

Introduction

Now that you have heard all of the evidence in this case and the arguments of each side, it is my duty to give you instructions as to the law applicable to the very serious question of whether or not Defendant should be sentenced to life in prison without any possibility of release, or to death.

Regardless of any opinion you may have as to what the law may be -- or should be -- it would be a violation of your oaths as jurors to base your verdict upon any other view of the law than that given to you in these instructions.

Some of the legal principles that you must apply to this sentencing decision duplicate those you followed in reaching your verdict as to guilt. Others, however, are different. In order to avoid any confusion, I have prepared a full set of instructions that you are to follow at this stage of the proceedings. You must follow only these instructions and not any others. I have also prepared a verdict form that details special findings you are asked to make in this case and the possible decisions you can render.

The Death Penalty or Life In Prison Without Any Possibility of Release

By law, you must now consider whether justice requires imposition of the death penalty, or life in prison without any possibility of release, on the defendant, Defendant.

This is a decision left exclusively to you, the jury. I will not be able to change any decision you reach regarding the death penalty, nor regarding life imprisonment without any possibility of release. You, and you alone, will decide whether or not Defendant should be executed or sentenced to life in prison without any possibility of release. Thus, I again stress the importance of your giving careful and thorough consideration to all evidence before you. I also remind you of your obligation to strictly follow the applicable law.

At the same time, I remind you that none of you individually, nor the jury collectively, is ever required to impose a sentence of death.

I also charge you that unlike the finding of factual guilt or innocence, which must be unanimous for “guilty” or “not guilty,” if any one of you believes that death is not appropriate, that ends the inquiry. While all of you must agree to sentence Defendant to death, any one of you can disagree and that disagreement must be respected by this Court and by the other jurors.

In other words, if any one of you believes that death is not appropriate, you must then “agree to disagree” and sign the verdict form that sentences Defendant to life in prison without any possibility of release, rather than to death.

This hearing was conducted so that this jury could choose between punishments. Your verdict finding Defendant guilty insures that he will be punished

with one of the two severest punishments available under law: life in prison without any possibility of release, or death.

Counsel have quite properly referred to some of the governing rules of law in their arguments. If, however, any difference appears to you between the law as stated by me in these instructions and what counsel has said, you are to be governed by my instructions.

You are not to single out one instruction alone as stating the law, but must consider the instructions as a whole.

Neither are you to be concerned with the wisdom of any rule of law stated by me. Regardless of any opinion you may have as to what the law ought to be, it would be a violation of your sworn duty to base a verdict upon any other view of the law than that given in my instructions; just as it would be a violation of your sworn duty, as judges of the facts, to base a verdict upon anything but the evidence in this case.

Justice through trial by jury must always depend upon the willingness of each individual juror to seek the truth as to the facts from the same evidence presented to all the jurors and to arrive at a verdict by applying the same rules of law, as given in the instructions of the Court.

Credibility of Witnesses – Discrepancies in Testimony

You, as jurors, are the sole judges of the credibility of the witnesses and the weight their testimony deserves.

You should carefully scrutinize all the testimony given, the circumstances under which each witness has testified, and every matter in evidence which tends to show whether a witness is worthy of belief. Consider each witness's intelligence, motive, state of mind, demeanor and manner while on the stand. Consider the witness's ability to observe the matters as to which he or she has testified and whether he or she impressed you as having an accurate recollection of these matters. Consider also any relation each witness may bear to either side of the case; the manner in which each witness might be affected by the verdict; and the extent to which, if at all, each witness is either supported or contradicted by other evidence in the case.

Inconsistencies or discrepancies in the testimony of a witness, or between the testimony of different witnesses, may or may not cause you to discredit such testimony. Two or more persons witnessing an incident or a transaction may see or hear it differently; innocent misrecollection, like failure of recollection, is not an uncommon experience. In weighing the effect of a discrepancy, always consider whether it pertains to a matter of importance or an unimportant detail, and whether the discrepancy results from innocent error or intentional falsehood.

After making your own judgment, you will give the testimony of each witness such credibility, if any, as you may think it deserves.

Opinion Evidence – Expert Witnesses

The rules of evidence ordinarily do not permit witnesses to testify as to opinions or conclusions. An exception to this rule exists as to those whom we call "expert witnesses." Witnesses who, by education and experience, have become expert in some art, science, profession, or calling, may state an opinion as to relevant and material matter in which they profess to be expert, and may also state their reasons for the opinion.

