

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF KENTUCKY
PADUCAH DIVISION
(Filed Electronically)**

**CRIMINAL ACTION NO.: 5:06-CR-19-R
UNITED STATES OF AMERICA,**

PLAINTIFF.

V.

STEVEN DALE GREEN,

DEFENDANT.

**DEFENDANT'S AMENDMENTS TO JURY INSTRUCTIONS
PROPOSED BY THE COURT**

(Additions highlighted, deletions struck through)

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CERTIFICATE

I hereby certify that on May 19, 2009, I electronically filed the foregoing with the clerk of the court by using the CM/ECF system, which will send a notice of electronic filing to the following: Marisa J. Ford, Esq., Assistant United States Attorney; James R. Lesousky, Esq., Assistant United States Attorney; and Brian D. Skaret, Esq., Attorney at Law.

/s/ Scott T. Wendelsdorf

INSTRUCTION NO. ___

Introduction

Now that you have heard all 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 profoundly serious question of whether Steven Green should be executed, or imprisoned for life without the possibility of release. 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. You must follow the law as I state it here.

Some of the legal principles that you must apply to this sentencing decision are the same as those you followed in reaching your guilty verdicts. Others, however, are different. I will give you a written copy of these instructions to read along with me and to take into the deliberation room with you. You will also receive a Special Verdict Form to record your findings and the possible decisions you may render. I will be reviewing this form with you at the conclusion of these instructions.

INSTRUCTION NO. ___

You must now consider whether the imposition of a sentence of death is the only proper and justified punishment for Steven Green, or whether the imposition of a sentence of life imprisonment without the possibility of release is sufficient to serve the ends of justice. This decision is left exclusively to the jury. I will not be able to change any decision you reach. Thus, I again stress the importance of your giving careful and thorough consideration to all evidence before you.

Now, although Congress has left it wholly to you to decide Steven Green's punishment, it has narrowed and channeled your discretion in specific ways, particularly requiring you to consider and weigh any "aggravating" and "mitigating" factors present in this case.

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. 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 choice regarding the death penalty or life imprisonment without release as punishment for Steven Green.

Your discretion is narrowed and channeled because the law does not assume that every person found guilty of committing four premeditated murders, murders in perpetration of aggravated sexual abuse and first degree murder with a firearm – should be sentenced to death. In other words, the law does not in any way assume that Steven Green 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.

Please note carefully that it is not enough merely for you to find that the aggravating factor or factors predominate. To be sufficient to justify a death penalty the aggravating factors must

outweigh the mitigating factors to such a degree, or carry such weight in themselves if no mitigating factors are found, that you unanimously conclude that death is the only punishment adequate to serve the ends of justice in this case. A defendant may not be sentenced to death unless each juror, individually, is convinced beyond a reasonable doubt that death is the only proper and justified sentence.

Steven Green does not have the burden of disproving the existence of any aggravating factor. He does not have to present any evidence. In this regard, remember that you may draw no inference whatsoever from the fact that Mr. Green did not testify at the sentencing phase of this trial. The fact that he did not testify is, quite simply, to play no part whatsoever in your decision-making at this stage. As I will explain below, the defendant is, however, entitled to present, and has presented, evidence of mitigating factors to you -- that is, factors that favor a lesser punishment than death.

The jury's decision either that Steven Green should be sentenced to death, or sentenced to life imprisonment without the possibility of release, must be unanimous. If you cannot agree on either sentence, you can inform me and I will impose a sentence of life without the possibility of release upon the defendant.

INSTRUCTION NO. __

Threshold Age and Mental State Determination

Before you begin consideration of aggravating and mitigating circumstances and the sentence to be imposed in this case, ~~may consider whether the penalty of death, rather than life imprisonment without the possibility of release, is an appropriate sentence to be imposed for a particular Count,~~ you must first consider whether the government has proved that the defendant was at least eighteen (18) years old at the time of the offense alleged in the particular Count and whether the government has proven beyond a reasonable doubt at least one of the four “gateway” intent factors.

You must consider each Count separately, and make a finding for that Count. When you have unanimously agreed on your answer to these questions, the foreperson will check “YES” or “NO” on the appropriate lines on Sections I and II of the Special Verdict Form. If you answer “NO”, then conclude your deliberations on that Count and certify your decision as described in Section VII of the Special Verdict Form. If you answer “YES”, then continue your deliberations and proceed to Section II of the Special Verdict Form for that Count.

