

UNITED STATES DISTRICT COURT  
(NAME OF DISTRICT)

United States :  
 :  
v. : No. 3:02cr7(JBA)  
 :  
Defendant :

Jury Instructions

Members of the jury, it is again my duty to instruct you on the law applicable to the sentencing phase of this case. Each of the counts on which you found (defendant) guilty carry the potential for the death penalty, that is, they are each "capital counts." The sole question before you is whether (defendant) should be sentenced for his capital offenses to either (1) life imprisonment without the possibility of release, or (2) the death penalty. The selection between these very serious choices is yours and yours alone to make. Whether you determine, as to a particular count, that (defendant) should be sentenced to death, or instead to life imprisonment without the possibility of release, the Court is required to impose that sentence which you chose as to that count. There is no parole in the federal system, and so a life sentence means precisely that.

You have found (defendant) guilty of the following counts of the Indictment: Count One, conspiracy to commit murder-for-hire; Count Two, murder-for-hire by use of interstate travel;

Count Four, Violent Crime in Aid of Racketeering (VICAR); and Count Five, causing death by use of a firearm during a crime of violence. Even though there are four counts at issue here, you must still approach the sentencing decision before you separately as to each count and with an open mind. I cannot stress to you enough the importance of your giving careful and thorough consideration to all the evidence. And 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 sentencing decision upon any view of the law other than that which is given to you in these instructions.

The instructions I am giving constitute a complete set of instructions on the law applicable to the capital sentencing decision as to (defendant). During your deliberations you should thus rely on these instructions. A Special Verdict Form has been prepared that you must complete. This verdict form details the specific findings you are required to make and will aid you in making your findings in the proper order and in properly performing your deliberative duties.

Now, although Congress has left it wholly to you, the jury, to decide (defendant's) punishment, it has narrowed and channeled your discretion in specific ways, particularly by requiring that you consider and weigh any "aggravating" and

"mitigating" factors proved in this case. These factors have to do with the circumstances of the crime, the personal traits, character, or background of (defendant), or anything else relevant to the sentencing decision. "Aggravating factors" are those that would tend to support imposition of the death penalty. By contrast, "mitigating factors" are those that suggest that life in prison without the possibility of release is the appropriate sentence in this case. The word "mitigate" means "to make less severe" or "to moderate."

Of course, your task is not simply to decide what aggravating and mitigating factors exist here, if any. Rather, you are called upon to evaluate any such factors and to make a unique, individualized choice between the death penalty and life in prison without the possibility of release. In short, the law does not assume that any defendant found guilty of premeditated murder should be sentenced to death. Nor does the law presume that (defendant), in particular, should be sentenced to death. Rather, your decision on the question of his punishment is a uniquely personal judgment which the law leaves up to each of you. However, the decision to impose the death sentence on (defendant) must be a unanimous decision. That is, every juror must agree that a sentence of death should be imposed rather than a sentence of life imprisonment without the possibility of

release. If all twelve of you do not unanimously agree that a sentence of death should be imposed, then the sentence will be life imprisonment without the possibility of release.

### Burden of Proof

The Government, at all times and as to all counts, has the burden of proving beyond a reasonable doubt that the appropriate sentence for (defendant) is the death penalty. Before you can consider whether the Government has proved that the death penalty is appropriate, the Government must prove beyond a reasonable doubt as to each count all of the following:

1. the existence of the "gateway factor" claimed by the Government;
2. the existence of at least one "statutory aggravating factor" claimed by the Government;
3. the existence of the "non-statutory aggravating factor" claimed by the Government; and
4. that all the aggravating factors found to exist sufficiently outweigh all the mitigating factors found to exist so as to justify a sentence of death (or, in the absence of any mitigating factor, that the aggravating factors found to exist alone justify a death sentence.)

Even if the Government proves these things, you are not required to impose the death penalty; there is never any such requirement.

