
UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF TEXAS

UNITED STATES OF AMERICA

§

§

versus

§

NO. 1:09-CR-15 (1)

§

(Judge Crone)

MARK ISAAC SNARR

§

FILED

COURT'S INSTRUCTIONS TO THE JURY—PHASE TWO

PM 5:11 2010
DAVID J. MALAND, Clerk
U.S. DISTRICT COURT
By *Yatulia Ryz*
DEPT

Members of the Jury:

Having found Defendant Mark Isaac Snarr guilty of First Degree Murder in phase one of the trial, you must now in phase two determine if the defendant is legally eligible for consideration of the death penalty as punishment. These instructions will explain the law that you must apply in making the various findings relevant to the issue of eligibility.

A determination by you that the defendant is eligible for consideration of a death sentence does not mean that such a sentence will be imposed. Rather, the selection of the punishment will be made by you in a subsequent phase of the trial if you first find that the defendant is death penalty eligible. At this stage of the proceedings, you are not to consider or discuss whether death is an appropriate punishment.

GENERAL INSTRUCTIONS

Some of the legal principles that you must apply at this stage of the proceedings duplicate the instructions I gave you in phase one of the trial. I will now repeat several of the instructions I previously gave you for guidance in your deliberations with respect to this the eligibility phase of the trial.

DUTY TO FOLLOW INSTRUCTIONS

You, as jurors, are the judges of the facts. But in determining what actually happened—that is, in reaching your decision as to the facts—it is your sworn duty to follow all of the rules of law as I explain them to you.

You have no right to disregard or give special attention to any one instruction, or to question the wisdom or correctness of any rule I may state to you. You must not substitute or follow your own notion or opinion as to what the law is or ought to be. It is your duty to apply the law as I explain it to you, regardless of the consequences.

It is also your duty to base your verdict solely upon the evidence, without prejudice or sympathy. That was the promise you made and the oath you took before being accepted by the parties as jurors, and they have the right to expect nothing less.

REASONABLE DOUBT

A “reasonable doubt” is a doubt based upon reason and common sense after careful and impartial consideration of all the evidence in the case. Proof beyond a reasonable doubt, therefore, is proof of such a convincing character that you would be willing to rely and act upon it without hesitation in the most important of your own affairs.

EXCLUDING WHAT IS NOT EVIDENCE

As I told you earlier, it is your duty to determine the facts. In doing so, you must consider only the evidence presented during phases one and two of the trial, including the sworn testimony of the witnesses and the exhibits. Remember that any statements, objections, or arguments made by the lawyers are not evidence. The function of the lawyers is to point out those things that are most significant or most helpful to their side of the case, and in so doing to call your attention to

certain facts or inferences that might otherwise escape your notice. In the final analysis, however, it is your own recollection and interpretation of the evidence that controls in the case. What the lawyers say is not binding upon you.

During the trial I sustained objections to certain questions and exhibits. You must disregard those questions and exhibits entirely. Do not speculate as to what the witness would have said if permitted to answer the question or as to the contents of an exhibit. Also, you have been instructed to disregard certain questions. Do not consider any questions you have been told to disregard in reaching your decision. Your verdict must be based solely on the legally admissible evidence and testimony.

Also, do not assume from anything I may have done or said during the trial that I have any opinion concerning any of the issues in this case. Except for the instructions to you on the law, you should disregard anything I may have said during the trial in arriving at your own findings as to the facts.

EVIDENCE—INFERENCES—DIRECT AND CIRCUMSTANTIAL

While you should consider only the evidence, you are permitted to draw such reasonable inferences from the testimony and exhibits as you feel are justified in the light of common experience. In other words, you may make deductions and reach conclusions that reason and common sense lead you to draw from the facts which have been established by the evidence.

In considering the evidence, you should not be concerned about whether the evidence is direct or circumstantial. "Direct evidence" is the testimony of one who asserts actual knowledge of a fact, such as an eyewitness. "Circumstantial evidence" is proof of a chain of events and

circumstances indicating that something is or is not a fact. The law makes no distinction between the weight you may give to either direct or circumstantial evidence.

CREDIBILITY OF WITNESSES

I remind you that it is your job to decide whether the government has proved beyond a reasonable doubt whether the defendant is eligible for consideration of the death penalty as punishment. In doing so, you must consider all of the evidence. This does not mean, however, that you must accept all of the evidence as true or accurate.