INSTRUCTION NO. ___

Mental State Threshold

~~Before you may consider whether the penalty of death, rather than life imprisonment without the possibility of release, is an appropriate sentence to be imposed for a particular Count, you must first unanimously find beyond a reasonable doubt that the government has proved that the defendant committed the offense charged in the particular Count in one of the manners described below.~~

There are four possible threshold mental state factors which deal with the defendant's intent and role in committing the offenses. In the penalty phase of the proceeding, your focus must be on the individual intent of Steven Green, not on the collective intentions of all of the defendants or conspirators.

In this case, as to each capital offense, the government alleges four possible threshold mental state factors:

1. intentionally killed the victim;
2. intentionally inflicted serious bodily injury that resulted in the death of the victim;
3. 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 died as a result of the act; or
4. 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 died as a direct result of the act.

~~These threshold mental state factors are to guide you in assessing the defendant's intent and role in committing the offenses.~~

You must unanimously find that one of these mental state factors is proven by the government beyond a reasonable doubt as to each Count in order to further consider the imposition

of the death penalty with respect to that Count. In other words, before you can turn to the rest of your sentencing responsibilities as to any particular Count, you must first decide—as to that Count—whether one of these mental state factors has been proven beyond a reasonable doubt, and if so, which one.

You must consider each Count separately and make findings for that Count. When you have unanimously agreed on your answers to the first four questions, the foreperson will check “YES” or “NO” on the appropriate lines on Section II of the Special Verdict Form for each of these four threshold mental state factors. If you answer “NO” with respect to all four questions, then conclude your deliberations on that Count and sign the Certification in Section VII of the Special Verdict Form. If you answer “YES” with respect to one or more of the questions, then continue your deliberations and proceed to Section III of the Special Verdict Form.

INSTRUCTION NO. __

Statutory **Aggravating** ~~Mitigating~~ Factors

If, and only if you unanimously find that the Government has proven that a threshold mental state factor or factors 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 specifically set forth in the Federal Death Penalty statute and has been explicitly identified by the Government in a particular case. ~~Before you may consider whether the death penalty is an appropriate sentence for a particular Count, you must unanimously find beyond a reasonable doubt that the government has proved at least one of the following aggravating factors prescribed by Congress and alleged by the Government in this case:~~

In this case, the government claims the following statutory aggravating factors have been proven beyond a reasonable doubt.

1. The defendant committed the offenses in Counts 3, 7, and 13 in an especially heinous, cruel, or depraved manner in that it involved serious physical abuse to the victim, Abeer Al-Janabi, by raping her, shooting her in the face, and lighting her on fire.

Note: To establish that the defendant killed the victim in an especially heinous, cruel, or depraved manner, the government must prove that the killing involved ~~either~~ serious physical abuse to the victim. You must not find this factor to exist unless you unanimously agree that serious physical abuse has been proved beyond a reasonable doubt. In other words, all twelve of you must agree that it involved serious physical abuse to the victim and was thus heinous, cruel, or depraved.

“Heinous” means extremely wicked or shockingly evil, where the killing was accompanied by such additional acts of torture or serious physical abuse of the victim as to set it apart from other killings.

“Cruel” means that the defendant intended to inflict a high degree of pain by torturing the victim in addition to killing the victim.

“Depraved” means that the defendant relished the killing or showed indifference to the suffering of the victim, as evidenced by serious physical abuse of the victim.

“Serious physical abuse” means a significant or considerable amount of injury or damage to the victim’s body. ~~Serious physical abuse may be inflicted either before or after death and does not require that the victim be conscious of the abuse at the time it was inflicted.~~ However, The defendant must have specifically intended the abuse in addition to the killing.

Pertinent factors in determining whether a killing was especially heinous, cruel, or depraved include: an infliction of gratuitous violence upon the victim above and beyond that necessary to commit the killing; ~~the needless mutilation of the victim’s body; the senselessness of the killing; and the helplessness of the victim.~~ **Post mortem abuse or, in this case, burning of the body after death, is not “serious physical abuse.”**

The word “especially” means highly or unusually great, distinctive, peculiar, particular, or significant, when compared to other killings.