The definition of reasonable doubt is the same as that which I instructed you at the guilt phase. You will remember that it is a doubt based upon reason and common sense. It is a doubt that a reasonable person has after carefully weighing all of the

evidence. A reasonable doubt may arise from the evidence itself or lack of evidence. It is a doubt which would cause a reasonable person to hesitate to act in a matter of importance in his or her personal life. 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. Proof beyond a reasonable doubt does not mean proof beyond all possible doubt.

A defendant never has the burden of disproving the existence of anything on which the Government bears the burden of proof beyond a reasonable doubt. The burden is wholly upon the Government; the law does not require a Defendant to produce any evidence that a particular aggravating factor does not exist or that death is not an appropriate sentence.

(Defendant) is entitled to, but is not required to, present evidence to establish any mitigating factors - that is, facts that favor a punishment other than death. Here, (defendant) asserts a number of mitigating factors, and it is his burden to establish any mitigating factors by a preponderance of the evidence. To prove something by a preponderance of the evidence is a lesser standard of proof than proof beyond a reasonable doubt. To prove something by a preponderance of the evidence is to prove that it is more likely

true than not true. It is determined by considering all of the evidence and deciding what evidence is more believable. It is proof that a fact is more than 50% likely to be true.

The preponderance of the evidence is not determined by the greater number of witnesses or exhibits presented by the Government or the defense. Rather, it is the quality and persuasiveness of the information which controls.

### **Evidence**

In making all the determinations you are required to make in this phase of the trial, you may consider any information presented during this penalty phase and the guilt phase. Recall that for our purposes here the terms "evidence" and "information" have the same meaning.

In deciding what the facts are, you may have to decide what testimony you believe and what testimony you do not believe. You may believe all of what a witness said, or only part of it, or none of it. In deciding what testimony of any witness to believe, consider the witness's intelligence, the opportunity the witness had to see or hear the things testified about, the witness's memory, any motives that the witness may have for testifying a certain way, the manner of the witness while testifying, whether that witness said something different at an earlier time, the general reasonableness of the testimony, and the extent to which the testimony is consistent with other evidence that you believe. You also decide what weight or significance you will give to each witness's testimony.

Additionally, because the law does not permit any witness to state whether he or she personally favors or opposes the death penalty in this case, you should draw no inference either way from the fact that no witness has testified as to his or

her view on this subject.

**Finding As to Defendant's Age**

Before you may consider the imposition of the death penalty, you must first unanimously agree that the defendant was eighteen years of age or older at the time of the offense. The parties have stipulated that (defendant) was eighteen years of age or older at the time of the offense.

If you make that finding, you will so indicate in Section I of the Special Verdict Form and continue your deliberations.

### **Finding of Gateway Factor**

Before you may consider the imposition of the death penalty for any count, you must first unanimously find, beyond a reasonable doubt, the existence as to that count of the "gateway" factor identified by the Government. It is called a "gateway" factor because if you do not find it proved, you may not go further to consider a death sentence. The gateway factor applicable here is:

That the Defendant intentionally participated in acts, contemplating that the life of (victim) would be taken or intending that lethal force would be used in connection with (victim), a person other than one of the participants in the offense, and (victim) died as a direct result of the act.

The Government must prove that the defendant deliberately participated in such acts with a conscious desire that (victim) be killed, or that lethal force be employed against (victim). The phrase "lethal force" means an act of violence capable of causing death.

Although I will be discussing each of the counts of conviction collectively, in your deliberations regarding the existence of the gateway factor and the statutory aggravating factors, you must treat each count separately.

Your findings as to whether the Government has proven the existence, beyond a reasonable doubt, of the gateway factor must

be unanimous on each count.

In making your findings, you may not rely solely upon your Phase One verdict of guilt or your factual determinations therein. Instead, you must now each decide this issue for yourselves again.

Any finding that the gateway factor has been proven as to a particular count must be based on (defendant's) personal actions and intent. Intent or knowledge may be proven 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 his knowledge or intent. You may, but are not required to, infer that a person intends the natural and probable consequences of acts knowingly done or knowingly omitted.

