

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF INDIANA
HAMMOND DIVISION**

UNITED STATES OF AMERICA)
)
 vs.) 2:11-cr-00077
)
JUAN BRISENO)

**COURT’S FINAL INSTRUCTIONS TO THE JURY
(FOLLOWING PENALTY-PHASE EVIDENCE)**

Dated: March 6, 2015.

/s/ Philip P. Simon
PHILIP P. SIMON, CHIEF JUDGE
UNITED STATES DISTRICT COURT

COURT'S INSTRUCTION NO. 1

Introduction to Final Instructions

Members of the Jury, it is now my duty to again instruct you on the rules of law that you must follow and apply in imposing a sentence on the defendant.

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 view of the law other than that given to you in these instructions.

Some of the legal principles that you must apply to this sentencing decision duplicate those you followed in reaching your verdict as to guilt or innocence. Others are different. The instructions I am giving you now are a complete set of instructions on the law applicable to the sentencing decision. I have prepared them to ensure that you are clear in your duties at this extremely serious stage of the case. I have also prepared Special Verdict Forms that you must complete. The forms detail special findings you must make in this case and will help you perform your duties properly.

When I have finished, you will go into the jury room, choose a foreperson (who may or may not be the same foreperson who served during the earlier deliberations on guilt) and begin your penalty deliberations.

COURT'S INSTRUCTION NO. 2

Burden of Proof

Under the federal death penalty statute, there are certain requirements that must be met before you may consider a death sentence. As I have instructed you, you may not consider imposing a death sentence unless you first find the Government proved beyond a reasonable doubt the age requirement, at least one intent factor, and at least one Statutory Aggravating Factor. Again, affirmative findings on these three elements must be unanimous and beyond a reasonable doubt.

You may also find Non-statutory Aggravating Factors, which are those not specifically set out by Congress in the federal death penalty statute, but which have been specifically identified by the government for your consideration in this case. Again, an affirmative finding that any Non-statutory Aggravating Factor exists must be unanimous and beyond a reasonable doubt.

The defendant does not have the burden of disproving the existence of anything the Government seeks to prove. The burden is wholly upon the Government to prove its contentions beyond a reasonable doubt; the law does not require the defendant to produce any evidence at all, including evidence that a particular aggravating factor does not exist or that death is not the appropriate sentence. The defendant has chosen to assert Mitigating Factors, and he has the burden of proving them. However, there is a different standard of proof for Mitigating Factors. You need not be convinced beyond a reasonable doubt about the existence of a Mitigating Factor; you need only be

convinced by a preponderance of the evidence. A matter is proved “by a preponderance of the evidence” if it is shown to be more likely true than not true. This is a lesser standard of proof under the law than proof beyond a reasonable doubt.

Any evidence relating to Mitigating Factors should be fully discussed by all of you to ensure that each juror considers the matter carefully. I instruct you, however, that the law does not require unanimity with regard to Mitigating Factors. Any one of you may find the existence of a Mitigating Factor, regardless of the number of other jurors who may agree, and anyone who so finds may consider and weigh that Mitigating Factor in determining the appropriate sentence in this case. The Verdict Form provides a space for you to indicate the number of jurors who find a particular Mitigating Factor.

COURT'S INSTRUCTION NO. 3

The Evidence

In deciding the issues now before you, you may consider any evidence (to the extent you find it credible and relevant), direct or circumstantial, that was presented during the guilt phase of the trial and any information that was presented during the penalty phase of the trial, including any matters to which the parties have stipulated. As in the guilt phase, the arguments of the attorneys and the comments and rulings of the Court are not evidence.

You must make your decision based only on the evidence that you saw and heard here in court. Do not consider anything you may have seen or heard outside of court, including anything from the newspaper, television, radio, the Internet, or any other source.

The evidence includes only what the witnesses said when they were testifying under oath, the exhibits that I allowed into evidence, and any stipulations that the lawyers agreed to. A stipulation is an agreement that certain facts are true or that a witness would have given certain testimony.

Nothing else is evidence. The lawyers' statements and arguments are not evidence. If what a lawyer said is different from the evidence as you remember it, the evidence is what counts. The lawyers' questions and objections likewise are not evidence.

