

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF KENTUCKY
AT PADUCAH**

UNITED STATES OF AMERICA

PLAINTIFF

v.

CRIMINAL ACTION NO. 5:06 CR-00019-R

STEVEN D. GREEN

DEFENDANT

UNITED STATES' PROPOSED JURY INSTRUCTIONS

Comes the United States of America, by counsel, and submits the attached proposed jury instructions for the guilt phase as well as proposed jury instructions and a Special Verdict Form for sentencing.

The proposed jury instructions for the guilt phase are based on the Sixth Circuit Criminal Pattern Jury Instructions, with additions from the U.S. Code and the pattern criminal jury instructions from the Eighth, Ninth, and Eleventh Circuits. The sentencing instructions and Special Verdict Form are based on the Eighth Circuit's Model Death Penalty Jury Instructions. These are currently the only set of sentencing phase instructions to be approved by a federal circuit court.

Respectfully submitted,

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Certificate of Service

I hereby certify that on February 17, 2009, I filed the foregoing with the Clerk of the Court by using the CM/ECF system, which will send notice of electronic filing to Scott T. Wendelsdorf, Federal Defender; Patrick J. Bouldin, Assistant Federal Defender; and Darren C. Wolff, counsel for defendant, Steven D. Green.

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**Substantive Jury Instructions
United States of America v. Steven D. Green**

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INTRODUCTION

Members of the jury, now it is time for me to instruct you about the law that you must follow in deciding this case.

I will start by explaining your duties and the general rules that apply in every criminal case.

Then I will explain the elements, or parts, of the crime that the defendant is accused of committing.

Then I will explain some rules that you must use in evaluating particular testimony and evidence.

And last, I will explain the rules that you must follow during your deliberations in the jury room, and the possible verdicts that you may return.

Please listen very carefully to everything I say.

SOURCE: Sixth Circuit Pattern Criminal Jury Instructions § 1.01 (2007) (Introduction).

JURORS' DUTIES

You have two main duties as jurors. The first one is to decide what the facts are from the evidence that you saw and heard here in court. Deciding what the facts are is your job, not mine, and nothing that I have said or done during this trial was meant to influence your decision about the facts in any way.

Your second duty is to take the law that I give you, apply it to the facts, and decide if the government has proved the defendant guilty beyond a reasonable doubt. It is my job to instruct you about the law, and you are bound by the oath that you took at the beginning of the trial to follow the instructions that I give you, even if you personally disagree with them. This includes the instructions that I gave you before and during the trial, and these instructions. All the instructions are important, and you should consider them together as a whole.

The lawyers have talked about the law during their arguments. But if what they said is different from what I say, you must follow what I say. What I say about the law controls.

Perform these duties fairly. Do not let any bias, sympathy or prejudice that you may feel toward one side or the other influence your decision in any way.

SOURCE: Sixth Circuit Pattern Criminal Jury Instructions § 1.02 (2007) (Jurors' Duties).

PRESUMPTION OF INNOCENCE, BURDEN OF PROOF, REASONABLE DOUBT

As you know, the defendant has pleaded not guilty to the crimes charged in the indictment. The indictment is not any evidence at all of guilt. It is just the formal way that the government tells the defendant what crimes he is accused of committing. It does not even raise any suspicion of guilt.

Instead, the defendant starts the trial with a clean slate, with no evidence at all against him, and the law presumes that he is innocent. This presumption of innocence stays with him unless the government presents evidence here in court that overcomes the presumption, and convinces you beyond a reasonable doubt that he is guilty.

This means that the defendant has no obligation to present any evidence at all, or to prove to you in any way that he is innocent. It is up to the government to prove that he is guilty, and this burden stays on the government from start to finish. You must find the defendant not guilty unless the government convinces you beyond a reasonable doubt that he is guilty.

The government must prove every element of the crimes charged beyond a reasonable doubt. Proof beyond a reasonable doubt does not mean proof beyond all possible doubt. Possible doubts or doubts based purely on speculation are not reasonable doubts. A reasonable doubt is a doubt based on reason and common sense. It may arise from the evidence, the lack of evidence, or the nature of the evidence.

Proof beyond a reasonable doubt means proof which is so convincing that you would not hesitate to rely and act on it in making the most important decisions in your own lives. If you are convinced that the government has proved the defendant guilty beyond a reasonable doubt, say so by returning a guilty verdict. If you are not convinced, say so by returning a not guilty verdict.