In the event you unanimously find, beyond a reasonable doubt, that the gateway factor exists as to any count or counts, you will indicate that finding on the appropriate line in Section II of the Special Verdict Form, which provides a space for you to indicate your finding as to each count. If you do not unanimously find that the gateway factor has been proved with respect to any of the counts, you will deliberate no further and just complete the Certification in Section VIII of the Special Verdict Form. For any count, if you do not unanimously find that the

Government has proven the existence of the gateway factor, your deliberative task as to that count will be over and the Court will impose a mandatory sentence on that count of life imprisonment without the possibility of release.

I instruct you that if you find the gateway factor is proved to exist, it is not an aggravating factor and may not be weighed by you in deciding whether or not to impose a sentence of death. It is simply a threshold factor which must be found before you are required to make any further findings.

The law requires you to make a finding with regard to the gateway factor because Congress has determined that not all murders are eligible for the death penalty. Only those murders that also satisfy a gateway factor justify consideration of the death penalty. However, a finding that the gateway factor has been proved beyond a reasonable doubt cannot, in and of itself, justify a death penalty, precisely because it is not an aggravating factor to be weighed. As I will explain to you, more is required before you may decide that the death penalty is to be imposed rather than a sentence of life in prison without the possibility of release.

**Statutory Aggravating Factors: Introduction**

If and only if you unanimously find that the Government has proven that the gateway factor exists as to a particular count or counts, you must proceed to determine whether the Government has proven, beyond a reasonable doubt, the existence of at least one "statutory aggravating factor." A statutory aggravating factor is one which is specifically set forth in the Federal Death Penalty Statute and has been explicitly identified by the Government in a particular case. In this case, the Government alleges the following two statutory aggravating factors with respect to each count:

1. That (defendant) procured the commission of the offense by payment, or promise of payment, of something of pecuniary value; or
2. That (defendant) committed the offense after substantial planning and premeditation to cause the death of (victim).

The law directs you to consider and decide separately, as to each count for which you have found the existence of the gateway factor, whether the Government has proved the existence of either of the statutory aggravating factors it claims. You are reminded that to find the existence of a statutory aggravating factor as to a particular count, your decision must be unanimous and beyond a reasonable doubt as to that statutory aggravating factor. If you are not unanimous on the statutory aggravating

factor under consideration, that factor cannot be used in your deliberations. Any finding that one or both of these factors has been proven must be based on (defendant's) personal actions and intent.

If you find that one or both statutory aggravating factors exist as to any count or counts, you are to indicate that finding on the appropriate line in Section III of the Special Verdict Form for that count. If you do not unanimously find that either statutory aggravating factor has been proved with respect to any of the counts, your deliberations are finished and you should proceed directly to the Certification in Section VIII of the Special Verdict Form.

For any count, if you do not unanimously find that the Government has proven either statutory aggravating factor as to a particular count, your deliberative task as to that count will be over and the Court will impose a mandatory sentence on that count of life imprisonment without the possibility of release.

Let me now instruct you in detail on the specific elements necessary for the Government to prove each of these statutory aggravating factors beyond a reasonable doubt.

### **Pecuniary Gain**

The first statutory aggravating factor alleged by the Government is that (defendant) procured the commission of the offense by payment or promise of payment of anything of pecuniary value.

To "procure" means to obtain, induce, or cause to take place.

The words "payment or promise of payment" should be given their ordinary, everyday meaning which includes giving or offering compensation in return for services.

"Anything of pecuniary value" means anything in the form of money, property, or anything else having some economic value, benefit or advantage.

Your finding as to this statutory aggravating factor must be indicated in the appropriate space in Section III of the Special Verdict Form.

### Substantial Planning and Premeditation

The second statutory aggravating factor alleged by the government is that (defendant) committed the offense after substantial planning and premeditation to cause the death of (victim).

"Planning" means mentally formulating a method for doing something or achieving some end.

"Premeditation" means thinking or deliberating about something and deciding beforehand whether to do it.

"Substantial" planning and premeditation means a considerable or significant amount of planning and premeditation.