You are the sole judges of the credibility or “believability” of each witness and the weight to be given the witness’s testimony. An important part of your job will be making judgments about the testimony of the witnesses who testified in this case. You should decide whether you believe all or any part of what each person had to say, and how important that testimony was. In making that decision I suggest that you ask yourself a few questions: Did the person impress you as honest? Did the witness have any particular reason not to tell the truth? Did the witness have a personal interest in the outcome of the case? Did the witness have any relationship with either the government or the defense? Did the witness seem to have a good memory? Did the witness clearly see or hear the things about which he or she testified? Did the witness have the opportunity and ability to understand the questions clearly and answer them directly? Did the witness’s testimony differ from the testimony of other witnesses? These are a few of the considerations that will help you determine the accuracy of what each witness said.

Your job is to think about the testimony of each witness you have heard and decide how much you believe of what each witness had to say. In making up your mind and reaching a verdict, do not make any decisions simply because there were more witnesses on one side than on

the other. Do not reach a conclusion on a particular point just because there were more witnesses testifying for one side on that point.

IMPEACHMENT BY PRIOR INCONSISTENCIES

The testimony of a witness may be discredited by showing that the witness testified falsely concerning a material matter, or by evidence that at some other time the witness said or did something, or failed to say or do something, which is inconsistent with the testimony the witness gave at this trial.

Earlier statements of a witness were not admitted in evidence to prove that the contents of those statements are true. You may consider the earlier statements only to determine whether you think they are consistent or inconsistent with the trial testimony of the witness and therefore whether they affect the credibility of that witness.

If you believe that a witness has been discredited in this manner, it is your exclusive right to give the testimony of that witness whatever weight you think it deserves.

IMPEACHMENT BY PRIOR CONVICTIONS

You have been told that witnesses Keenan Hurt, Ricardo Palleret, Clinton Alls, George Sarro, and John L. Franklin a/k/a Jonathan Franklin have prior felony convictions. A conviction is a factor you may consider in deciding whether to believe that witness, but it does not necessarily destroy the witness's credibility. These convictions have been brought to your attention only because you may wish to consider them when you decide whether you believe the witness's testimony. They are not evidence of anything else.

INFORMER TESTIMONY

The testimony of a witness who provides evidence against a defendant for a benefit, favored treatment, a reduction in sentence, placement in a special program, or for personal advantage must always be examined and weighed by the jury with greater care and caution than the testimony of ordinary witnesses. You, the jury, must decide whether the witness's testimony has been affected by any of those circumstances, or by the witness's interest in the outcome of the case, or by prejudice against the defendant, or by the benefits that the witness has or may receive from providing testimony in this case. You should keep in mind that such testimony is always to be received with caution and weighed with great care.

EXPERT WITNESSES

During the trial, you heard the testimony of Dr. Tommy Brown and Mark Bezy who expressed opinions concerning forensic pathology and prison administration, respectively. If scientific, technical, or other specialized knowledge might assist the jury in understanding the evidence or in determining a fact in issue, a witness qualified by knowledge, skill, experience, training, or education may testify and state an opinion concerning such matters.

Merely because such a witness has expressed an opinion does not mean, however, that you must accept this opinion. You should judge such testimony like any other testimony. You may accept it or reject it, and give it as much weight as you think it deserves, considering the witness's education and experience, the soundness of the reasons given for the opinion, and all other evidence in the case.

STATEMENT—VOLUNTARINESS

In determining whether any statement, claimed to have been made by a defendant outside of court and after an alleged crime has been committed, was knowingly and voluntarily made, you should consider the evidence concerning such a statement with caution and great care, and should give such weight to the statement that you feel it deserves under all the circumstances.

You may consider in that regard such factors as the age, sex, training, education, occupation, and physical and mental condition of the defendant and all the other circumstances in evidence surrounding the making of the statement.

Of course, any such statement should not be considered in any way whatsoever as evidence with respect to any other defendant on trial.

MULTIPLE DEFENDANTS

The case of each defendant and the evidence pertaining to that defendant should be considered separately and individually. The fact that you may find one of the defendants legally eligible for the death penalty should not control your verdict as to the other defendant.