2. The defendant committed the offenses in Counts 3, 4, 5, 6, 7, 8, 9, 10, 13, 14, 15, and 16 after substantial planning and premeditation to cause the death of the victim.

Note: “Planning” means mentally formulating a method for doing something or achieving some end. “Premeditation” means thinking or deliberating about something and deciding whether to do it beforehand. “Substantial” planning and premeditation means a considerable or significant amount of planning and premeditation, **more than that required for commission o f premeditated murder generally.**

3. In Counts 3, 4, 7, and 8 the victim was particularly vulnerable due to youth.

Note: “Particularly” means especially, significantly, unusually, or high in degree. “Vulnerable” means subject to being attacked or injured by reasons of some weakness. Thus, to be “particularly vulnerable” means to be especially or significantly vulnerable, or vulnerable to an unusual or high degree.

“Youth” means that the victim was a child, and juvenile, a young person, or a minor, that is: any person who was, by reason of youthful immaturity or inexperience, significantly less able: (1) to avoid, resist, or withstand any attacks, persuasions, or temptations, or (2) to recognize, judge, or discern any dangers, risks or threats.

The vulnerability must have been such that it contributed to the death of the victim, meaning that there was a connection between the victim’s vulnerability and the offense committed upon the victim. You must also find that the victim was targeted by the defendant because of the victim’s vulnerability.

4. In Counts 3, 4, 5, 6, 7, 8, 9, 10, 13, 14, 15, and 16 the defendant intentionally killed more than one person in a single criminal episode.

Note: “Intentionally killing” a person means killing a person on purpose, that is: willfully, deliberately, or with a conscious desire to cause a person’s death (and not just accidentally or involuntarily).

“A single criminal episode” is an act or series of related criminal acts which occur within a relatively limited time and place, or are directed at the same persons, or are part of a continuous course of conduct related in time, place, or purpose.

You may, but are not required to, presume that a person of sound mind and discretion may be presumed to have intended the ordinary, natural, and probable consequences of his knowing and voluntary acts. Thus, you may infer from the defendant’s conduct that the defendant intended to kill a person if you find: (1) that the defendant was a person of sound mind and discretion; (2) that person’s death was the ordinary, natural, and probable consequence of the defendant’s acts; and (3) that the defendant committed these acts knowingly and voluntarily. But once again, you are not required to make such an inference.

You must consider each Count separately and make findings for that Count. The government must prove at least one of these statutory factors beyond a reasonable doubt as to particular Count. For each statutory aggravating factor, indicate by answering “YES” or “NO” on the appropriate lines in Section III (Statutory Aggravating Factors) of the Special Verdict Form whether you have unanimously found the factor to have been proven beyond a reasonable doubt. If you answer “NO” with respect to all the factors that apply to a particular Count, then conclude your deliberations for that Count and sign the Certification in Section VII of the Special Verdict Form for that Count. If you answer “YES” with respect to one or more of these factors, then continue your deliberations for that Count and proceed to Section IV of the Special Verdict Form.

INSTRUCTION NO.
Non-Statutory Aggravating Factors

If you unanimously find at least one of the statutory aggravating factors proven beyond a reasonable doubt as to a particular Count, you must consider whether the government has proven the existence of any non-statutory aggravating factors. As in the case for statutory aggravating factors, you must unanimously agree that the government has proven beyond a reasonable doubt the existence of any of the alleged non-statutory aggravating factors before you may consider such factor in your deliberations on the appropriate punishment for the defendant in this case.

In addition to any statutory aggravating factors you have found, the law permits you to consider and discuss only the non-statutory aggravating factors specifically claimed by the government and listed below. You are not free to consider any other factors in aggravation which you conceive of on your own.