If you have reached the stage where you are considering statutory aggravating factors, you will necessarily have found both that (defendant) is guilty of participation in the murder, and that he intended to commit the murder as specified in the gateway factor you found. However, the "substantial planning and premeditation" statutory aggravating factor requires more. To find that the Government has satisfied its burden of proving that (defendant) engaged in substantial planning and premeditation to cause the death of (victim), you must find that (defendant's) actual planning and premeditation was "considerable," or "large" in relation to that which would

be necessary to commit the underlying offense.

Additionally, in order to find this aggravating factor, you must also find beyond a reasonable doubt that (defendant) personally engaged in "substantial planning and premeditation." You may not find this aggravating factor based on any substantial planning and premeditation by any other persons involved in (victim's) murder.

Finally, let me reiterate that if with respect to any count you do not unanimously find that the Government has proven beyond a reasonable doubt at least one statutory aggravating factor, your deliberations as to that particular count are concluded.

### **Non-Statutory Aggravating Factor**

If, and only if, you have unanimously found that the Government has proven the existence of the gateway factor and at least one of the statutory aggravating factors as to a particular count or counts, you must then consider whether the Government has proven the existence of the single "non-statutory aggravating factor" with regard to that count or those counts. You must agree unanimously, and separately as to each count, that the Government has proven beyond a reasonable doubt the existence of the alleged non-statutory aggravating factor before you may consider that non-statutory aggravating factor in your deliberations.

The law permits you to consider only the one non-statutory aggravating factor specifically claimed by the Government, which is listed below. You are not free to consider any other facts in aggravation that you conceive of on your own.

The non-statutory aggravating factor alleged by the Government with regard to each count is:

That the Defendant committed the offense in connection with his role as the leader of the (name) Organization, an enterprise engaged in racketeering activity.

Again, your findings regarding this factor must be separate and unanimous with regard to each count you are

considering. You also must unanimously agree, beyond a reasonable doubt, that the non-statutory aggravating factor alleged by the Government is in fact aggravating, that is, that it makes the crime worse, more serious or severe. Thus, there are two basic findings on the non-statutory aggravating factor that you must make beyond a reasonable doubt:

1. that the fact alleged by the Government has been established; and
2. that the factor is "aggravating".

Again, an aggravating factor is a fact or circumstance that would tend to support imposition of the death penalty.

If you unanimously find that this non-statutory aggravating factor has been proven beyond a reasonable doubt as to any count or counts, you should so indicate in Section IV of the Special Verdict Form.

Even if you do not find the non-statutory aggravating factor proven with regard to any counts, you may still continue your deliberations and consider the death penalty as the possible sentence, but, obviously, you may not base any determination that the death penalty is appropriate on the claimed non-statutory factor. You will note that this instruction is different from the instruction for gateway and statutory aggravating factors, where, if you did not find the gateway factor or at least one statutory aggravating factor, you

could not proceed to deliberate further on that particular count. Only if you unanimously agree that the Government has proven beyond a reasonable doubt the existence of the non-statutory aggravating factor can you consider that factor in your sentencing decision.

After you have recorded your findings regarding the existence of this non-statutory aggravating factor in Section IV of the Special Verdict Form, you will next consider whether any mitigating factors exist. Remember, unless you are unanimous that a specific statutory or non-statutory aggravating factor has been proven by the Government beyond a reasonable doubt, you may not give that factor any further consideration during any of your deliberations.

### **Mitigating Factors**

Before you may consider the appropriate punishment for any counts for which you have found the existence of the gateway factor and at least one statutory aggravating factor, you must consider whether (defendant) has proven the existence of any mitigating factors. The word "mitigate" means "to make less severe," "to moderate," or "to lessen, soften, mollify, or temper." A mitigating factor is not offered to justify or excuse (defendant's) conduct with respect to the offense of conviction. Instead, a mitigating factor is a fact about (defendant's) life or character, or about the circumstances surrounding the particular capital offense, or anything else relevant that would suggest, in fairness, that life in prison without the possibility of release is a more appropriate punishment than a sentence of death.