You have heard the testimony of two mental health experts in this phase of the case. You will recall that Dr. One testified as an expert in neuropsychology. Dr. Two testified as an expert in psychology.

You should consider each expert opinion received in evidence in this case, and give it such weight as you may think it deserves. If you should decide that the opinion of an expert witness is not based upon sufficient education and experience, or if you should conclude that the reasons given in support of the opinion are not sound, or that the opinion is outweighed by other evidence, you may disregard the opinion entirely.

Aggravating and Mitigating Factors

Although Congress has left it to you to decide whether Defendant should be executed or imprisoned for life without any possibility of release, Congress has narrowed and channelled your discretion in specific ways, particularly by asking you to consider and weigh any "aggravating" and "mitigating" factors present in this case. These factors have to do with the circumstances of the crime or the personal traits, character or background of Defendant.

Aggravating factors are information that would tend to support imposition of the death penalty. Mitigating factors are information that suggest that life in prison without any possibility of release is appropriate or sufficient to do justice in this case.

Your task is not simply to decide whether aggravating and mitigating factors exist in this case. Rather, you are called upon to evaluate any such factors and to make a unique, individualized, reasoned, moral choice as to whether Defendant should be punished with the death penalty or with life in prison without any possibility of release.

In short, the law does not assume that every defendant found guilty of first degree murder in furtherance of a drug conspiracy should be sentenced to the death penalty. The law does not assume or presume that Defendant, as he sits before you, should be sentenced to death or to life in prison without any possibility of release. This decision is for you, the jury.

Government's Burden of Proof

The burden of proving that Defendant should be sentenced to death rests at all times with the government.

The government must satisfy its burden beyond a reasonable doubt. I remind you that a reasonable doubt is a doubt based upon reason and common sense -- the kind of doubt that would make a reasonable person hesitate to act. Proof beyond a reasonable doubt must, therefore, be proof of such a convincing character that a reasonable person would not hesitate to rely and act upon it in the most important of his or her own affairs.

Defendant does not have the burden of disproving the existence of any aggravating factor. He does not have to present any evidence at all. He does not have to prove to you that he should not be sentenced to death. In this case, Defendant has chosen to present mitigating facts -- that is, facts that favor a lesser punishment than death.

Unanimity Required for Death Sentence

In order for you to decide that Defendant should be sentenced to death, you must reach a unanimous decision that the government has proven beyond a reasonable doubt that death is the appropriate sentence. This means that each of you must be individually convinced, beyond a reasonable doubt, that death is the appropriate sentence before it is possible to sentence Defendant to death. If just one of you believes that death is not appropriate – or that the government has not proven beyond a reasonable doubt that death is the appropriate sentence – then you must not sentence Defendant to death, but rather to life in prison without any possibility of release.

As I said before, if any one or more of you decides that death is not appropriate – or that the government has not proven beyond a reasonable doubt that death is the appropriate sentence – then any jurors who disagree with a verdict of life in prison without any possibility of release must “agree to disagree.” When jurors “agree to disagree” about the appropriate sentence, all of the jurors must then sign the verdict form sentencing Defendant to life in prison without any possibility of release. This means that when you sign the verdict form for “life in prison without any possibility of release,” either all of you have agreed that life in prison without any possibility of release is sufficient punishment, or you have agreed to disagree. That is, if you sign the verdict form for life in prison without any possibility of release, it may mean that some of you feel that life without any possibility of release is sufficient punishment, while others of you may feel that it is not sufficient punishment.

Issues to be Decided -- Death Penalty Never Required

Let me discuss with you the specific steps you must follow in considering the very serious issue before you.

Step One: You must decide whether the government has proven beyond a reasonable doubt -- and to your unanimous agreement -- the threshold intent factor it has alleged. This means that you must all agree that the government has proven the threshold intent factor beyond a reasonable doubt.

If one or more of you does not agree that the government has proven the threshold intent factor beyond a reasonable doubt, then you must sign the verdict form indicating that you cannot unanimously agree that the government has proven the threshold intent factor beyond a reasonable doubt. If you cannot unanimously agree on the threshold intent factor, you do not have to go to the next step because you are done with your deliberations.