The non-statutory aggravating factors the government has alleged in this case are:

1. As to Counts 3, 4, 5, 6, 7, 8, 9, 10, 13, 14, 15, and 16 the defendant killed the victim and witnesses of his alleged rape, including Abeer Al-Janabi, Hadeel Al-Janabi, Kassem Al-Janabi, and Fakhriya Al-Janabi, in order to eliminate these victims as possible witnesses to his crimes.
2. As to Counts 3, 7, and 13 the defendant caused injury, harm, and loss to the family of Abeer Al-Janabi, as evidenced by her personal characteristics as a human being and the impact of her death on her family.
3. As to Counts 4, 8, and 14 the defendant caused injury, harm, and loss to the family of Hadeel Al-Janabi, as evidenced by her personal characteristics as a human being and the impact of her death on her family.
4. As to Counts 5, 9, and 15 the defendant caused injury, harm, and loss to the family of Kassem Al-Janabi, as evidenced by her personal characteristics as a human being and the impact of her death on her family.
5. As to Counts 6, 8, and 16 the defendant caused injury, harm, and loss to the family of Fakhriya Al-Janabi, as evidenced by her personal characteristics as a human being and the impact of her death on her family.

6. As to Counts 5, 6, 9, 10, 15, and 16 the injuries caused by the defendant extend especially to the two minor children orphaned as a result of their parents' death and to those presently caring for the children.

I emphasize again, because these are the only other aggravating factors cited by the government on which I instruct you, they are by law the only other aggravating factors that you may consider.

You must consider each Count separately and make findings for that Count. For each non-statutory aggravating factor, indicate by answering "YES" or "NO" on the appropriate lines in Section IV (Non-Statutory Aggravating Factors) of the Special Verdict Form whether you have unanimously found the factor to have been proved beyond a reasonable doubt, and continue your deliberations as to that particular Count.

INSTRUCTION NO. ____
Mitigating Factors

You must next consider any mitigating factors that may be present in this case. A mitigating factor is **not offered to justify or excuse the defendant's conduct, but is rather** simply a fact about the 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 **only necessary punishment** most appropriate punishment, or that a sentence of life imprisonment without any possibility of release is the more appropriate punishment. ~~Congress has identified certain statutory mitigating factors that you are to consider and has expressly directed that the jury consider any "other factors in the defendant's background, record, or character or any other circumstances of the offense that mitigate against the imposition of the death sentence."~~

~~It is the defendant's burden to establish any mitigating factors, but only by a preponderance of the evidence.~~ **Congress has specified in the statute that it is the defendant's burden to establish any mitigating factor or factors only by a preponderance of the evidence.** This is a lesser 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 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 mind the belief that what is sought to be established is more likely true than not true.

The mitigating factors differ from aggravating factors in another important way. Unlike aggravating factors, which the jury must unanimously find beyond a reasonable doubt before it can be considered, any one member of the jury who finds the existence of a mitigating factor by a preponderance of the evidence may consider such factor regardless of the number of jurors who concur that the factor has been established.

The mitigating factors relied upon by the defense in this case are:

Sgt. Paul Cortez, PFC Green's military superior and a person equally culpable in the crimes, will not be punished by death for his involvement in the murders. This is a statutory mitigating factor under 18 U.S.C. §3592(4).

Spc. James Barker, PFC Green's military superior and a person equally culpable in the crimes, will not be punished by death for his involvement in the murders. This is a statutory mitigating factor under 18 U.S.C. §3592(4).

PFC Green's capacity to appreciate the wrongfulness of his conduct or to conform his conduct to the requirements of law was significantly impaired, even though the capacity was not so impaired as to constitute a defense to the charge. This is a statutory mitigating factor under 18 U.S.C. §3592(1).

PFC Green committed the offenses under severe mental or emotional disturbance. This is a statutory mitigating factor under 18 U.S.C. §3592(6).

The defendant does not have a significant prior history of other criminal conduct. This is a statutory mitigating factor under 18 U.S.C. §3592(5).

In its criminal prosecutions of Sgt. Paul Cortez, Spc. James Barker, and PFC Jesse Spielman for their involvement in the murders, the United States did not even seek the death penalty, despite the fact that they were equally culpable in the offenses charged.

In its criminal prosecutions of Sgt. Paul Cortez, Spc. James Barker, and PFC Jesse Spielman for their involvement in the murders, the United States imposed terms of imprisonment that will make each of them eligible for parole in 10 years.