Unlike aggravating factors, which you must unanimously find proven beyond a reasonable doubt in order for you even to consider them in your deliberations, the law does not require unanimity with regard to mitigating factors. Any one juror who is persuaded of the existence of a mitigating factor must consider it in his or her sentencing decision.

Furthermore, it is Defendant's burden to establish a mitigating factor only by a preponderance of the evidence. This

is a less demanding standard of proof under the law than proof beyond a reasonable doubt. A factor is established by a preponderance of the evidence if its existence is shown to be more likely so than not so, that is, if the likelihood that the factor is true is even slightly more than 50 percent.

In this case, (defendant) claims the following mitigating factors:

- 1.(Associate #1) was extensively involved in all aspects of this crime. As such, he is at least as responsible as (defendant) in (victim's) murder, but (Assoc. #1) is not being prosecuted at all for his participation and involvement in this crime. Furthermore, he may well receive a sentence reduction on his 11-year drug sentence.
- 2.(Associate #2) was a willing participant and drove the motorcycle that was used in the murder of (victim). For these reasons, he is at least as responsible as (defendant) for this crime. (Assoc. #2) is also a career criminal with multiple criminal convictions over an extensive time span, who has also committed numerous uncharged violent offenses. Despite his central role in this murder and his extensive criminal history, he is not facing the death penalty in this or any other case.
- 3.(Associate #3) introduced (Assoc. #1) to the (name of state) killers. (Assoc. #3) made initial contact with the killers, may well have negotiated the price for the killing, and drove away the motorcycle used in the killing after the attack. (Assoc. #3) is at least as responsible as (defendant) in the commission of this murder, and he is not facing the death penalty in this case.
4. There is no physical, scientific or forensic evidence which absolutely proves(defendant's) guilt. The case against (defendant) relies on the testimony of cooperators who have motives to fabricate testimony and who made deals to help their own cases with the government.

5. The DEA agent, (name of agent), was the central point of contact for all three cooperating witnesses. The fact that (agent's) credibility is in any way in doubt raises concern about the reliability of the testimony of the three cooperators, and reduces the certainty of guilt in this case.
6. There is lingering doubt about (defendant's) guilt, even though those doubts did not rise to the level of "reasonable doubt" in deliberation of the guilt phase evidence.
7. (Victim) contributed directly to the chain of events that led to his death, as he committed acts of violence against (Assoc. #1) and others and threatened additional acts of violence.
8. Prior to the death of (victim), (Assoc. #4) had never been convicted of any criminal offense. Prior to his sentencing in federal court on drug charges in January (year), he had never before been incarcerated.
9. Other than this case, (defendant) has never been involved in any serious acts of violence.
10. Between the time of his arrest in June (year) and his sentencing in federal court on(date), (defendant) was released on bond. While on bond he voluntarily attended all court hearings, appeared in court and pled guilty to the federal drug charges, and then voluntarily appeared for sentencing, knowing the government was seeking a sentence of at least thirty years and potentially life in prison.
11. (Defendant) was gainfully employed on a consistent basis before his incarceration in January of (year).
12. (Defendant) has shown kindness and concern for other people in his community.
13. In (year), (defendant) rescued his son from an abusive and neglectful situation at the hands of his ex-wife's boyfriend. Since that time, he has provided a loving and caring environment for his son, both on his own and with the help of his family.
14. (Son) loves his father very much, and the execution of

(defendant) would have a particularly harsh impact on this young man.