SOURCE: Sixth Circuit Pattern Criminal Jury Instructions § 1.03 (2007) (Presumption of Innocence, Burden of Proof, Reasonable Doubt).

EVIDENCE DEFINED

You must make your decision based only on the evidence that you saw and heard here in court. Do not let rumors, suspicions, or anything else that you may have seen or heard outside of court influence your decision in any way.

The evidence in this case includes only what the witnesses said while they were testifying under oath; the exhibits that I allowed into evidence; the stipulations that the lawyers agreed to; and the facts that I have judicially noticed.

Nothing else is evidence. The lawyers' statements and arguments are not evidence. Their questions and objections are not evidence. My legal rulings are not evidence. And my comments and questions are not evidence.

During the trial I did not let you hear the answers to some of the questions that the lawyers asked. I also ruled that you could not see some of the exhibits that the lawyers wanted you to see. And sometimes I ordered you to disregard things that you saw or heard, or I struck things from the record. You must completely ignore all of these things. Do not even think about them. Do not speculate about what a witness might have said or what an exhibit might have shown. These things are not evidence, and you are bound by your oath not to let them influence your decision in any way.

Make your decision based only on the evidence, as I have defined it here, and nothing else.

SOURCE: Sixth Circuit Pattern Criminal Jury Instructions § 1.04 (2007) (Evidence Defined).

CONSIDERATION OF EVIDENCE

You should use your common sense in weighing the evidence. Consider it in light of your everyday experience with people and events, and give it whatever weight you believe it deserves. If your experience tells you that certain evidence reasonably leads to a conclusion, you are free to reach that conclusion.

SOURCE: Sixth Circuit Pattern Criminal Jury Instructions § 1.05 (2007) (Consideration of Evidence).

DIRECT AND CIRCUMSTANTIAL EVIDENCE

Now, some of you may have heard the terms "direct evidence" and "circumstantial evidence."

Direct evidence is simply evidence like the testimony of an eyewitness which, if you believe it, directly proves a fact. If a witness testified that he saw it raining outside, and you believed him, that would be direct evidence that it was raining.

Circumstantial evidence is simply a chain of circumstances that indirectly proves a fact. If someone walked into the courtroom wearing a raincoat covered with drops of water and carrying a wet umbrella, that would be circumstantial evidence from which you could conclude that it was raining.

It is your job to decide how much weight to give the direct and circumstantial evidence. The law makes no distinction between the weight that you should give to either one, or say that one is any better evidence than the other. You should consider all the evidence, both direct and circumstantial, and give it whatever weight you believe it deserves.

SOURCE: Sixth Circuit Pattern Criminal Jury Instructions § 1.06 (2007) (Direct and Circumstantial Evidence).

CREDIBILITY OF WITNESSES

Another part of your job as jurors is to decide how credible or believable each witness was. This is your job, not mine. It is up to you to decide if a witness's testimony was believable, and how much weight you think it deserves. You are free to believe everything that a witness said, or only part of it, or none of it at all. But you should act reasonably and carefully in making these decisions.

Let me suggest some things for you to consider in evaluating each witness's testimony.

Ask yourself if the witness was able to clearly see or hear the events. Sometimes even an honest witness may not have been able to see or hear what was happening, and may make a mistake.

Ask yourself how good the witness's memory seemed to be. Did the witness seem able to accurately remember what happened?

Ask yourself if there was anything else that may have interfered with the witness's ability to perceive or remember the events.

Ask yourself how the witness acted while testifying. Did the witness appear honest? Or did the witness appear to be lying?

Ask yourself if the witness had any relationship to the government or the defendant, or anything to gain or lose from the case, that might influence the witness's testimony. Ask yourself if the witness had any bias, or prejudice, or reason for testifying that might cause the witness to lie or to slant the testimony in favor of one side or the other.

And ask yourself how believable the witness's testimony was in light of all the other evidence. Was the witness's testimony supported or contradicted by other evidence that you found believable? If you believe that a witness's testimony was contradicted by other evidence, remember that people sometimes forget things, and that even two honest people who witness the same event may not describe it exactly the same way.

These are only some of the things that you may consider in deciding how believable each witness was. You may also consider other things that you think shed some light on the witness's believability. Use your common sense and your everyday experience in dealing with other people. And then decide what testimony you believe, and how much weight you think it deserves.

SOURCE: Sixth Circuit Pattern Criminal Jury Instructions § 1.07 (2007) (Credibility of Witnesses).