If, however, you unanimously agree that the government has proven the threshold intent factor beyond a reasonable doubt, then you must continue deliberating by going to Step Two, where you will consider aggravating factors.

Step Two: If you unanimously agree that the government has proved the threshold intent factor beyond a reasonable doubt, you must next consider whether the government has proved beyond a reasonable doubt, and to your unanimous agreement, at least one statutory aggravating factor.

I will instruct you about what statutory aggravating factors you may consider, and you may only consider the statutory aggravating factors I list for you. This

means you may not consider something to be a statutory aggravating factor if I do not specifically tell you that you may consider it.

If one or more of you does not agree that the government has proven at least one statutory aggravating factor beyond a reasonable doubt, then you must sign the verdict form indicating that you cannot unanimously agree that the government has proven a statutory aggravating factor beyond a reasonable doubt. When you cannot unanimously agree on a single statutory aggravating factor, you do not have to go to the next step because you are done with your deliberations.

If, however, you unanimously agree that the government has proven at least one statutory aggravating factor beyond a reasonable doubt and to your unanimous agreement, then you will continue deliberating by going to Step Three, where you will consider a non-statutory aggravating factor.

Step Three: If you unanimously agree that the government has proved at least one statutory aggravating factor beyond a reasonable doubt, you must next consider whether the government has proved beyond a reasonable doubt, and to your unanimous agreement, one non-statutory aggravating factor.

I will instruct you about the one non-statutory aggravating factor you may consider, and you may only consider the one non-statutory aggravating factor I list for you. This means you may not consider anything else to be a non-statutory aggravating factor.

If one or more of you does not agree that the government has proven the non-statutory aggravating factor beyond a reasonable doubt, then you must sign the verdict form indicating that you cannot unanimously agree that the government has

proven the non-statutory aggravating factor beyond a reasonable doubt. After doing this, you will go to Step Four, where you will consider mitigating circumstances.

If you unanimously agree that the government has proven the one non-statutory aggravating factor beyond a reasonable doubt, then you must indicate this finding on the verdict form and continue deliberating by going to Step Four, where you will consider mitigating factors.

Step Four: You must consider whether any one or more of you find mitigating factors to have been established by a preponderance of the evidence. This process is totally different than the process you used to decide whether a threshold intent factor and aggravating factors existed. When you are considering mitigating factors, you do not have to agree on whether a mitigating factor exists or on which mitigating factors exist. The only mitigating factors which you must agree exist are the mitigating factors to which the parties have stipulated -- which are listed later in these instructions. Once you have discussed mitigating factors, you must then proceed to Step Five.

Step Five: You must each decide whether the sum of the aggravating factor or factors you have unanimously found to exist, sufficiently outweigh the mitigating factor or factors that you have individually found to exist -- including the mitigating factors to which the parties have stipulated -- so as to justify sentencing Defendant to death. This determination is left entirely to each of you, individually.

Step Six: The final step is to decide whether to punish Defendant with life in prison without any possibility of release or whether to punish him with death.

If you have decided that the aggravating factor or factors which you have unanimously found to exist, sufficiently outweigh the mitigating factor or factors which you have individually found to exist -- including the mitigating factors to which the parties have stipulated -- you must then decide whether to impose death. You are never required to impose a sentence of death.

If you have decided that the aggravating factor or factors do not sufficiently outweigh the mitigating factor or factors, you must punish Defendant with life in prison without any possibility of release. I will now discuss the various steps with you in more detail.

STEP ONE: THRESHOLD FINDING ON INTENT

Before you begin consideration of aggravating and mitigating factors and the sentence to be imposed in this case, you must first consider the following: Whether Defendant intentionally killed Victim Two.

There must be unanimous agreement on whether the government has proven beyond a reasonable doubt that Defendant intentionally killed Victim Two. Your conclusion on this question is to be recorded on the Special Findings Form, Part One, entitled "Findings On Intent."

With regard to your finding, you may not rely solely upon your previous verdict of guilt or your factual determinations during those deliberations. Instead, you must now each decide this issue for yourselves again. However, in making all the determinations you are required to make in this phase of the trial, you may consider any evidence that was presented during the guilt phase of the trial, as well as evidence that was presented at this sentencing hearing. You may consider that a person may be presumed to have intended the ordinary, natural, and probable consequences of his knowing and voluntary acts, but you are not required to make this presumption.