15. During the time (defendant) was in a relationship with (acquaintance), he became a father in every sense to her children, (name) and (name), though he is not their biological father. They love and respect him deeply as he continues to play a role in their lives. The execution of (defendant) would have a particularly harsh impact on these young people.
16. Prior to and since his incarceration (defendant) has been a loving father, uncle, son and brother to his family members, and his execution would have a harsh impact on his entire family.
17. (Defendant) has been a model prisoner and has fully conformed his conduct to the rules of the Federal Bureau of Prisons since he began his incarceration on (date).
18. (Defendant) has studied for and received his High School Equivalency Diploma, has participated in other educational and counseling programs, and has pursued available opportunities for education and personal growth within the Federal Bureau of Prisons, since his incarceration began on (date).
19. (Defendant) has been regularly employed within the prison, and has consistently received favorable or excellent work evaluations, since his incarceration began on (date).
20. If (defendant) is granted life, the prison system will gain a man of demonstrated positive leadership within the prison community.
21. (Defendant) has shown kindness and concern for other inmates and serves as a positive role model to other inmates.
22. (Defendant) has continually shown respect for prison staff, and his positive actions within the prison have aided the staff in creating a safe and orderly environment.
23. (Defendant) is a human being with many positive

qualities.

24. The evidence has established other factors, in addition to those listed above, that support a sentence of life imprisonment.

One mitigating factor on which (defendant) relies, "that another person, equally culpable in the crime, will not be punished by death," allows you to take into account as a reason not to impose the death penalty the fact that other participants in the murder will not be sentenced to death and executed, even though they might be equally responsible for (victim's) death.

The law requires consideration of this mitigating factor to allow juries to consider what is fair, considering all of the persons responsible for an intentional killing, before imposing a sentence of death.

(Defendant) has also claimed as a mitigating factor lingering doubt. You have found (defendant) guilty of capital crimes. Your consideration of guilt or innocence has, therefore, been completed. However, because the death penalty is utterly final and irrevocable, the consequences of a mistake in the determination of a person's guilt is something that a sentencing jury must consider in deciding the ultimate sentence to be imposed. Just as the law requires a greater degree of certainty in order to convict a person of a crime than to find

him liable civilly for money damages, so may each juror require an even greater degree of certainty when the outcome of his or her decision is the death of the person. Thus, you may consider any lingering doubts that any of you may have had as to the guilt of the defendant, even though those doubts did not rise to the level of "reasonable doubts" under the instructions previously given to you, in determining whether to recommend a sentence of life imprisonment without release.

In Section V of the Special Verdict Form, you are asked to report for each mitigating factor considered whether one or more members of the jury found a particular mitigating factor to be established by a preponderance of the evidence. In addition to the twenty-four mitigating factors specifically raised by the Defendant, the law permits each of you to consider anything about the circumstances of the offense, or anything about (defendant's) background, record, or character, or anything else relevant that you individually believe mitigates against the imposition of the death penalty. The law does not limit your consideration of mitigating factors to those that can be articulated in advance. As such, if there are any mitigating factors not argued by the attorneys for (defendant) but which any juror, on his or her own or with others, finds to be established by a preponderance of the evidence, that juror must

consider it in his or her sentencing determination. In short, your discretion in considering mitigating factors is much broader than your discretion in considering aggravating factors. This was a choice expressly made by Congress in enacting the Federal Death Penalty Act. In Section V of the Special Verdict Form, you are asked to identify any such additional mitigating factors that one or more of you independently finds to exist.

At this time, I wish to make a clarifying point: the existence of a mitigating factor is a distinct consideration from whatever weight, if any, should ultimately be given that factor in your deliberations. For example, any number of jurors might first find that a particular mitigating factor is proved to exist, but those individual jurors might later choose to give that particular mitigating factor differing levels of significance during the weighing process. With this distinction in mind, Section V of the Special Verdict Form only asks you to report if one or more jurors find the existence of a particular mitigating factor to be established by a preponderance of the evidence.

After you have completed your findings regarding the existence or non-existence of mitigating factors, you should proceed to weigh the aggravating factors and mitigating factors

with regard to each of the counts for which you have  
unanimously found the gateway factor and at least one statutory  
aggravating factor.