SPECIFIC INSTRUCTIONS WITH RESPECT TO ELIGIBILITY PHASE

The task of determining whether or not the defendant is eligible for consideration of the death penalty is an extremely important one. It is imperative that you keep an open mind until you have had the opportunity to hear the arguments of the parties, consider all of the evidence presented, and discuss that evidence with your fellow jurors. Whether or not the circumstances in this case are such that the defendant is eligible for consideration of a death sentence is entirely yours. You must not take anything I said or did during either phase of the trial as indicating what I think of the evidence presented or what I think your verdict on the eligibility findings should be.

When making your findings, you may not rely solely upon your previous guilty verdict or your factual determinations during those deliberations. Instead, you must now each decide the new issues before you. In making the determinations you are required to make in this phase of the trial, however, you may consider any evidence that was presented during the first phase, as well as any additional evidence that was presented during the eligibility phase.

The government has the burden of proving beyond a reasonable doubt the aggravating factors necessary to render the defendant eligible for a death sentence. As I explained to you in the guilt phase, while this burden of proof is a strict or heavy burden, it is not necessary that proof of the necessary aggravating factors be beyond all possible doubt. It is only required that the government's proof exclude any reasonable doubt as to these factors to your unanimous satisfaction.

As was true in the first phase of the trial, the defendant has no obligation to testify or present any evidence during the eligibility phase. Put another way, the defendant does not have to prove that the alleged aggravating factors do not exist. Thus, no adverse inference may be drawn against a defendant who does not take the stand at the eligibility stage of the trial.

In considering whether the defendant is eligible for the death sentence, you must not consider the race, color, religious beliefs, national origin, or sex of either the defendant or the victim in this case. These facts are completely irrelevant to the important issues you must consider. You are not to find that a defendant is eligible for a sentence of death unless you have concluded that you would make such a finding no matter what the race, color, religious beliefs, national origin, or sex of either the defendant or the victim might have been.

To emphasize the importance of this consideration, a Certification is attached to the Verdict Form that must be signed by each juror. When you have reached a decision, each of you must sign the Certificate—but only if this is so—attesting that considerations of race, color, religious beliefs, national origin, or sex of the defendant or the victim were not involved in reaching your individual decision, and attesting that you would have made the same findings no matter what the race, color, religious beliefs, national origin, or sex of the defendant or the victim might have been.

SPECIAL FINDING I—AGE OF THE DEFENDANT

You must first determine whether the government has proved beyond a reasonable doubt to your unanimous satisfaction that the defendant was eighteen (18) years of age or older at the time of the instant offense. In this case, the parties have stipulated to the age of the defendant, and you should treat that fact as having been proved. You must, however, still indicate on the Verdict Form whether you unanimously agree beyond a reasonable doubt that the defendant was eighteen (18) years of age or older at the time of the offense.

SPECIAL FINDING II—AGGRAVATING FACTORS WITH RESPECT TO THE DEFENDANT’S INTENT

You must then consider whether the government has proved beyond a reasonable doubt and to your unanimous satisfaction one of the four necessary threshold aggravating factors regarding the knowledge and intent of the defendant with respect to the death of Gabriel Rhone. In this case, the government alleges four possible threshold intent aggravating factors:

- A. that the defendant intentionally killed the victim, Gabriel Rhone; or

- B. that the defendant intentionally inflicted serious bodily injury that resulted in the death of the victim, Gabriel Rhone; or
- C. that the defendant intentionally participated in an act, contemplating that the life of a person would be taken or intending that lethal force would be used in connection with a person, other than one of the participants in the offense, and the victim, Gabriel Rhone, died as a direct result of the act; or
- D. that the defendant intentionally and specifically engaged in an act of violence, knowing that the act created a grave risk of death to a person, other than one of the participants in the offense, such that participation in the act constituted a reckless disregard for human life, and the victim, Gabriel Rhone, died as a direct result of the act.

You must unanimously find beyond a reasonable doubt that one of these four intent factors has been proven by the government as to the defendant before you may go any further in your deliberations. If you unanimously find that any one of these factors has been proven beyond a reasonable doubt as to the defendant, you need not consider the remaining possible intent factors. If, however, you unanimously find that none of the four possible intent aggravating factors is present for the defendant, your deliberations as to eligibility are complete.

In evaluating whether the government has met its burden regarding the intent of the defendant, you should consider the following instructions on the law.