Steven Green was eligible for re-enlistment in the Army with the consent of the United States. Once back in the Army, PFC Green would have again been subject to the Uniform Code of Military Justice and could have been fully prosecuted and punished in the military system for the murders, as were Sgt. Paul Cortez, Spc. James Barker, PFC Jesse Spielman, and PFC Bryan Howard. Steven Green offered to re-enter the Army and subject himself to prosecution and punishment for the murders under the Uniform Code of Military Justice. The United States acknowledged that this was permitted, but declined to allow it.

The United States could have tried Sgt. Paul Cortez, Spc. James Barker, PFC Jesse Spielman, PFC Bryan Howard, and PFC Steven Green together in this court under civilian law and procedures before a civilian judge and jury for their involvement in the murders; or it could have tried all of them in military court under the law and procedures of the Uniform Code of Military Justice before a military judge and jury, but chose to try only Steven Green in civilian court and the others in military court.

This case should have been tried in the military justice system under the Uniform Code of Military Justice, as were the cases of Sgt. Paul Cortez, Spc. James Barker, PFC Jesse Spielman,

PFC Bryan Howard, and Sgt. Anthony Yribe.

The favorable plea agreements offered to and the lenient sentences imposed upon Sgt. Paul Cortez, Spc. James Barker, PFC Jesse Spielman, PFC Bryan Howard, and Sgt. Anthony Yribe by the United States weigh against imposition of the death sentence for PFC Steven Green.

PFC Green's combat stress was a substantial factor that contributed to the offenses.

The Army command and Combat Stress Control personnel knew that PFC Green was at a high risk of homicidal conduct against Iraqi citizens due to his combat stress, but returned him to the field without proper treatment or follow up.

PFC Steven Green was suffering from psychological impairments which were identified by the United States Army and could have and should have been properly treated, but were not.

The Army should have declared PFC Green's platoon and squad to be not combat ready and withdrawn them from TCP duty.

Failure of the Army command to provide adequate command, control, and supervision of 1st Platoon and 1st Squad contributed to the murders.

PFC Green's platoon and squad suffered greater casualties and losses than other units.

Failure of the Army command to recognize the unusually harsh and stressful conditions faced by 1st Platoon and 1st Squad contributed to the murders.

Failure of the Army command to adequately support 1st Platoon and 1st Squad contributed to the murders.

PFC Green's military superiors played a leadership role in planning, authorizing, and executing the murders.

PFC Steven Green committed the offenses while under the influence and control of his military superiors, Sgt. Cortez and Spc. Barker.

PFC Green promptly confessed his involvement in the murders to Sgt. Anthony Yribe, his military superior and the head of the official Army team investigating the killings.

Had Sgt. Anthony Yribe taken the proper and required steps to report PFC Green's timely confessions, PFC Green would have been prosecuted, tried, and sentenced by a military court under the Uniform Code of Military Justice.

Steven Green never lied to his military superiors about his involvement in the murders, while Sgt. Paul Cortez, Spc. James Barker, PFC Jesse Spielman, PFC Bryan Howard, and Sgt. Anthony Yribe repeatedly did so.

Army personnel engaged in a cover-up of the murders.

PFC Steven Green was 20 years of age on March 12, 2006.

PFC Green suffered from neurological and psychological problems that impaired his ability to function properly under the extreme stresses present in the Triangle of Death.

Steven Green suffers from brain dysfunction which has impaired his ability to properly function in the absence of strong support, structure, and guidance.

Steven Green was subjected to emotional and physical abuse as a child.

Steven Green was subjected to neglect as a child.

Steven Green was deprived of the parental guidance and protection which he needed.

Steven Green's schoolwork and behavior markedly improved when he was in a supportive and structured environment.

Steven Green has a positive relationship with many people who care for and love him.

Steven Green joined the United States Army in a time of war, knowing that he would be sent into life threatening combat.

Steven Green did well at boot camp and was a good soldier who served honorably until an unusually high number of horrific losses of his friends, fellow soldiers, and respected leaders at the hands of insurgents overwhelmed and broke him.

Steven Green sought help for his psychological deterioration, but received substandard care.

Steven Green may be rehabilitated if sentenced to life in prison without the possibility of release.

If Steven Green is not sentenced to death, he will remain in prison for the rest of his life without the possibility of release and will die in prison.

If Steven Green is executed, extended family members and friends will suffer harm.