If the government does not prove, based on the evidence at trial and the evidence at this sentencing hearing, that the threshold intent factor existed beyond a reasonable doubt, you should return a finding to that effect by recording that finding on Part I of the Special Findings Form and notifying the Court. After you record that finding, no further deliberations will be necessary. The Court will impose a sentence of life imprisonment without possibility of release.

However, if you unanimously find that the government has proven beyond a reasonable doubt that Defendant intentionally killed Victim Two, you will then proceed to Step Two to determine whether the government has proven beyond a reasonable doubt the existence of any of the alleged aggravating factors.

STEP TWO: FINDINGS ON STATUTORY AGGRAVATING FACTORS

If you find beyond a reasonable doubt that Defendant intentionally killed Victim Two, then you must proceed to Step Two.

In this step, you must first consider whether you are unanimously persuaded that the government has proven beyond a reasonable doubt at least one aggravating factor from the statutory categories established by Congress.

I must warn you, however, that the threshold intent factor you considered in Step One is not an aggravating factor and may not be considered by you as aggravation supporting a sentence of death. This is very important. Often people think that solely because a crime is intentional a death sentence may be warranted. The law specifically rejects that notion. A death sentence may be warranted, if at all, only if the government proves beyond a reasonable doubt the existence of one or more aggravating factors. Remember, the threshold intent factor may not be considered by you as an aggravating factor.

During your deliberations you may consider and find that more than one statutory aggravating factor has been proven, but your finding as to each aggravating factor must be unanimous and beyond a reasonable doubt.

The law permits you to consider and discuss only those aggravating factors specifically claimed by the government and listed below.

The government alleges the following two possible statutory aggravating factors. These two factors are the only possible statutory aggravating factors you may consider, and you may only consider them if you find that the government has proven them beyond a reasonable doubt:

Statutory Aggravating Factors

(1) Substantial Planning and Substantial Premeditation:

To establish the existence of this factor, the government must prove beyond a reasonable doubt that Defendant committed the offense after substantial planning and substantial premeditation to cause the death of Victim Two.

With respect to this factor, substantially more is required than simply proving that the killing of Victim Two was intentional.

A premeditated murder is one committed upon deliberation and prior design. This means the government must prove beyond a reasonable doubt that Defendant killed the victim only after thinking the matter over and deliberating whether to act. There is no requirement that the government prove that Defendant deliberated for any particular period of time in order to show premeditation. The government must, however, show that Defendant had some substantial period of time to become fully aware of what he intended to do and to think it over before he acted.

The government must also establish that the murder was committed aftersubstantial planning for you to find this factor proved beyond a reasonable doubt. The words “substantial planning” should be given their ordinary, every day meaning. “Substantial planning and substantial premeditation” are not established

by simply showing that a murder was premeditated, nor that some small amount of planning came before it. Rather, it must be shown that there was both a considerable amount of premeditation and that there was a considerable amount of planning before the murder.

(2) Use of Firearm:

To establish the existence of this factor, the government must prove beyond a reasonable doubt that in committing the offense, Defendant used a firearm or knowingly directed, advised, authorized, or assisted another person to use a firearm to threaten, intimidate, assault, or injure a person.

"Knowingly" means that the government must prove beyond a reasonable doubt that not only was Defendant conscious and aware of his conduct, but also, that he knowingly did this in order to threaten, intimidate, assault, or injure a person. Knowledge may be proved like anything else. You may consider any statements made and acts done by Defendant, and all the facts and circumstances in evidence which may aid in a determination of Defendant's knowledge.

If the government does not satisfy each of you beyond a reasonable doubt, based on the evidence at trial and the evidence at this sentencing hearing, that at least one of these two statutory aggravating factors has been proven beyond a reasonable doubt, you must resolve that doubt in Defendant's favor – which means you must find that the government failed to establish that statutory aggravating factor beyond a reasonable doubt. You should return a finding to that effect by recording that finding on Part Two of the Special Findings Form and notifying the

Court. Once you have recorded that finding, your deliberations are over. The Court will then impose the penalty of life in prison without any possibility of release.

If, however, you unanimously find that the government has proven one or more of the above two statutory aggravating factors beyond a reasonable doubt, you should record those findings on Part Two of the Special Findings Form, and proceed to Step Three, where you will consider the non-statutory aggravating factor of “Continuing Danger to Life and Safety of Others in the Future.”