INTENT GENERALLY

The intent of a person or the knowledge that a person possesses at any given time may not ordinarily be proven directly because there is no way of scrutinizing the workings of the human

mind. In determining the issue of what a person knew or what a person intended at a particular time, you may consider any statements or acts or inaction of that person and all other facts and circumstances received in evidence which may aid in your determination of that person's knowledge or intent. You may infer that a person intends the natural and probable consequences of acts knowingly done or knowingly omitted. To act "knowingly" means that the defendant was conscious and aware of his action, realized what he was doing, and did not act because of ignorance, mistake, or accident. It is entirely up to you, however, to decide what facts to find from the evidence received during the trial.

INTENTIONALLY KILLING THE VICTIM

To establish that the defendant "intentionally" killed the victim, the government must prove to your unanimous satisfaction and beyond a reasonable doubt that the defendant deliberately and purposefully killed Gabriel Rhone. In other words, you must find that the killing was the product of the defendant's conscious objective rather than the product of a mistake or accident.

INTENTIONALLY INFLECTING SERIOUS BODILY INJURY WHICH RESULTED IN THE DEATH OF THE VICTIM

To establish that the defendant intentionally inflicted serious bodily injury which resulted in the death of the victim, the government must prove that the defendant deliberately caused serious injury to the victim's body, which, in turn, caused the victim's death. That is, the infliction of serious bodily injury was the product of the defendant's conscious objective rather than the product of a mistake or accident. The government must also prove to your unanimous satisfaction beyond a reasonable doubt that the serious bodily injury resulted in the victim's death. "Serious bodily injury" means a significant or considerable amount of injury or damage; injury

which presents a substantial risk of death; infliction of extreme physical pain; obvious disfigurement; or loss or impairment (other than temporary) of the function of a bodily member, organ, or mental faculty.

**INTENTIONALLY PARTICIPATING IN AN ACT CONTEMPLATING THAT
THE LIFE OF A PERSON WOULD BE TAKEN OR INTENDING THAT
LETHAL FORCE WOULD BE EMPLOYED AGAINST A PERSON**

To establish that the defendant intentionally participated in an act contemplating that the life of a person would be taken or intending that lethal force would be employed against a person, the government must prove to your unanimous satisfaction and beyond a reasonable doubt that the defendant deliberately and purposefully committed an act and that, in so acting, the defendant intended that a person be killed or that lethal force be employed against a person other than one of the participants in the offense. That is, the government must prove that the defendant's conduct was the product of the defendant's conscious objective rather than the product of mistake or accident. The government must also prove that the victim died as a direct result of the defendant's conduct.

**INTENTIONALLY ENGAGING IN AN ACT OF VIOLENCE WHICH THE
DEFENDANT KNEW WOULD CREATE A GRAVE RISK OF DEATH
TO A PERSON OTHER THAN THE PARTICIPANTS IN THE OFFENSE
AND WHICH RESULTED IN THE DEATH OF THE VICTIM**

To establish that the defendant intentionally engaged in an act of violence which the defendant knew would create a grave risk of death to a person other than one of the participants in the offense, and which resulted in the death of the victim, the government must prove to your unanimous satisfaction and beyond a reasonable doubt: (1) that the defendant intentionally and specifically engaged in an act which the defendant knew or was aware would create a grave risk

of death to a person who was a non-participant in the offense or acted with reckless disregard for, or with extreme indifference to, human life; and (2) that the act in which the defendant engaged resulted in the death of the victim. A “grave risk of death” is a risk that is very serious and dangerous to life. To act “intentionally” means to act deliberately and purposefully. That is, the defendant’s act was the product of the defendant’s conscious objective rather than the product of a mistake or accident.

SPECIAL FINDING III—STATUTORY AGGRAVATING FACTORS REGARDING CIRCUMSTANCES OF THE CRIME AND CONDUCT OF THE DEFENDANT

You must then consider whether the government has proved beyond a reasonable doubt and to your unanimous satisfaction the existence of any one of the statutory aggravating factors regarding the nature and circumstances of the crime and the conduct of the defendant. You must make specific findings as to each of the statutory aggravating factors alleged by the government.