A lawyer has a duty to object if he thinks a question is improper. If I sustained

objections to questions the lawyers asked, you must not speculate on what the answers might have been.

If, during the trial, I struck testimony or exhibits from the record, or told you to disregard something, you must not consider it.

Give the evidence whatever weight you decide it deserves. Use your common sense in weighing the evidence, and consider the evidence in light of your own everyday experience.

People sometimes look at one fact and conclude from it that another fact exists. This is called an inference. You are allowed to make reasonable inferences, so long as they are based on the evidence.

You may have heard the terms “direct evidence” and “circumstantial evidence.” Direct evidence is evidence that directly proves a fact. Circumstantial evidence is evidence that indirectly proves a fact. You are to consider both direct and circumstantial evidence. The law does not say that one is better than the other. It is up to you to decide how much weight to give to any evidence, whether direct or circumstantial.

Do not make any decisions simply by counting the number of witnesses who testified about a certain point. You may find the testimony of one witness or a few witnesses more persuasive than the testimony of a larger number. You need not accept the testimony of the larger number of witnesses. What is important is how truthful and accurate the witnesses were and how much weight you think their testimony deserves.

Part of your job as jurors is to decide how believable each witness was, and how

much weight to give each witness's testimony. You may accept all of what a witness says, or part of it, or none of it. Some factors you may consider include:

- the intelligence of the witness;
- the witness's ability and opportunity to see, hear, or know the things the witness testified about;
- the witness's memory;
- the witness's demeanor;
- whether the witness had any bias, prejudice, or other reason to lie or slant the testimony;
- the truthfulness and accuracy of the witness's testimony in light of the other evidence presented; and
- inconsistent statements or conduct by the witness.

You may consider evidence that a witness was convicted of a crime only in deciding the believability of his testimony. You may not consider it for any other purpose.

You have heard two witnesses who gave opinions and testimony about certain subjects. Specifically, Mark Bezy and David Dodrill, who testified about prison conditions and security.

You do not have to accept these witnesses' opinions or testimony. You should judge these witnesses' opinions and testimony the same way you judge the testimony of any other witness. In deciding how much weight to give to these opinions and

testimony, you should consider each witness's qualifications, how he or she reached his or her opinions and conclusions, and the factors I have described for determining the believability of testimony.

If you have taken notes during the trial, you may use them during deliberations to help you remember what happened during the trial. You should use your notes only as aids to your memory. The notes are not evidence. All of you should rely on your independent recollection of the evidence, and you should not be unduly influenced by the notes of other jurors. Notes are not entitled to any more weight than the memory or impressions of each juror.

COURT'S INSTRUCTION NO. 4

The Defendant's Right Not to Testify

The defendant did not testify. A defendant has an absolute right not to testify. There is no burden upon a defendant to prove that he should not be sentenced to death. The burden is entirely on the prosecution to prove that a sentence of death should be imposed. Accordingly, you may not consider in any way the fact that the defendant did not testify. You may not even discuss it in your deliberations.

COURT'S INSTRUCTION NO. 5

Your Findings

I will now provide you with additional instructions on the Age requirement, Threshold Intent Factors, Aggravating Factors, and Mitigating Factors. I again stress the importance of your giving careful and thorough consideration to all evidence before you. I also remind you of your obligation to strictly follow the applicable law.

You must deliberate and determine the appropriate sentence for each of the capital counts separately. Although I will be discussing the capital counts together, your findings regarding gateway factors, aggravating factors, and all other issues pertaining to these counts must treat each of these counts separately. You may find differences which justify different sentences on different counts. You will have a separate Special Verdict Form to complete for each capital count.

You also may not rely solely upon your guilt-phase verdict or your factual determinations therein. Instead, you must now consider each issue and make each determination described in these Instructions, even if you considered similar issues during your first deliberations in the guilt phase of this trial.