Remember that if you find that the government has proven a factor beyond a reasonable doubt, that means you have all agreed – unanimously – that the government has proven that specific factor beyond a reasonable doubt. It is not enough for some of you to believe the government has proven one aggravating factor and others of you to think the government has proven a different aggravating factor.

STEP THREE: FINDING ON NON-STATUTORY AGGRAVATING FACTOR

You only reach this step if you have unanimously decided that the government has proven beyond a reasonable doubt at least one statutory aggravating factor from the list of two statutory factors in Step Two.

Before I describe the one non-statutory aggravating factor that the government has alleged, I must warn you again that the threshold intent factor you considered in Step One is not an aggravating factor and may not be considered by you as aggravation supporting a sentence of death. It is very important for you to remember that the threshold intent factor in Step One may not be considered by you as an aggravating factor.

The one non-statutory aggravating factor that the government has alleged is the following:

Non-Statutory Aggravating Factor

Continuing Danger to Life and Safety of Others in Future:

To establish the existence of this aggravating factor, the government must prove beyond a reasonable doubt that Defendant represents a continuing danger to the life and safety of other people in the future. In order to prove whether this factor exists beyond a reasonable doubt, the government must prove the following:

- (a) That Defendant was involved in at least one additional murder and armed robbery, as well as numerous physical assaults on other persons; and if so,
- (b) That the additional murder, armed robbery, and numerous physical assaults on other persons demonstrate a continuing pattern of violence; and if so,
- (c) That the continuing pattern of violence proves, beyond a reasonable doubt, that Defendant represents a continuing danger to the life and safety of

other people in the future, even if Defendant was imprisoned for the rest of his life without any possibility of release.

When evaluating this non-statutory aggravating factor, I must remind you once more that if you find that the government has proven this factor beyond a reasonable doubt, that means you have all agreed – unanimously – that the government has proven this specific factor beyond a reasonable doubt. It is not enough for some of you to believe the government has proven this non-statutory aggravating factor and others of you to think the government has not proven this non-statutory aggravating factor.

If the government does not satisfy each of you, unanimously and beyond a reasonable doubt, that this non-statutory aggravating factor exists, you must resolve that doubt in Defendant's favor – which means you must find that the government failed to establish this non-statutory aggravating factor beyond a reasonable doubt. You should return a finding to that effect by recording that finding on Part Three of the Special Findings Form, then proceeding to Step Four, where you will consider mitigating evidence.

If you unanimously find that the government has proven this non-statutory aggravating factor beyond a reasonable doubt, you should record that finding on Part Three of the Special Findings Form, then proceed to Step Four, where you will consider mitigating evidence.

STEP FOUR: FINDINGS ON MITIGATING FACTORS

Mitigating Factors Defined

A mitigating factor is not offered to justify or to excuse Defendant's conduct. Indeed, if a homicide was justified or excusable, a defendant would not be guilty of it or punishable for it. A mitigating factor is simply additional information about Defendant's life or character, or about the circumstances surrounding the offense, that would suggest, in fairness and mercy, that a sentence of death is not the most appropriate punishment, and that a sentence of life in prison without any possibility of release is the more appropriate punishment.

Burden of Proof on Mitigation

It is the defendant's burden to establish any mitigating factors by a preponderance of the evidence. This is a lesser standard of proof under the law than proof beyond a reasonable doubt. A mitigating factor is established by a preponderance of the evidence if its existence is shown to be more likely so than not so. In other words, a preponderance of the evidence means such evidence as, when considered and compared with that opposed to it, produces in your minds the belief that it is more likely true than not true.

Mitigating Factors -- Unanimity Not Required

The law provides that you may consider factors in Defendant's background or character, or any other circumstance of the offense, that mitigates against imposition of the death sentence.

A finding with respect to a mitigating factor may be made by one or more members of the jury, and any member of the jury who finds the existence of a

mitigating factor may consider such a factor established for purposes of this section regardless of whether any other jurors agree that the factor has been established. In other words, unlike aggravating factors, which you must unanimously find proved beyond a reasonable doubt in order for you to consider them in your deliberations, the law does not require you to unanimously agree about mitigating factors. The only mitigating factors which you must agree exist are the mitigating factors to which the parties have stipulated -- which are listed later in these instructions.