Other factors in PFC Steven Green's childhood, background, or character or any other circumstance of the offense that mitigate against imposition of the death sentence. This is a statutory mitigating factor under 18 U.S.C. §3592(8).

This last factor, which also derives from the statute, permits you to consider anything else about the commission of the crime or the defendant's background or character that would mitigate

against the imposition of the death penalty. Thus, if there are any such mitigating factors, whether or not specifically argued by defense counsel, but which are established by a preponderance of the evidence, you are free to consider them in your deliberations. You are not confined to those mitigation factors listed above.

You must consider each Count separately and make findings for that Count. In Section V (Mitigating Factors) of the Special Verdict Form you should report the number of jurors who find by a preponderance of the evidence that a particular mitigating factor exists for that Count. There are spaces in Section V (Mitigating Factors) of the Special Verdict Form to identify any additional mitigating factors that any one of you finds. It is not necessary, however to specifically articulate such additional factors. If 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.

INSTRUCTION NO. __
Weighing the factors

You will only be required to determine the appropriate sentence as to a particular Count if you ~~the government first proves certain prerequisites. You must first find~~ unanimously and beyond a reasonable doubt that the defendant, Steven Green, was 18 at the time the offense was committed, that the defendant acted with the requisite intent, and that the government has proved the existence of at least one statutory aggravating factor. If you do find that all these prerequisites are met as to a particular Count, you **must** then determine whether the government proved **beyond a reasonable doubt** the existence of the non-statutory aggravating factors submitted to you, and whether the defendant proved **by a preponderance of the evidence** the existence of any mitigating factors. You will then engage in a weighing process.

In determining the appropriate sentence, all of you must 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 factor or factors that you individually found to exist. You shall consider whether the aggravating factors or factors found to exist sufficiently outweigh the mitigating factor or factors found to exist to justify a sentence of death, or in the absence of a mitigating factor, whether the aggravating factor or factors alone are sufficient to justify a sentence of death. ~~Based upon this consideration, you the jury, by unanimous vote, shall determine whether Steven Green should be sentenced to life imprisonment without the possibility of release or death.~~

In engaging in the weighing process, you must avoid any influence of passion, prejudice, or undue sympathy. Your deliberations should be based upon the evidence you have seen and heard and the law on which I have instructed you. Again, whether or not the circumstances in this case justify a sentence of death is a decision that the law leaves entirely to you.

The process of weighing aggravating and mitigating factors against each other in order to

determine the proper punishment is not a mechanical process. In other words, you should not simply count the number of aggravating and mitigating factors and reach a decision based on which number is greater; 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 factors outweighs all aggravating factors combined, or that the aggravating factors proven do not, standing alone, justify imposition of a sentence of death. If one or more of you so find, you must return a sentence of life in prison without possibility of release. Similarly, you may unanimously find that a particular aggravating factors sufficiently outweighs all mitigating factors combined to justify a sentence of death. You and you alone are to decide what weight or value is to be given to a particular aggravating or mitigating factor in your decision-making process.

In order to bring back a verdict deciding the penalty to be imposed upon the defendant in this case, all twelve of you must unanimously vote in favor of that penalty. **In other words, you must be unanimous in order to impose a sentence of death or a sentence of life imprisonment without the possibility of release. If after due deliberation, any of you, even a single juror, is not persuaded that the death penalty should be imposed in this case, and you are not able to reach a unanimous decision on either a sentence of death or a sentence of life in prison without the possibility of release, this Court will impose a sentence of life in prison without the possibility of release.**

~~If you unanimously conclude that the aggravating factor or factors found to exist sufficiently outweigh any mitigating factor or factors found to exist to justify a sentence of death, or in the absence of any mitigating factors, that the aggravating factor or factors alone are sufficient to justify a sentence of death, and that therefore death is the appropriate sentence in this case for that particular Count, you shall record your determination that a sentence of death shall be imposed in~~

~~Section VI (Sentencing Decisions), Decision Form A of the Special Verdict Form.~~

If you determine that death is not justified, you shall complete Part VI (Sentencing Decision), Decision Form ~~A~~ B of the Special Verdict Form.