COURT'S INSTRUCTION NO. 6

Age of defendant (Section I of Special Verdict Form)

The first step in your deliberations should be to determine whether the Government has proved beyond a reasonable doubt that the defendant was at least eighteen years old on the date the capital crime you are considering was committed. Those dates are: September 26, 2007 (Luis Ortiz), June 3, 2008 (Michael Sessum and Miguel Mejias), February 7, 2010 (Miguel Colon), and June 19, 2010 (Latroy Howard).

If you find that the Government failed to prove that the defendant was at least eighteen years old on any of these dates, then you will complete Section I of the appropriate Special Verdict Form accordingly and your deliberations will be over as to the murder committed on that date or those dates. For any such count you will sign the final certification in Section VII of the Special Verdict Form and move on to considering the next count. If you have no counts left to consider you will advise the Court that you have reached a verdict.

If, however, you find unanimously and beyond a reasonable doubt that the defendant was at least eighteen years old on the date any of the murder counts was committed, you will fill in the appropriate Special Verdict Form accordingly. You should then proceed to the second step in your deliberations on any such counts, the determination of the required intent factor or factors.

COURT'S INSTRUCTION NO. 7

Threshold Intent Factors (Section II of Special Verdict Form)

In addition to the required age finding, you also may not consider the death penalty for any count unless you first unanimously find, beyond a reasonable doubt, that the government proved at least one of four possible threshold intent factors. Not all four threshold intent factors are available for your consideration in every count. The Special Verdict Forms set out which threshold intent factors are at issue in each count, and you will consider only the threshold intent factors listed for each count. Your consideration of the possible threshold intent factors will address whether the defendant:

(1) intentionally killed the victim; or

(2) intentionally inflicted serious bodily injury that resulted in the death of the victim; or

(3) intentionally participated in an act, contemplating that a person's life 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 direct 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.

Intent or knowledge may be proved like anything else. You may consider any statements made and acts done by the defendant, and all facts and circumstances in evidence in determining the defendant's knowledge and intent. An "intentional act" is an act done deliberately and with the conscious desire that it be committed. A person acts knowingly if he realizes what he is doing and is aware of the nature of his conduct, and does not act through ignorance, mistake, or accident. You may, but are not required to, infer that a person intended the natural and probable consequences of his knowing and voluntary acts.

"Serious bodily injury" means a significant or considerable amount of injury or damage to the victim's body which involves a substantial risk of death, unconsciousness, extreme physical pain, protracted and obvious disfigurement, or protracted loss or impairment of the function of a body member, organ, or mental faculty.

"Lethal force" means an act of violence capable of causing death.

"Grave risk of death" means a significant and considerable possibility that a person other than one of the participants in the crime might be killed.

Fill in your answers to the questions in Section II of the Special Verdict Form for the count you are considering. If you find that the Government did not prove any of the intent elements listed on the Special Verdict Form for a particular count, then your deliberations will be over as to that count and the Court will sentence the defendant to life in prison without the possibility of release on that count. You will sign the

Certification in Section VII of the Special Verdict Form for the count you are considering and move on to the next count. If you have no counts left to consider then you will advise the Court that you have reached a verdict.

However, if you unanimously find one or more of the intent elements proved beyond a reasonable doubt with respect to any capital count, then you will note that on the Special Verdict Form for the appropriate count and continue to Section III for that count.

As you continue with your deliberations bear in mind that threshold intent factors are not aggravating factors and therefore may not be weighed in deciding whether or not to impose a sentence of death.

COURT'S INSTRUCTION NO. 8

Statutory Aggravating Factors (Section III of Special Verdict Form)

If, for the murder count you are considering, you have unanimously found that the Government has proved beyond a reasonable doubt that the defendant was over the age of eighteen when the offense was committed, and that at least one of the four threshold intent factors existed for the count, you must then proceed to determine whether the Government has proved beyond a reasonable doubt the existence of any of the Statutory Aggravating Factors that the government has alleged for that count. The government has alleged three different Statutory Aggravating Factors, but the government does not allege that all three apply to each count, so the Special Verdict Form for each count lists only the Statutory Aggravating Factor or Factors that apply to that count.