The following mitigating factors have been offered to you and must be considered by you if you find them established by a preponderance of the evidence:

1. Defendant grew up in extreme poverty.
2. Defendant grew up surrounded by violence, both in his home and his neighborhoods.
3. Defendant's mother was and is a drug addict and introduced the family to drugs.
4. The only parental figure in Defendant's life was his mother; there was no father or father figure in the home.
5. Defendant never had a male role model.
6. Defendant was 27 years old at the time of his arrest.
7. Defendant will serve a sentence of life in prison without any possibility of release if not sentenced by you to death.
8. Defendant presents no risk of future violence or danger to the public while in prison for the rest of his life.
9. Defendant has made a good adjustment to being incarcerated.
10. Defendant has made the lives of guards and other prison employees easier while incarcerated.

11. Defendant suffered a brain injury. Defendant's brain injury, while not extreme, relates to Defendant's character, background, record, and/or to the circumstances of the offense.
12. Defendant contributed to the financial and emotional well-being of his younger sister [NAME] until his arrest.
13. Defendant provided support and encouragement to [NAME] to go to school.
14. Defendant attempted to be a positive father.
15. Defendant acted as a father figure to his sisters [NAME] and [NAME].
16. Defendant will maintain a positive relationship with his family if sentenced to life imprisonment without any possibility of release.
17. Defendant's execution will cause his family great emotional pain and distress.
18. Defendant's execution may cause his children to believe they are worthless, as well as causing them grief.
19. Defendant's criminality was caused, in part, by his upbringing.
20. Defendant was negatively affected by his mother's killing of [NAME].
21. Defendant attempted, although he was not successful, to stop using drugs.
22. The State's social service system failed Defendant and his family.
23. Defendant may be rehabilitated even while in prison.
24. Other co-defendants, or possible co-defendants, are equally or more culpable than Defendant for some of his actions, but are not sentenced to death.
25. Defendant is a human being.
26. Victim Two participated in the defendant's conduct.
27. The death penalty is a penalty of last resort.

28. Any other evidence about the commission of the crime, or Defendant's background or character, that establishes a reason to punish with life in prison without any possibility of release, rather than death.

Other Mitigating Evidence

I will now explain the last mitigating factor for a moment. In addition to the other factors listed above, you may consider anything else about the commission of the crime or about Defendant's background or character -- so long as you find it has been established by a preponderance of the evidence -- that would mitigate against imposing the death penalty. This means that if there are any mitigating factors, whether or not specifically argued by defense counsel or listed above, which are established by a preponderance of the evidence, you are free to consider them in your deliberations.

In other words, your discretion in considering mitigating factors is much broader than your discretion in considering aggravating factors.

Remember that a finding with respect to a mitigating factor may be made by one or more members of the jury, and any member of the jury who finds the existence of a mitigating factor may consider such a factor established for purposes of this section regardless of whether any other jurors agree that the factor has been established. In other words, unlike aggravating factors, which you must unanimously find proved beyond a reasonable doubt in order for you to consider them in your deliberations, the law does not require you to unanimously agree about mitigating factors.

You may consider as a mitigating factor any circumstance which tends to justify the penalty of life in prison without any possibility of release rather than the sentence of death. You should list any additional mitigating factors on the Special Findings Form. If, however, you think there is some other mitigating factor present but are simply not able to put it into words so that you can write it down on a list, you should still give that factor your full consideration.

You should record your findings on mitigating factors on Part Four of your Special Findings Form.

Mitigating Factors - Directed Verdict

Now I instruct you that the parties have stipulated that certain mitigating circumstances exist. I therefore instruct you that you must consider that the following mitigating factors have been proven by a preponderance of the evidence:

1. Defendant grew up in extreme poverty.
3. Defendant's mother was and is a drug addict and introduced the family to drugs.
4. The only parental figure in Defendant's life was his mother; there was no father or father figure in the home.
6. Defendant was 27 years old at the time of his arrest.
7. Defendant will serve a sentence of life in prison without any possibility of release if not sentenced by you to death.
13. Defendant provided support and encouragement to Sister to go to school.