NUMBER OF WITNESSES

One more point about the witnesses. Sometimes jurors wonder if the number of witnesses who testified makes any difference.

Do not make any decisions based only on the number of witnesses who testified. What is more important is how believable the witnesses were, and how much weight you think their testimony deserves. Concentrate on that, not the numbers.

SOURCE: Sixth Circuit Pattern Criminal Jury Instructions § 1.08 (2007) (Number of Witnesses).

LAWYERS' OBJECTIONS

There is one more general subject that I want to talk to you about before I begin explaining the elements of the crime charged.

The lawyers for both sides objected to some of the things that were said or done during the trial. Do not hold that against either side. The lawyers have a duty to object whenever they think that something is not permitted by the rules of evidence. Those rules are designed to make sure that both sides receive a fair trial.

And do not interpret my rulings on their objections as any indication of how I think the case should be decided. My rulings were based on the rules of evidence, not on how I feel about the case. Remember that your decision must be based only on the evidence that you saw and heard here in court.

SOURCE: Sixth Circuit Pattern Criminal Jury Instructions § 1.09 (2007) (Lawyers' Objections).

INTRODUCTION

That concludes the part of my instructions explaining your duties and the general rules that apply in every criminal case. In a moment, I will explain the elements of the crime that the defendant is accused of committing.

But before I do that, I want to emphasize that the defendant is only on trial for the particular crimes charged in the indictment (and the lesser charges that I will explain to you). Your job is limited to deciding whether the government has proved the crimes charged (or one of those lesser charges).

Also keep in mind that whether anyone else should be prosecuted and convicted for these crimes is not a proper matter for you to consider. The possible guilt of others is no defense to a criminal charge. Your job is to decide if the government has proved this defendant guilty. Do not let the possible guilt of others influence your decision in any way.

SOURCE: Sixth Circuit Pattern Criminal Jury Instructions § 2.01 (2007) (Introduction).

SEPARATE CONSIDERATION – SINGLE DEFENDANT CHARGED WITH MULTIPLE CRIMES

The defendant has been charged with several crimes. The number of charges is no evidence of guilt, and this should not influence your decision in any way. It is your duty to separately consider the evidence that relates to each charge, and to return a separate verdict for each one. For each charge, you must decide whether the government has presented proof beyond a reasonable doubt that the defendant is guilty of that particular charge.

Your decision on one charge, whether it is guilty or not guilty, should not influence your decision on any of the other charges.

SOURCE: Sixth Circuit Pattern Criminal Jury Instructions § 2.01A (2007) (Separate Consideration – Single Defendant Charged with Multiple Crimes).

DEFINITION OF THE CRIMES

Count 1 – Conspiracy to Commit Murder

Count 1 of the indictment accuses the defendant of Conspiracy to Commit Murder in violation of federal law. Conspiracy is a kind of criminal partnership, and it is a crime for two or more persons to conspire, or agree, to commit a criminal act, regardless of whether they actually achieve their goal.

For you to find the defendant guilty of Conspiracy to Commit Murder in Count 1, the government must prove each and every one of the following elements beyond a reasonable doubt:

First, that two or more persons conspired, or agreed, to commit the crime of murder with malice aforethought.

Second, that the defendant knowingly and voluntarily joined the conspiracy.

Third, that a member of the conspiracy did one of the overt acts described in the indictment for the purpose of advancing or helping the conspiracy.

Fourth, that the conspiracy took place outside the United States.

Fifth, that the conspiracy took place while the defendant was a member of the Armed Forces subject to the Uniform Code of Military Justice.

And Sixth, that the defendant's conspiracy to commit murder would constitute an offense punishable by imprisonment for more than 1 year if the conduct had been engaged in within the special maritime and territorial jurisdiction of the United States. As a matter of law, I instruct you that Conspiracy to Commit Murder is punishable by imprisonment for more than 1 year if the conduct had been engaged in within the special maritime and territorial jurisdiction of the United States.

You must be convinced that the government has proved all of these elements beyond a reasonable doubt in order to find the defendant guilty of the conspiracy charged in Count 1.

SOURCE: Sixth Circuit Pattern Jury Instructions § 3.01A (2007) (Conspiracy to Commit an Offense – Basic Elements); MEJA, 18 U.S.C. § 3261(a)(2).

Count 2 – Conspiracy to Commit Aggravated Sexual Abuse

Count 2 of the indictment accuses the defendant of Conspiracy to Commit Aggravated Sexual Abuse in violation of federal law.