The first Statutory Aggravating Factor alleged by the Government is that the defendant committed each of the murders of Luis Ortiz, Michael Sessum, Miguel Mejias, Miguel Colon, and Latroy Howard after substantial planning and premeditation to cause the death of a person. "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. You must find that both the planning and the premeditation were more than the minimum amount necessary to carry out one's plan. To find that the

Government has satisfied its burden of proving beyond a reasonable doubt that the defendant engaged in substantial planning and premeditation to cause the death of a person, you must unanimously agree on the particular object of the substantial planning and premeditation, namely to cause the death of a person.

The second Statutory Aggravating Factor alleged by the Government is that the defendant, in the commission of the offense, or in escaping apprehension for the offense, knowingly created a grave risk of death to one or more persons in addition to the victim. In this case, the Government alleges this Statutory Aggravating Factor with respect to the murder of each of Michael Sessum, Miguel Mejias, and Miguel Colon. "Persons in addition to the victim" include innocent bystanders in the zone of danger created by the defendant's acts, but do not include other participants in the offenses. "Grave risk of death" is defined above.

The third Statutory Aggravating Factor alleged by the Government with respect to any of the capital counts is that the defendant intentionally killed more than one person in a single criminal episode. In this case, the Government alleges that the defendant intentionally killed or attempted to kill Michael Sessum and Miguel Mejias in a single criminal episode. "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). "More than one person" means one or more other people in addition to the victim named in a particular murder count. "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 person or persons, or are part of a continuous course of conduct related in time, place, or purpose. You may, but are not required to, infer that a person of sound mind intended the ordinary, natural, and probable consequences of his knowing and voluntary acts. Thus, you may infer from the defendant's conduct that he intended to kill a person if you find: (1) that the defendant was a person of sound mind; (2) that the victim's death was an 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.

The law directs you to consider and decide, separately as to each of the capital counts, only the Statutory Aggravating Factors specifically claimed by the Government with respect to each count. You are reminded that to find the existence of a statutory aggravating factor, your decision must be unanimous and beyond a reasonable doubt.

Complete Section III of the Special Verdict Form for the count you are considering according to your findings. If, for any count, you answer "NO" with respect to all of the Statutory Aggravating Factors alleged in that count then your deliberations are complete with respect to that count. You will sign the Certification in Section VII of the Special Verdict Form for that count and proceed to consider the next count. If no counts remain to be considered then you will advise the Court that you have reached a verdict.

If you answer "YES" with respect to any Statutory Aggravating Factor alleged in

the count you are considering, then complete accordingly Section III of the Special Verdict Form for that count and proceed to Section IV.

COURT'S INSTRUCTION NO. 9

Non-Statutory Aggravating Factors (Section IV of Special Verdict Form)

If you have found the existence of one or more Statutory Aggravating Factors unanimously and beyond a reasonable doubt for the count you are considering, you must then consider whether the government has proved the existence of any Non-Statutory Aggravating Factors for that count. As with Statutory Aggravating Factors, with respect to each count separately you must unanimously agree that the Government has proved beyond a reasonable doubt the existence of any of the alleged Non-Statutory Aggravating Factors before you may consider such factors in your deliberations on the appropriate punishment for the defendant for that count. But unlike threshold intent factors and Statutory Aggravating Factors, even if you don't unanimously find that the Government has proved any Non-Statutory Aggravating Factors that apply to a particular count, you may still consider the death penalty as a possible sentence for that count. In other words, you will proceed to Section V from this Section IV regardless of your Section IV findings on the count you are considering.

In addition to any Statutory Aggravating Factors you have found, you are permitted to consider and discuss only the four (4) Non-Statutory Aggravating Factors specifically claimed by the Government. I will describe those Factors. You must not consider any other facts in aggravation which you might think of on your own.

The Non-Statutory Aggravating Factors that the Government has alleged against the defendant with respect to each of the capital counts are as follows:

1. Future Dangerousness. The defendant represents a continuing danger to the lives and safety of other persons; with respect to all of the murders, as evidenced by his low potential for rehabilitation as demonstrated by repeated violent criminal acts; with respect to only the murders of Luis Ortiz, Michael Sessum, Miguel Mejias, and Miguel Colon, as evidenced by a willingness to take human life and a lack of remorse for his acts of violence and attempted acts of violence as demonstrated by statements that he made following these violent acts; and again, with respect to all of the murders, as evidenced by the defendant's stated desire to impose a rule requiring fellow members of the Imperial Gangsters to shoot at rivals on sight, and his future dangerousness tends to support the imposition of the death penalty.