16. Defendant will maintain a positive relationship with his family if sentenced to life imprisonment without any possibility of release.
17. Defendant's execution will cause his family great emotional pain and distress.
25. Defendant is a human being.
26. Victim Two participated in the defendant's conduct.
27. The death penalty is a penalty of last resort.

STEP FIVE: WEIGHING THE AGGRAVATING AND MITIGATING FACTORS

Once you have decided on the aggravating and mitigating factors present in this case, the law requires you to evaluate these factors to decide whether you are unanimously persuaded that the aggravating factor or factors found to exist sufficiently outweigh the mitigating factor or factors found to exist. Only if the aggravating factor or factors sufficiently outweigh the mitigating factors, may you consider imposing a punishment of death rather than a punishment of life in prison without any possibility of release.

Remember that regardless of your findings regarding aggravating or mitigating factors, you are never required to impose the death penalty.

You will notice that I just told you that you may not impose the death penalty unless each of you finds the aggravating factor or factors sufficiently outweighs mitigation so as to convince you that Defendant should be executed rather than punished with life in prison without any possibility of release. Whether the evidence favoring a death sentence is “sufficient” to warrant actually sentencing Defendant to death is a question the law leaves up to you.

In carefully weighing the various factors at issue in this case, you are called upon to make a unique, individualized judgment about the propriety of sentencing Defendant either to death or to life in prison without any possibility of release. This is not a mechanical process. Rather than counting factors, you should consider them qualitatively. Your decision must be a reasoned, moral response. Any one aggravating factor proved, if sufficiently serious, may outweigh all mitigating factors.

On the other hand, you must recognize that even a single mitigating factor may outweigh all aggravating factors.

Furthermore, even if you find that the mitigating factors to which the parties have stipulated are insufficient and that no other mitigating factor exists, you may still decide that the aggravating factors are not enough to justify sentencing Defendant to death. In short, ladies and gentlemen, what is called for in weighing the various factors is not arithmetic, but your careful, your considered, your mature judgment.

STEP SIX: DETERMINING THE SENTENCE

At this stage in the process, you are not called upon simply to find relevant factors. You are called upon to decide whether Defendant shall live in prison until he dies of natural causes or die by execution.

When I speak of justice, I speak of the highest ideal of the law, and the standard by which civilized societies are measured. Justice contemplates the careful application of human reason and experience to a set of circumstances. It contemplates an even-handed weighing of those circumstances in an effort to reach a fair result. Whether any given amount of aggravation, once proven, is “sufficient” to warrant actually sentencing Defendant to death is a question that the law leaves entirely up to the jury collectively and to each of you individually.

Each juror must decide, individually, whether Defendant should be sentenced to death or to life in prison without any possibility of release. The jury by unanimous vote shall then decide whether Defendant should be sentenced to death or to life in prison without any possibility of release.

If you cannot agree unanimously that Defendant should be sentenced to either death by execution or to life in prison without any possibility of release, then you will “agree to disagree” by signing the verdict form sentencing Defendant to life in prison without any possibility of release.

You should record your decision on Mr. Defendant’s sentence on Part Five-A or Five-B of your Special Findings Form.

Consequences of Sentencing Verdict

In your deliberations on the question of punishment, you must understand that if you sentence Defendant to death, I will not be able to change that verdict, and you must assume that he will in fact be executed.

You are also instructed that if you do not sentence Defendant to death, he will spend the rest of his life in prison without any possibility of release, and I will not be able to change that verdict, either.

The only two punishment choices for Defendant are death or life in prison without any possibility of release. No other options are available. If you do not unanimously agree on whether to sentence Defendant to death or to life in prison without any possibility of release, Defendant will be sentenced to life in prison without any possibility of release.

The Death Penalty is Not Required

You are never required to impose a death sentence. You have complete control and discretion in determining whether or not the circumstances of this case justify a sentence of death.

You must consider whether the aggravating factor or factors you have unanimously found to be established in this case sufficiently outweigh the mitigating factor or factors each of you, individually, find to be established -- including the mitigating factors which both parties have stipulated exist -- before you may consider imposing a sentence of death. You may consider mercy in making this determination.

If you decide to impose the death sentence, the Court is required to impose that sentence. If you decide that the death penalty should not be imposed in this case, Defendant will be sentenced to life in prison without any possibility of release.