For you to find the defendant guilty of Conspiracy to Commit Aggravated Sexual Abuse in Count 2, the government must prove each and every one of the following elements beyond a reasonable doubt:

First, that two or more persons conspired, or agreed, to commit the crime of aggravated sexual abuse.

Second, that the defendant knowingly and voluntarily joined the conspiracy.

Third, that a member of the conspiracy did one of the overt acts described in the indictment for the purpose of advancing or helping the conspiracy.

Fourth, that the conspiracy took place outside the United States.

Fifth, that the conspiracy took place while the defendant was a member of the Armed Forces subject to the Uniform Code of Military Justice.

And Sixth, that the defendant's conspiracy to commit Aggravated Sexual Abuse would constitute an offense punishable by imprisonment for more than 1 year if the conduct had been engaged in within the special maritime and territorial jurisdiction of the United States. As a matter of law, I instruct you that Conspiracy to Commit Murder is punishable by imprisonment for more than 1 year if the conduct had been engaged in within the special maritime and territorial jurisdiction of the United States.

You must be convinced that the government has proved all of these elements beyond a reasonable doubt in order to find the defendant guilty of the conspiracy charged in Count 2.

SOURCE: Sixth Circuit Pattern Criminal Jury Instructions § 3.01A (2007) (Conspiracy to Commit an Offense – Basic Elements); MEJA, 18 U.S.C. § 3261(a)(2).

AGREEMENT

With regard to the first element – a criminal agreement – the government must prove that two or more persons conspired, or agreed, to cooperate with each other to commit the crime of Murder, as charged in Count 1, and Aggravated Sexual Abuse, as charged in Count 2.

This does not require proof of any formal agreement, written or spoken. Nor does this require proof that everyone involved agreed on all the details. But proof that people simply met together from time to time and talked about common interests, or engaged in similar conduct, is not enough to establish a criminal agreement. These are things that you may consider in deciding whether the government has proved an agreement. But without more they are not enough.

What the government must prove is that there was a mutual understanding, either spoken or unspoken, between two or more people, to cooperate with each other to commit either the crime of Murder or the crime of Aggravated Sexual Abuse, or both. This is essential.

An agreement can be proved indirectly, by facts and circumstances which lead to a conclusion that an agreement existed. But it is up to the government to convince you that such facts and circumstances existed in this particular case.

SOURCE: Sixth Circuit Pattern Criminal Jury Instructions § 3.02 (2007) (Agreement).

DEFENDANT'S CONNECTION TO THE CONSPIRACY

If you are convinced that there was a criminal agreement, then you must decide whether the government has proved that the defendant knowingly and voluntarily joined that agreement. To convict the defendant, the government must prove that he knew the conspiracy's main purpose, and that he voluntarily joined it intending to help advance or achieve its goals.

This does not require proof that a defendant knew everything about the conspiracy, or everyone else involved, or that he was a member of it from the very beginning. Nor does it require proof that the defendant played a major role in the conspiracy, or that his connection to it was substantial. A slight role or connection may be enough.

But proof that the defendant simply knew about a conspiracy, or was present at times, or associated with members of the group, is not enough, even if he approved of what was happening or did not object to it. Similarly, just because a defendant may have done something that happened to help a conspiracy does not necessarily make him a conspirator. These are all things that you may consider in deciding whether the government has proved that the defendant joined a conspiracy. But without more they are not enough.

What the government must prove is that the defendant knew the conspiracy's main purpose, and that he voluntarily joined it intending to help advance or achieve its goals. This is essential.

A defendant's knowledge can be proved indirectly by facts and circumstances which lead to a conclusion that he knew the conspiracy's main purpose. But it is up to the government to convince you that such facts and circumstances existed in this particular case.

SOURCE: Sixth Circuit Pattern Criminal Jury Instructions § 3.03 (2007) (Defendant's Connection to the Conspiracy).

OVERT ACTS

The third element that the government must prove is that a member of the conspiracy did one of the overt acts described in the indictment for the purpose of advancing or helping the conspiracy.

The indictment lists overt acts. The government does not have to prove that all these acts were committed, or that any of these acts were themselves illegal.

But the government must prove that at least one of these acts was committed by a member of the conspiracy, and that it was committed for the purpose of advancing or helping the conspiracy. This is essential.

SOURCE: Sixth Circuit Pattern Criminal Jury Instructions § 3.04 (2007) (Overt Acts).