### **Weighing Aggravating and Mitigating Factors**

If, and only if, you unanimously find, beyond a reasonable doubt, that the Government has proven the existence of the gateway factor and at least one statutory aggravating factor, with regard to any count; and after you have determined whether the Government has proven beyond a reasonable doubt the existence of the non-statutory aggravating factor with regard to that count, and whether (defendant) has proven by a preponderance of the evidence the existence of any mitigating factors, then you must engage in a weighing process. This weighing process asks whether you are unanimously persuaded, beyond a reasonable doubt, that the aggravating factors sufficiently outweigh any mitigating factors or, in the absence of any mitigating factors, that the aggravating factors are in themselves sufficient to justify a sentence of death. Each juror must individually decide whether under all the facts and circumstances in this case a sentence of death has been proved justified.

You are to conduct this weighing process separately with regard to each of the counts for which you have found the gateway factor and at least one statutory aggravating factor. The specific offenses for which you are considering the sentence may not be considered themselves as factors in your weighing process. This means, for example, that the fact that Count II

charges murder-for-hire by use of interstate travel while Count IV charges a Violent Crime in Aid of Racketeering (VICAR), is not to be of any significance to you in deciding what the sentence should be on each count since all counts relate to the death of (victim).

You must independently weigh the aggravating factor or factors that you unanimously found to exist, whether statutory or non-statutory, and each of you must weigh any mitigating factors that you individually or with others found to exist. You are not to weigh the gateway factor as any part of this process, nor any aggravating factor you did not find proved, nor the nature of the specific counts. In engaging in the weighing process, you must avoid any influence of passion, prejudice, or any other arbitrary consideration. Your deliberations should be based upon the evidence you have seen and heard, and the law on which I have instructed you.

The process of weighing aggravating and mitigating factors against each other, or weighing aggravating factors alone if you find no mitigating factors, in order to determine if a death sentence is justified, is by no means a mechanical process. In other words, you should not simply count the total number of aggravating and mitigating factors and reach a decision based on which number is greater; rather, you should consider the weight

and value of each factor.

The law contemplates that different factors may be given different weights or values by different jurors. Thus, you may find that one mitigating factor outweighs all aggravating factors combined, or that the aggravating factors proved do not, standing alone, justify imposition of a sentence of death beyond a reasonable doubt. Similarly, you may instead find that a single aggravating factor sufficiently outweighs, beyond a reasonable doubt, all mitigating factors combined so as to justify a sentence of death. Each juror is individually to decide what weight or value is to be given to a particular aggravating or mitigating factor in the decision-making process. You will reflect your determination in Section VI.

Remember that even a finding that the aggravating factor(s) sufficiently outweigh the mitigating factors to justify a sentence of death does not require that you impose a sentence of death; there is never any requirement that a death sentence be imposed. Your determination of what sentence shall be imposed will be the result of you carefully weighing these various factors, and making a unique, individual judgment about the sentence that shall be imposed on (defendant).

### **Determination of Sentence**

Whether or not the circumstances in this case persuade you that a sentence of death is called for is a decision that the law leaves entirely to you. Remember that before a sentence of death can be imposed, all 12 jurors must agree beyond a reasonable doubt that death is in fact the appropriate sentence, but that no juror is ever required by the law to impose a death sentence. The decision is yours as individuals to make. Any one of you may decline to impose a death sentence, even where your findings make consideration of the death penalty possible. You do not have to give a reason for your decision. The law has given each of you the discretion to temper justice with mercy.

Bear in mind that in order to find unanimously that a sentence of death should be imposed on (defendant), the jurors must also have unanimously concluded that a death sentence is justified because the aggravating factor or factors sufficiently outweigh any mitigating factors, as I discussed in the previous section. A death sentence is never mandatory, but once it is imposed, I cannot change it. I will have no discretion, and I must then sentence (defendant) to death.

If you unanimously determine (defendant) shall be

sentenced to life imprisonment without possibility of release, you must record your determination in Section VII(A) of the Special Verdict Form.

If you unanimously conclude beyond a reasonable doubt that (defendant) shall be sentenced to death, then you must record your determination in Section VII(B) of the Special Verdict Form.

If all twelve members of the jury cannot unanimously find either that (defendant) should be sentenced to life imprisonment without possibility of release or to death, then you should indicate this circumstance in Section VII(C) of the Special Verdict Form. In that event, Congress has provided that the Court will impose the mandatory sentence of life imprisonment without any possibility of release.