Decision Forms

Because I recognize that these instructions provide you with a variety of conclusions you can reach, and because your decision in this phase of the case, unlike the first, cannot be reported by pronouncing as simple a conclusion as "guilty" or "not guilty," I have prepared a number of alternative decision forms that can be reported by your foreperson, depending upon the jury's findings. Let me go over them with you.

Whichever decision you reach, you are each asked to sign the decision form with your full name. Your foreperson will be called upon in open court to report the decision. I also ask that your foreperson be prepared to report in open court your specific findings as to Defendant and the aggravating and mitigating factors I have discussed.

Right to Justice Without Discrimination

Finally, in your deliberations as to the death penalty and life without any possibility of release, you must not consider the race, color, religious beliefs, national origin, or sex of either Defendant or the victim. Whatever decision you return, each of you is required by law to sign a certification attesting to the fact that you have followed this instruction. You must be convinced in your own mind that you would have reached the same decision regarding sentence regardless of the race, color, religious beliefs, national origin, or sex of either Defendant or the victim.

Closing Instructions

I have now outlined for you the rules of law applicable to your consideration of the death penalty and the processes by which you should determine the facts and weigh the evidence. In a few minutes you will retire to the jury room for your deliberations. Once again, you should select a foreperson to ensure that your deliberations proceed in an orderly manner. Of course, his or her vote is not entitled to any greater weight than that of any other juror.

The importance of your deliberations should be obvious. You are to consider whether the sum of the aggravating factor or factors found to exist sufficiently outweigh the sum of the mitigating factor or factors found to exist to justify a sentence of death. Based upon this consideration, the jury by unanimous vote shall decide whether Defendant should be sentenced to death or to life imprisonment without possibility of release. This means that even if one juror is not so persuaded - - if any one of you thinks that justice can be served by a sentence other than death - - you must return a decision against the death penalty.

Each of you must decide the case for yourself. It is also your duty, as jurors, to consult with one another and to deliberate with a view to reaching an agreement, if you can do so without violence to individual judgment.

Remember at all times, you are not partisans. You are judges -- judges of the facts. Your sole interest is to seek the truth from the evidence in the case.

When you are in the jury room, please discuss all aspects of these sentencing issues among yourselves with candor, frankness, and a due regard for the opinions of one another. Nevertheless, I remind you that each of you must decide this

question for yourself and not merely go along with the conclusion of your fellow jurors. In the course of your deliberations, no juror should surrender conscientious beliefs of what the truth is and what the weight and effect of the evidence is.

If at any point one or more of you believes that life in prison without any possibility of release is sufficient punishment, you may stop deliberating and sign the verdict form sentencing Defendant to life in prison without any possibility of release.

Remember that the parties and the Court are relying upon you to give full, considered, and mature consideration to this sentencing issue. By so doing, you carry out to the fullest your oaths as jurors to try the issues of this case well and truly, and to render a just result.

If it becomes necessary during your deliberations to communicate with me for any reason, simply send me a note signed by your foreperson or by one or more other members of the jury. Do not attempt to communicate with the Court or any other court personnel by any means other than a signed writing. I will not communicate with any member of the jury on any subject touching on your sentencing decision other than in writing or orally here in open court.

When you have reached your decision as to the death penalty or life imprisonment without possibility of release, send me a note signed by your foreperson that you have reached a decision. Do not indicate in the note what the decision is.

You must be prepared to report to the Court both your findings as to the aggravating and mitigating factors listed on your Special Findings Form and then one of the decisions provided in the various forms given to you.

Let me remind you that nothing that I have said in these instructions – and nothing that I have said or done during the trial – has been said or done to suggest to you what I think your decision should be.

Before now asking you to retire and begin your deliberations, let me first consult with counsel to be certain I have not overlooked any point.

Now, ladies and gentlemen of the jury, I am about to direct that you be taken to the jury room for deliberation on the decision which you are required to render. Take up the case carefully for it is an important case to both Defendant and to the government. Give each item careful consideration and arrive at a proper verdict. Have your foreperson record the verdict, return the verdict slip as to us at the appropriate time, and your verdict will then be announced in open court.

Do not be hasty in your deliberations. Be true to the oath you have taken by taking time to understand these instructions and thoughtfully discuss all the evidence you have heard to be sure that the decision you make is yours -- and yours alone. Your verdict should be one which you feel justice dictates after calm and deliberate consideration of all the evidence.