UNINDICTED, UNNAMED OR SEPARATELY TRIED CO-CONSPIRATORS

Now, some of the people who may have been involved in these events are not on trial. This does not matter. There is no requirement that all members of a conspiracy be charged and prosecuted, or tried together in one proceeding.

SOURCE: Sixth Circuit Pattern Criminal Jury Instructions § 3.06 (2007) (Unindicted, Unnamed or Separately Tried Co-Conspirators).

DEFINITIONS OF THE CRIMES (CONT'D)

Counts 3, 4, 5, and 6 – Premeditated Murder

Counts 3, 4, 5, and 6 of the indictment accuse the defendant of Premeditated Murder of Abeer Kassem Hamza Al-Janabi, Hadeel Kassem Hamza Al-Janabi, Kassem Hamza Rachid Al-Janabi, and Fakhriya Taha Mohsine Al-Janabi in violation of federal law. Murder is the unlawful killing of a human being with malice aforethought.

The defendant can be found guilty of the crimes charged in Counts 3, 4, 5, and 6 only if all of the following facts are proved beyond a reasonable doubt:

First, that the person named in each count was killed;

Second, that the defendant caused the death of the person named in each count with “malice aforethought;”

Third, that the defendant did so with “premeditated intent;”

Fourth, that the killing of the person named in each count occurred outside the United States;

Fifth, that the killing of the person named in each count occurred while the defendant was a member of the Armed Forces subject to the Uniform Code of Military Justice;

And Sixth, that the killing of the person named in each count would constitute an offense punishable by imprisonment for more than 1 year if the conduct had been engaged in within the special maritime and territorial jurisdiction of the United States. On this point, I am instructing you that as a matter of law, the crime of murder is punishable by imprisonment for more than 1 year if the conduct had been engaged in within the special maritime and territorial jurisdiction of the United States.

You must be convinced that the government has proved all of these elements for each count beyond a reasonable doubt in order to find the defendant guilty of Premeditated Murder in Counts 3, 4, 5, or 6.

To kill with “malice aforethought” means an intent at the time of the killing to take the life of another person, either deliberately and intentionally, or to willfully act with callous and wanton disregard for human life.

The government need not prove that the defendant hated the persons killed or felt ill will toward the victims at the time, but the evidence must establish beyond a reasonable doubt that the defendant acted either with the intent to kill or to willfully do acts with callous and wanton disregard for the consequences and which the defendant knew would result in a serious risk of death or serious bodily harm.

Killing with “premeditated intent” is required in addition to proof of malice aforethought in order to establish the offense of first degree murder. Premeditation is typically associated with killing in cold blood and requires a period of time in which the accused deliberates, or thinks the matter over, before acting.

The law does not specify or require any exact period of time that must pass between the formation of the intent to kill and the killing itself. It must be long enough for the killer, after forming the intent to kill, to be fully conscious of that intent.

You must be convinced that the government has proved all of these elements beyond a reasonable doubt in order to find the defendant guilty of the Premeditated Murder charge in Counts 3, 4, 5, or 6.

SOURCE: Eleventh Circuit Pattern Jury Instructions § 45.1 (2003); MEJA, 18 U.S.C. § 3261(a)(2); Sixth Circuit Pattern Jury Instructions § 3.01A (2007).

Counts 7, 8, 9, and 10 – Felony Murder

Federal law makes it a crime for anyone to murder another human being during the perpetration of, or the attempted perpetration of, the crime of aggravated sexual abuse. The Defendant can be found guilty of Felony Murder in this case only if all of the following facts are proved beyond a reasonable doubt:

First, that the persons named in each count was killed.

Second, that the defendant caused the death of the persons named.

Third, that the death of the person occurred as a consequence of and while the defendant was knowingly and willfully engaged in perpetrating or attempting to perpetrate the crime of aggravated sexual abuse.

Fourth, that the murder of the named persons occurred outside the United States.

Fifth, that the murder of the named persons occurred while the defendant was a member of the Armed Forces subject to the Uniform Code of Military Justice.

And Sixth, that the murders would constitute an offense punishable by imprisonment for more than 1 year if the conduct had been engaged in within the special maritime and territorial jurisdiction of the United States. As a matter of law, I instruct you that the crime of murder is punishable by imprisonment for more than 1 year if the conduct had been engaged in within the special maritime and territorial jurisdiction of the United States.