2. Contemporaneous Convictions for Other Criminal Activity. The defendant was convicted at trial of other criminal activity, including additional murders and an attempted murder, and this additional criminal activity tends to support the imposition of the death penalty.

3. Demonstrated Allegiance to Criminal Street Gang. The defendant had an allegiance to and was a member of the Imperial Gangsters, a criminal street gang, and this allegiance and membership tends to support the imposition of the death penalty.

4. Victim Impact. The defendant caused injury, harm, and loss to the victims, Luis Ortiz, Michael Sessum, Miguel Mejias, Miguel Colon, and Latroy Howard, and the victims' families and friends, and this harm tends to support the imposition of the death penalty.

After considering these Factors you will record in Section IV of the Special Verdict Form for the count you are considering your findings regarding whether you unanimously find that the Government has proved beyond a reasonable doubt the existence of any of these Non-Statutory Aggravating Factors.

Then you will continue on to consider the questions in Section V of the Special Verdict Form for the count you are considering.

COURT'S INSTRUCTION NO. 10

Mitigating Factors (Section V of Special Verdict Form)

You must next consider, for the count on which you are deliberating, any Mitigating Factors that may be present in this case. A Mitigating Factor is not offered to justify or excuse the defendant's conduct. Rather, a Mitigating Factor is a fact about the defendant's life or character, or about the circumstances surrounding the offenses or any other relevant fact that would suggest, in fairness, that a sentence of death is not the appropriate punishment, or that a sentence of life in prison without the possibility of release is the more appropriate punishment.

Unlike for aggravating factors, your vote with respect to a Mitigating Factor **need not** be unanimous. A finding with respect to a Mitigating Factor may be made by one or more of the members of the jury. Any juror persuaded of the existence of a mitigating factor must consider it in this case, regardless of the number of other jurors who agree the factor has been established. Further, any juror may weigh a mitigating factor found by another juror, even if he or she did not also find that factor to exist or to be mitigating.

It is the defendant's burden to establish any mitigating factors, but only by a preponderance of the evidence, not 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.

Please understand that 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 factually true (that is, that the factor has been established by a preponderance of the evidence), but those jurors as individuals might later choose to give that same mitigating factor differing levels of significance during the weighing process. With this distinction in mind, Section IV of each Special Verdict Form only asks you to report the total number of jurors who individually find the existence of a particular mitigating factor to be established by a preponderance of the evidence.

Earlier in these instructions, I stated that 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. Accordingly, it is not your role to pass on the wisdom of whether a particular mitigating factor submitted to you is, in your own personal view, the kind of circumstance that should weigh against imposition of the death penalty. If a mitigating factor that I state in these instructions and that appears on the Special Verdict Forms has been established by a preponderance of the evidence, you are required to weigh it in the balance to be struck between the aggravating and mitigating factors. It is up to you, however, to decide how much weight you individually assign to each particular mitigating factor.

The Special Verdict Form provides a space for you to indicate the number of jurors who find each Mitigating Factor. Complete that section.

Mitigating Factors to Consider

The Mitigating Factors which the defendant asserts he has proved by a preponderance of the evidence are:

- A. If not sentenced to death, Mr. Briseno will be sentenced to lifetime imprisonment without the possibility of release.
- B. The Federal Bureau of Prisons will impose appropriate conditions of confinement and security with regard to Mr. Briseno.
- C. Mr. Briseno is the product of a childhood marked by chaos, abuse and abandonment.
- D. Growing up, Mr. Briseno lacked positive male role models in his home.
- E. His mother's poor choices in the men she brought into the family home had a negative impact on Mr. Briseno.
- F. Juan grew up in a neighborhood plagued with drugs, gangs, and violence.
- G. Juan was raised in poverty.
- H. Juan's basic needs were neglected when he was a young child.
- I. Juan's older brother was a gang member and a poor role model.
- J. Juan was recruited into the Imperial Gangsters when he was only 16.
- K. Juan was unable to keep up with his peers in school.
- L. Juan's father abandoned the family when Juan was only 8.
- M. Juan's father and his associates abused alcohol in front of the children.
- N. Juan has participated in rehabilitative programs while incarcerated.