In this case, the government alleges five (5) aggravating factors regarding the nature and circumstances of the crime and the conduct of Defendant Mark Isaac Snarr:

- A. The defendant has previously been convicted of two (2) or more Federal or State offenses, punishable by a term of imprisonment of more than one (1) year, committed on different occasions, involving the infliction of, or attempted infliction of, serious bodily injury or death upon another person;
- B. The defendant, in the commission of the offense, knowingly created a grave risk of death to one (1) or more persons in addition to the victim of the offense, Gabriel Rhone;

- C. The defendant committed the offense in an especially heinous, cruel, or depraved manner in that it involved torture or serious physical abuse to the victim, Gabriel Rhone;
- D. The defendant committed the offense after substantial planning and premeditation to cause the death of a person; and/or
- E. The defendant intentionally killed or attempted to kill more than one (1) person in a single criminal episode.

**CONVICTION OF TWO (2) OR MORE FEDERAL OR STATE OFFENSES,
PUNISHABLE BY A TERM OF IMPRISONMENT OF MORE THAN ONE (1) YEAR,
COMMITTED ON DIFFERENT OCCASIONS, INVOLVING THE INFLECTION OF,
OR ATTEMPTED INFLECTION OF, SERIOUS BODILY INJURY OR DEATH UPON
ANOTHER PERSON**

A statutory aggravating factor alleged by the government is that Defendant Mark Isaac Snarr has been previously convicted of two (2) or more Federal or State offenses, punishable by a term of imprisonment of more than one (1) year, committed on different occasions, involving the infliction of, or attempted infliction of, serious bodily injury or death upon another person. The government alleges: (1) that the defendant has previously been convicted in the Second District Court, Farmington, Davis County, Utah, of Aggravated Assault by a Prisoner on or about June 10, 2004; (2) that the defendant has previously been convicted in the District of Utah of Racketeer Influenced and Corrupt Organizations (R.I.C.O.) Conspiracy on or about August 12, 2005; and (3) that the defendant has previously been convicted in the Eastern District of Texas of Possession of a Weapon by a Federal Inmate on or about March 19, 2009. If you unanimously find beyond a reasonable doubt that the government has proved that the defendant was previously convicted of at least two (2) of the above listed offenses, committed on different occasions, each

involving the infliction of, or attempted infliction of, serious bodily injury or death upon another person and punishable by a term of imprisonment of more than one (1) year, then you should find the government has proven this aggravating factor. You must indicate on the Verdict Form whether you unanimously agree beyond a reasonable doubt as to any of these factors.

**THE DEFENDANT, IN THE COMMISSION OF THE OFFENSE, KNOWINGLY
CREATED A GRAVE RISK OF DEATH TO ONE (1) OR MORE PERSONS IN ADDITION
TO THE VICTIM OF THE OFFENSE**

The second statutory aggravating factor alleged by the government is that the defendant, in the commission of the offense, knowingly created a grave risk of death to one (1) or more persons in addition to the victim of the offense.

Therefore, if you find beyond a reasonable doubt that the defendant, in committing the murder of Gabriel Rhone, knowingly created a grave risk of death to one (1) or more persons in addition to Gabriel Rhone, then you should find the government has proven this aggravating factor. You must indicate on the Verdict Form whether you unanimously agree beyond a reasonable doubt as to this factor.

**THE DEFENDANT COMMITTED THE OFFENSE IN AN
ESPECIALLY HEINOUS, CRUEL, OR DEPRAVED MANNER IN THAT IT
INVOLVED TORTURE OR SERIOUS PHYSICAL ABUSE TO GABRIEL RHONE**

To find the existence of this statutory aggravating factor, you must unanimously find that the government has proved beyond a reasonable doubt that the defendant committed the offense in an especially heinous, cruel, or depraved manner in that it involved either torture or serious physical abuse to the victim.

“Torture” includes severe mental as well as physical abuse. For such abuse to amount to torture, the victim must have been conscious of it at the time it was inflicted. Further, the

defendant must have specifically intended to inflict severe mental or physical pain upon the victim, apart from killing the victim.

On the other hand, “serious physical abuse” may be inflicted regardless of whether the victim is conscious of the abuse at the time it was inflicted. The defendant, however, must have specifically intended the abuse, apart from the killing. “Serious physical abuse” means a significant or considerable amount of injury or damage to the victim’s body which involves a substantial risk of death, extreme physical pain, protracted and obvious disfigurement, or protracted loss or impairment of the function of a bodily member, organ, or mental faculty.