If you unanimously conclude that the aggravating factor or factors found to exist sufficiently outweigh any mitigating factor or factors found to exist to justify a sentence of death, or in the absence of any mitigating factors, that the aggravating factor or factors alone are sufficient to justify a sentence of death, and that therefore death is the appropriate sentence in this case for that particular Count, you shall record your determination that a sentence of death shall be imposed in Section VI (Sentencing Decisions), Decision Form B of the Special Verdict Form.

If you are not able to reach a unanimous decision on either a sentence of death or a sentence of life in prison without the possibility of release, you shall record this fact in Section VI (Sentencing Decisions), Decision Form C of the Special Verdict Form. In such an event, this Court will impose a sentence of life in prison without the possibility of release.

INSTRUCTION NO. ___
Death is Never Required

Regardless of whether any or all of you determine that aggravating factors outweigh mitigating factors, or alone are sufficient to justify a sentence of death, you are never required to return a verdict of death. The law provides you with guidance in making a decision but your decision on the question of life or death is one which the law, in the final analysis, leaves up to each individual juror.

INSTRUCTION NO. __

You must consider each Count separately. If, after weighing the aggravating and mitigating factors, you unanimously determine that a sentence of death shall be imposed for that Count, then the Court is required to sentence the defendant to death as to that Count. If you unanimously determine that a sentence of life imprisonment without the possibility of release shall be imposed, then the Court is required to sentence the defendant accordingly for that Count. If despite all reasonable efforts and after due deliberation you cannot come to unanimous agreement as to a particular Count, the Court will impose a sentence of life imprisonment without the possibility of release for that Count.

If you unanimously determine that a sentence of death shall be imposed for any count, and I therefore impose a sentence of death as to that count, then the defendant will be executed, even if a sentence of life imprisonment without the possibility of release is imposed on any other count or counts. In other words, as far as the end result of what will happen to the defendant -- will he be executed or will he serve life imprisonment without release -- there is no difference between imposing a death sentence on one count and imposing a death sentence on all counts.

INSTRUCTION NO. __

It is your duty 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 this remaining question 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 solely because others think differently or simply to conclude your deliberations.

INSTRUCTION NO. __

~~Steven Green did not testify. You may not attach any significance to this fact or even discuss it in the course of your deliberations. A defendant has no obligation to testify or to present any other evidence. There is no burden upon a defendant to prove that he should not be sentence to death. The burden is entirely on the government to prove that a sentence of death is justified.~~

INSTRUCTION NO. __

In considering whether a sentence of death is justified, you shall not consider the race, color, religious beliefs, national origin, or gender of the defendant or of any victim. You are not to impose a sentence of death unless you conclude that you would do so no matter what the race, color, religious beliefs, national origin, or gender of the defendant tor the victims may be.

Whatever sentencing decision you reach, each of you is required by law to sign a certification attesting to the fact that you have followed this Instruction. The certification is set out in Section VII of the Special Verdict Form.

INSTRUCTION NO. __

I have prepared a form entitled "Special Verdict Form" to assist you during your deliberations. You are required to record your decisions as to each Count on this Form.

Section I of the Special Verdict Form contains space to record your findings on the defendant's age; Section II contains space to record your findings on the requisite mental state; Section III contains space to record your findings on statutory aggravating factors. Section IV contains space to record your findings on non-statutory aggravating factors. Section V of the Special Verdict Form contains space to record your findings on mitigating factors. Section VI is where you should record your ultimate decision as to what penalty should be imposed as to each Count, and each juror should sign the form. Section VII contains the certificate relating to the right to justice without discrimination, which I have previously discussed.

INSTRUCTION NO. __

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. The first thing you should do is select a foreperson. The foreperson may be the same person that served you during the guilty phase or someone else. He or she will preside over your deliberations and will speak for you here in Court.

As I told you in the guilt phase, do not talk to the jury officer, or to me, or to anyone else, except each other, about this case. If it becomes necessary during your deliberations to communicate with me, you may send me a note through the jury officer signed by your foreperson or by one or more members of the jury. No member of the jury should ever attempt to communicate with me on anything concerning the case except by a signed writing or here in open Court. Remember that you

Please proceed to Section VII: Certificate.

Decision Form C

Deadlock as to Sentence

We, the jury, are unable to unanimously agree.

Foreperson

Date: _____, 2009.

Please proceed to Section VII: Certificate.