- O. Juan donated his hair to cancer patients through "Locks of Love."
- P. Juan has a loving relationship with his twin cousins.
- Q. If Juan were to be executed others would suffer grief and loss.
- R. Juan has made a positive adjustment to incarceration and is likely to do so in federal prison.
- S. Cooperating witnesses and/or cooperating defendants who have killed someone will not be sentenced to death.
- T. The five victims of the murders voluntarily chose to engage in dangerous and illegal activities, a circumstance that contributed to their deaths.
- U. Mr. Briseno always behaved respectfully in court.
- V. Mr. Briseno's life has value.
- W. Another defendant, or defendants, equally culpable in the murders, will not be punished by death.
- X. There are other relevant circumstances that weigh against imposing a sentence of death.

Any Additional Mitigating Factors

You are also permitted to consider **anything** else about the circumstances of the crime or about the defendant's background, record, or character or any other circumstance of the offense, that mitigate against imposition of the death penalty. So if there are any such Mitigating Factors, whether or not specifically argued by the attorneys for the defense, which at least one juror finds are established by a

preponderance of the evidence, you are free to consider them in your deliberations.

There is a space in Section V of the Special Verdict Form for each count for you to fill in any additional Mitigating Factors and note the number of jurors who find that it exists.

Complete that Section for each count as you consider that count. But even if you are unable to articulate or describe these additional Mitigating Factors, you may still give them your full consideration without noting them on the Special Verdict Form.

The law does not require that there be a connection between a Mitigating Factor and the crime committed. 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 capital punishment statute. What weight you give each Mitigating and Aggravating Factor is entirely up to you.

After you complete Section V of the Special Verdict Form for the count you are considering, you will move on to weigh the Aggravating Factor or Factors you have found and the Mitigating Factor or Factors you may have found.

COURT'S INSTRUCTION NO. 11

Weighing Aggravating and Mitigating Factors

With respect to the capital count you are considering, if you unanimously find that the government proved beyond a reasonable doubt: 1) that the defendant was over 18 years of age at the time of the crime; and 2) the existence of at least one intent factor, and 3) the existence of at least one Statutory Aggravating Factor; and after you then decide whether the Government proved beyond a reasonable doubt the existence of the alleged Non-Statutory Aggravating Factors submitted to you with respect to that count, and whether the defendant proved the existence of any Mitigating Factors by a preponderance of the evidence, you will then engage in a weighing process.

In determining the appropriate sentence for each count, all of you must weigh the Aggravating Factor or Factors that you unanimously found proved beyond a reasonable doubt for that count, and each of you must weigh any Mitigating Factor or Factors that you individually found to exist for that count, and may weigh any Mitigating Factors that another fellow juror found to exist. Whether or not the circumstances of each count in this case make death the appropriate sentence is a decision that the law leaves entirely to you.

Although I have previously instructed you that you will not consider a death sentence for any count unless you first unanimously find the age requirement and at least one threshold intent factor proven beyond a reasonable doubt, I instruct you now that the age requirement and threshold intent factors **shall not** be considered when

weighing the Aggravating and Mitigating Factors. You must weigh only the Statutory and Non-Statutory Aggravating Factors that you unanimously find to exist for a particular count against any Mitigating Factors that any juror individually, or with others, finds to exist for that count.

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.

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 instead consider the weight and value of each factor to make a unique, individualized, and reasoned judgment about the sentence this defendant should receive for each capital offense.

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 one or more Aggravating Factors. Or you may find, even if you have found no Mitigating Factors, that the Aggravating Factor or Factors proved do not, standing alone, justify imposition of a sentence of death. On the other hand, you may unanimously find that a particular Aggravating Factor sufficiently outweighs all Mitigating Factors combined to make a sentence of death the appropriate sentence. Each juror must decide what weight or value is to be given to a particular Aggravating or Mitigating Factor in the

decision-making process.