SUBSTANTIAL PLANNING AND PREMEDITATION

The government has also alleged that the defendant killed Gabriel Rhone after substantial planning and premeditation. The government must prove this aggravating factor to your unanimous satisfaction beyond a reasonable doubt. The words “substantial planning and premeditation” should be given their ordinary, everyday meaning. “Planning” means the act or process of making or carrying out plans. A plan, as used in these instructions, means a method of achieving something, or a way of carrying out a design.

“Premeditation” means thinking or deliberating about something and deciding whether to do it beforehand. The passage of time is a factor which you may consider in attempting to determine if a defendant acted with “premeditation.” The amount of time needed for premeditation of a killing can depend on the person and the circumstances. The time must be long enough after forming the intent to kill, however, for the killer to have been fully conscious of the intent and to have considered the killing. “Substantial” planning and premeditation means a considerable or significant amount of planning and premeditation. This substantial planning and

premeditation must relate to the killing of Gabriel Rhone and the acts which directly led to his death. The fact that the killing occurred does not satisfy this requirement. You must find that both the planning and the premeditation were more than the minimum amount necessary to commit the offense of murder. However, the government need not prove that the defendant planned or deliberated for any particular period of time before the killing of Gabriel Rhone.

**INTENTIONALLY KILLED OR ATTEMPTED TO KILL MORE THAN ONE (1)
PERSON IN A SINGLE CRIMINAL EPISODE**

The last statutory aggravating factor that the government alleges is that the defendant intentionally killed or attempted to kill more than one (1) person in a single criminal episode. Therefore, if you unanimously find beyond a reasonable doubt that the government has proved that the defendant intentionally killed or attempted to kill more than one (1) person in a single criminal episode then you should find the government has proven this aggravating factor. You must indicate on the Verdict Form whether you unanimously agree beyond a reasonable doubt as to this factor.

INSTRUCTIONS ON DELIBERATIONS

To reach a verdict, all of you must agree. Your verdict must be unanimous. Your deliberations will be secret. You will never have to explain your verdict to anyone.

It is your duty to consult with one another and to deliberate in an effort to reach agreement if you can do so. Each of you must decide the case for yourself, but only after an impartial consideration of the evidence with your fellow jurors. During your deliberations, do not hesitate to reexamine your own opinions and change your mind if convinced that you were wrong. But

do not give up your honest beliefs as to the weight or effect of the evidence solely because of the opinion of your fellow jurors, or for the mere purpose of returning a verdict.

Remember at all times, you are judges—judges of the facts. Your duty is to decide whether the government has carried its burden of proof at this the eligibility phase of the trial.

Any notes that you have taken during this trial are only aids to memory. If your memory should differ from your notes, then you should rely on your memory and not on the notes. The notes are not evidence. A juror who has not taken notes should rely on his or her independent recollection of the evidence and should not be unduly influenced by the notes of other jurors. Notes are not entitled to any greater weight than the recollection or impression of each juror about the testimony.

During your deliberations, you must not communicate with or provide any information to anyone by any means about this case. You may not use any electronic device or media, such as a telephone, cell phone, smart phone, iPhone, BlackBerry, or computer; the Internet, any Internet service, or any text or instant messaging service; or any Internet chat room, blog, or website such as Facebook, My Space, LinkedIn, YouTube, or Twitter, to communicate to anyone any information about this case or to conduct any research about this case until you are discharged from jury service.

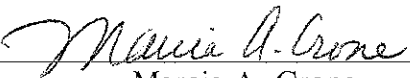
A Verdict Form has been prepared for your convenience.

The foreperson will write the unanimous answers of the jury in the spaces provided. At the conclusion of your deliberations, the foreperson should date and sign the Verdict Form with her initials and each of you should attest to the Certification by your signature.

If you need to communicate with me during your deliberations, the foreperson should write the message and give it to the courtroom security officer. I will either reply in writing or bring you back into the courtroom to respond to your inquiry.

Bear in mind that you are never to reveal to any person, not even to the court, how the jury stands, numerically or otherwise, until after you have reached a unanimous verdict.

SIGNED at Beaumont, Texas, this 11th day of May, 2010.



Marcia A. Crone
United States District Judge