUT PAROLE. DO EACH OF YOU UNDERSTAND THIS THIRD STEP?

THE INSTRUCTIONS I HAVE JUST GIVEN YOU ARE VERY SUMMARY IN NATURE. IF A SENTENCING OR PENALTY PHASE IS REACHED IN A PARTICULAR CASE THE JURY WOULD RECEIVE GUIDANCE IN THE FORM OF DETAILED ORAL INSTRUCTION. THE JURY WOULD ALSO RECEIVE WRITTEN INSTRUCTIONS ON A FORM CALLED THE "ISSUES AND RECOMMENDATION AS TO PUNISHMENT" FORM. ON THIS FORM WOULD BE THE ISSUES OR QUESTIONS THAT I HAVE JUST DISCUSSED WITH YOU ALONG WITH INSTRUCTIONS TO GUIDE THE JURY DEPENDING ON HOW THE JURY MIGHT FIND AS TO A PARTICULAR ISSUE OR QUESTION. DO EACH OF YOU UNDERSTAND THIS?

ADDITIONAL INSTRUCTIONS AND QUESTIONS:

IS THER ANYTHING THAT YOU WANT TO TELL ME RIGHT OFF THE BAT?

TIME REQUIREMENT? TRIAL WILL TAKE APROXIMATELY _____ WEEKS.

I NEVER MAKE PROMISES THAT I CAN'T KEEP...

NO COURT ON FRIDAYS-DAYS OFF.

IF YOU ARE SELECTED AS A JUROR-RELEASED AND TOLD WHEN TO COME BACK.

HAVE YOU HEARD ANYTHING ABOUT THE CASE?

MEDIA, FRIENDS, PUBLIC OR OTHERWISE.

HAVE YOU FORMED AN OPINION? CAN YOU DECIDE THE CASE ON WHAT YOU SEE AND HEAR IN THIS COURTROOM ONLY?

DEATH PENALTY?

Court Voir Dire – Punishment

1. Do (any of) you have any personal, moral, or religious scruples or beliefs that would prevent you from serving on a jury and deciding impartially whether a defendant has, or has not, been proven guilty of first degree murder beyond a reasonable doubt, knowing that the only two possible sentences would be life imprisonment (without parole) or death? If so, please raise your hand.

2. Do (any of) you have any personal, moral or religious beliefs either against the death penalty or against life imprisonment (without parole) as an appropriate sentence for a person convicted of first degree murder? If so, please raise you hand.

If no hands:

3. I take it that (each of) you feel(s) that if you are called upon to decide the appropriate punishment in this case, (each of) you could fairly, objectively and under the law and instructions that I will give to you, consider both a sentence of death and a sentence of life imprisonment (without parole).

If any hands:

3. Is that a personal, moral or religious belief?

4. Let me assure you (Mr./Mrs. Juror), nobody here is going to try and change your belief or your opinion. All of us respect your beliefs and opinions. Each of us is fully entitled to our own beliefs, opinions and feelings. I just need to ask you several questions to determine if any of yours would hinder you in performing your duties as a juror in this case.

TYPICAL QUESTIONS BY COURT REGARDING
JUROR'S VIEW OF DEATH PENALTY

I. *[Mr. / Ms. Juror], is your view in opposition to capital punishment so strong that it would cause you to automatically vote against a sentence of death and in favor of a life sentence in every first degree murder case without regard to the evidence presented and the applicable law?*

Followed by:

II. *Are you saying that if you are required to sit as a juror in this case and if the jury is required to make a sentence recommendation, that you have, because of your personal belief against the death penalty, already made up your mind to vote for a life sentence and against the death penalty, no matter what the evidence shows and no matter what the law requires?*

Followed by:

III. *I take it then that due to your personal or religious beliefs there are no circumstances under which you as a juror could ever consider voting in favor of a sentence of death?*

IV. *If juror's responses are unequivocal and unambiguous, you may ask:

Is your view in opposition to the death penalty such that it would prevent or substantially impair your ability to perform your sworn duties as a juror?*

(Judge may continue to question prospective jurors about their views on life imprisonment without parole and the death penalty, depending on how unequivocal the answers are, and REMOVE those for cause who are disqualified. BEFORE doing so, however, it would be wise to ask the prosecutor(s) and the defense counsel(s) if they have any questions or any motions to make. The state will usually challenge death penalty opponents and the defense will usually challenge lifer opponents. Give non-moving party brief chance to question, if appropriate.)

Additional Possible Questions

1. If so, would it be impossible, under any circumstances, and in any event, for you to vote for a sentence of death (life imprisonment) even though it became your duty as a juror to do so upon the facts proven beyond a reasonable doubt (upon the failure of the State to meet its burden of proof upon the evidence) and the law?
2. Would you automatically vote against a sentence of death (life imprisonment) no matter how aggravating (mitigating) the case and no matter what the facts are?
3. If you were convinced beyond a reasonable doubt under the evidence and the law that the appropriate punishment was a sentence of death, could you and would you return a verdict that would require the court to impose that sentence upon a defendant?
(Rephrase if life imprisonment.)
4. (If yes) You could not return a recommendation that the death penalty (life imprisonment) be imposed no matter what the evidence or the facts were. Is that correct?

Death Penalty Jury Selection

1. Orient all of jurors
2. Ask for hardship cases to come forward
3. Examine hardships
4. Excuse entire panel
5. Discuss hardships with attorneys
6. Bring panel back
7. Excuse and/or keep hardships
8. Call 12 into box-Panel 1
9. Send Panel 1 to jury room
10. Call 12 into box-Panel 2
11. Send Panel 2 to assembly room
12. Call 12 into box-Panel 3
13. Send Panel 3 home or to lunch-GIVE TIME TO RETURN OR CALL BACK
14. Call 12 into box-Panel 4
15. Repeat as with Panel 3 and continue until all jurors are on Panel
16. Court Death Qualify Panel-fill in up to 12
17. Court Death Qualifies next Panel-Pass 12 to State
18. State to Question 12

Alternates-do as a group of 2 or 3 or 4 (Total number that you will need)

Seat in first chair, then second, etc.

Members of the jury, you will be required to consider two categories of mitigating circumstances. The first of the two categories is what are called “statutory mitigating circumstances”. They are called “statutory” mitigating circumstances because our legislature has found these particular mitigating circumstances to have mitigating value as a matter of law and has listed them in our General Statutes. If one or more jurors find a “statutory” mitigating circumstance to have been proven by a preponderance of the evidence, it must be listed as having been found and it must be given mitigating value.

The second category is what is called “non-statutory mitigating circumstances”. These are circumstances which the defendant contends have mitigating value. If one or more jurors finds a “non-statutory mitigating circumstance” to have been proven by the defendant by a preponderance of the evidence and that it has mitigating value, it must be listed and must be given mitigating value by those jurors.

When evidence has been received tending to show that a witness has been convicted of criminal charges, you may consider this evidence for one purpose only. If, considering the nature of the crimes, you believe that this bears on truthfulness, then you may consider it, together with all other facts and circumstances bearing upon the witness' truthfulness, in deciding whether you will believe or disbelieve his testimony at this trial. Except as it may bear on this decision, this evidence may not be considered by you in your determination of any fact in this case.

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**THE FOLLOWING INSTRUCTION APPLIES ONLY TO THE
THREE ALLEGED OFFENSES OF ROBBERY WITH A
DANGEROUS WEAPON - IT DOES NOT APPLY TO THE
ALLEGED OFFENSES OF 1ST DEGREE MURDER OR ANY
LESSER INCLUDED OFFENSES.**