Again, whether or not the circumstances in any particular count justify a sentence of death is a decision that the law leaves entirely to you. You are never required to impose a death sentence.

COURT'S INSTRUCTION NO. 12

Determination of Sentence (Section VI of Special Verdict Form)

You will be asked the following question for each capital count: "Do you, the jury, **unanimously** find that a sentence of death shall be imposed on the defendant JUAN BRISENO, aka Tito, as punishment" for the murder you are considering? You will answer that question either "Yes" or "No." In answering this question, you must unanimously decide whether the Aggravating Factor or Factors sufficiently outweigh the Mitigating Factor or Factors such that a sentence of death is the most appropriate sentence. If you answer "Yes" the Court will then be required to impose a death sentence for that count.

If you cannot unanimously agree that a sentence of death should be imposed, you should answer the question "No" and the Court will sentence Mr. Briseno to a life sentence without the possibility of release for the count you are considering. In the federal system, a sentence of life imprisonment without the possibility of release means just that – the defendant will never be released from prison. There is no parole in the federal system.

It is your duty as jurors to discuss all aspects of these sentencing issues with one another frankly and candidly in an effort to reach agreement, if you can reach agreement. Each of you must decide these questions for yourselves and not go along with the conclusions of your fellow jurors, but only after full consideration of the evidence with the other members of the jury and due respect for one another's opinions.

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 reach a verdict.

COURT'S INSTRUCTION NO. 13

Right to Justice Without Discrimination

In your consideration of whether the death sentence is justified as to any count you must not consider the race, color, religious beliefs, national origin, or sex of either the defendant or the 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 the defendant or the victim.

To emphasize the importance of this consideration, Section VII of the Special Verdict Form for each count 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 on that count.

COURT'S INSTRUCTION NO. 14

Special Verdict Form

I have prepared a set of forms, one for each capital count, each entitled "Special Verdict Form," to assist you during your deliberations. You are required to record your decisions on these forms. Section I of the Special Verdict Form is where you will record your findings on the defendant's Age. Section II is where you will record your findings on the Threshold Intent Factors. Section III is where you will record your findings on Statutory Aggravating Factors. Section IV is where you will record your findings on Non-Statutory Aggravating Factors. Section V is where you will record your findings on Mitigating Factors. Section VI is where you will record your sentence determinations. Finally, Section VII contains the non-discrimination certification each juror must read and sign. You are each required to sign the Special Verdict Form.

There is a separate Special Verdict Form for you to record your decisions with respect to each determination as to each capital count charged in the Fourth Superseding Indictment, and by capital count I mean: Count Nine (Luis Ortiz), Count Thirteen (Michael Sessum), Count Fifteen (Miguel Mejias), Count Nineteen (Miguel Colon), and Count Twenty-one (Latroy Howard). You must consider each count separately and record your findings for each count in the appropriate spaces on the appropriate Special Verdict Form. Once you have finished your deliberations and filled in, signed, and dated all of the Special Verdict Forms, you will advise the Court that you have reached a verdict.

COURT'S INSTRUCTION NO. 15

Concluding Instruction

Once you start deliberating, do not communicate about the case or your deliberations with anyone except other members of your jury. You may not communicate with others about the case or your deliberations by any means. This includes oral or written communication, as well as any electronic method of communication, like your phones, computers, or on the Internet, or any other method of communication.

If you need to communicate with me while you are deliberating, send a note through the court security officer. The note should be signed by the foreperson or by one or more members of the jury. To have a complete record of this trial, it is important that you do not communicate with me except by a written note. I may have to talk to the lawyers about your message, so it may take me some time to get back to you. You may continue your deliberations while you wait for my answer. Please be advised that transcripts of trial testimony are not available to you. You must rely on your collective memory of the testimony.

If you send me a message or question, you should not tell me any details of your deliberations or the breakdown of any votes you may have conducted.

Let me remind you again that nothing that I have said in these instructions, and nothing that I have said or done during either phase of the trial, has been said or done to suggest to you what I think your decisions should be. The decisions are your

exclusive responsibility.

You may now retire to begin your deliberations.