Before you reach any conclusion based on a lack of unanimity (on any count), you should continue your discussions until you are fully satisfied that no further discussion will lead to a unanimous decision.

As I have told you, should you unanimously decide to impose the death penalty or to impose life imprisonment without any possibility of release, I am required by law to abide by your decision and to sentence (defendant)

accordingly.

### **Duty to Deliberate**

It is your duty as jurors to discuss the issue of punishment with one another in an effort to reach agreement, if you can do so. Each of you must decide the question of punishment for yourselves, but only after full consideration of the evidence with the other members of the jury. While you are discussing this matter, do not hesitate to re-examine your own opinion, and to change your mind if you become convinced that you are wrong. But do not give up your honest beliefs as to the weight or the effect of the evidence or the appropriate sentence for (defendant) solely because others think differently, or simply to get the case over with.

### **Justice Without Discrimination**

In your consideration of whether the death sentence is appropriate, you must not consider the race, color, religious beliefs, national origin, or sex of either (defendant) or (victim). You are not to return a sentence of death unless you would return a sentence of death for the crime in question without regard to the race, color, religious beliefs, national origin, or sex of either (defendant) or (victim).

To emphasize the importance of this consideration, Section VIII of the Special Verdict Form contains a certification statement. Each juror should carefully read the statement, and sign your name in the appropriate place if the statement accurately reflects the manner in which each of you reached your individual decision.

### **Special Verdict Form**

As referenced throughout these instructions, a "Special Verdict Form" has been prepared to assist you during your deliberations. You are required to record your decisions on this form.

Section I of the Special Verdict Form contains space to record your finding as to the defendant's age. Section II of the Special Verdict Form contains space to record your findings on the gateway factor; Section III contains space to record your findings on statutory aggravating factors; and Section IV contains space to record your findings on the non-statutory aggravating factor. Section V contains space to record your findings on mitigating factors. Section VI contains space to record your findings as to your weighing process. Section VII of the Special Verdict Form contains space to record your determination of the sentence. Section VIII of the Special Verdict Form contains a certification statement.

You are each required to sign the Special Verdict Form in Section VII to reflect your sentencing determination, and in Section VIII to reflect your certification.

### Conclusion

I have now outlined for you the rules of law applicable to your consideration of the death penalty and the process by which you should determine the facts and weigh the evidence. In a few minutes you will retire to the jury room.

The importance of your deliberations should be obvious. I remind you that you can return a decision sentencing (defendant) to death only if all 12 of you are unanimously persuaded, beyond a reasonable doubt, that the death sentence is in fact appropriate in his case.

When you are in the jury room, please discuss all aspects of these sentencing issues among yourselves with candor and frankness, but also with a due regard and respect for the opinions of one another. 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 his or her conscientious beliefs of what is the truth, of what is the weight and effect of the evidence, and what should be the outcome as determined by that juror's individual conscience and evaluation of the case. Remember that the parties and the Court are relying upon you to give full, considered, and mature consideration to this sentencing decision. By so doing, you carry out to the fullest your oaths

as jurors: that you will render a true and just verdict.

If it becomes necessary during your deliberations for you to ask questions or seek clarification or to communicate with me for any reason, simply send me a note signed by your foreperson. Do not attempt to communicate with the Court or any other court personnel by any means other than a signed note. I will never 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 a decision, send me a note signed by your foreperson that you have completed your deliberations. Do not indicate what your determination is in the note. In no communication with the Court prior to a verdict should you ever give a numerical count of where the jury stands in its deliberations.

Whichever of these possible determinations you reach, the foreperson must complete the Special Verdict Form accordingly and be prepared to report to the Court the jurors' findings as to the gateway, aggravating and mitigating factors, and the sentencing decision. The foreperson will sign where indicated; all jurors will sign the sentence determination and the certification sections.

Let me remind you again 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 the outcome should be. What the sentencing decision should be is your exclusive duty and responsibility.