The crime charged here is known as a "felony murder" – that is, a killing that occurs during the knowing and willful commission of some other, specified felony offense. It is not necessary, therefore, for the government to prove that the defendant had any premeditated design or intent to kill the victim.

It is sufficient if the government proves beyond a reasonable doubt that the defendant knowingly and willfully committed, or attempted to commit, the crime of aggravated sexual abuse as charged in Count 11 of the indictment, and that the killing of the victim occurred during, and as a consequence of, the defendant's commission of, or attempted commission of that crime.

You must be convinced that the government has proved all of these elements beyond a reasonable doubt in order to find the defendant guilty of Felony Murder in Counts 7, 8, 9, or 10.

SOURCE: Eleventh Circuit Pattern Jury Instructions § 45.2 (2003); MEJA, 18 U.S.C. § 3261(a)(2); Sixth Circuit Pattern Jury Instructions § 3.01A (2007).

Count 11 – Aggravated Sexual Abuse

Federal law makes it a crime to sexually abuse another person by using force or threats. The Defendant can be found guilty of that offense only if all of the following facts are proved beyond a reasonable doubt:

First, that the defendant caused Abeer Kassem Hamza Al-Janabi to engage in a sexual act;

Second, that the defendant did so by using force against her or by threatening or placing her in fear that she, or any other person, would be subjected to death, serious bodily injury, or kidnapping.

Third, that the defendant did such acts knowingly.

Fourth, that the aggravated sexual abuse occurred outside the United States.

Fifth, that the aggravated sexual abuse occurred while the defendant was a member of the Armed Forces subject to the Uniform Code of Military Justice.

And Sixth, that the aggravated sexual abuse would constitute an offense punishable by imprisonment for more than 1 year if the conduct had been engaged in within the special maritime and territorial jurisdiction of the United States. As a matter of law, I instruct you that the crime of murder is punishable by imprisonment for more than 1 year if the conduct had been engaged in within the special maritime and territorial jurisdiction of the United States.

The term "sexual act" means:

Contact between the penis and the vulva or the penis and the anus, and contact involving the penis occurs upon penetration however slight; or

Contact between the mouth and the penis, the mouth and the vulva, or the mouth and the anus; or

Penetration, however slight, of the anal or genital opening of another by a hand or finger or by any object, with an intent to abuse, humiliate, harass, degrade, or to arouse or gratify the sexual desire of the defendant or any other person.

The term "serious bodily injury" means bodily injury that involves a substantial risk of death, unconsciousness, extreme physical pain, protracted and obvious disfigurement, or protracted loss or impairment of the function of a bodily member, organ, or mental faculty.

You must be convinced that the government has proved all of these elements beyond a reasonable doubt in order to find the defendant guilty of Aggravated Sexual Abuse as charged in Count 11.

SOURCE: Eleventh Circuit Pattern Jury Instructions § 74 (2003); MEJA, 18 U.S.C. § 3261(a)(2); Sixth Circuit Pattern Jury Instructions § 3.01A (2007).

Count 12 – Aggravated Sexual Abuse with Children

The defendant is charged in Count 12 of the indictment with Aggravated Sexual Abuse of a Child in violation of federal law. In order for the defendant to be found guilty of that charge, the government must prove each of the following beyond a reasonable doubt:

First, the defendant knowingly engaged in a sexual act with Abeer Kassem Hamza Al-Janabi.

Second, at the time, Abeer Kassem Hamza Al-Janabi was at least 12 years old but younger than 16 years old.

Third, at the time, Abeer Kassem Hamza Al-Janabi was at least four years younger than the defendant.

Fourth, the aggravated sexual abuse occurred outside the United States.

Fifth, the aggravated sexual abuse occurred while the defendant was a member of the Armed Forces subject to the Uniform Code of Military Justice.

And Sixth, that the aggravated sexual abuse would constitute an offense punishable by imprisonment for more than 1 year if the conduct had been engaged in within the special maritime and territorial jurisdiction of the United States. As a matter of law, I instruct you that the crime of murder is punishable by imprisonment for more than 1 year if the conduct had been engaged in within the special maritime and territorial jurisdiction of the United States.

The term "sexual act" means:

Contact between the penis and the vulva or the penis and the anus, and contact involving the penis occurs upon penetration however slight; or

Contact between the mouth and the penis, the mouth and the vulva, or the mouth and the anus; or

Penetration, however slight, of the anal or genital opening of another by a hand or finger or by any object, with an intent to abuse, humiliate, harass, degrade, or to arouse or gratify the sexual desire of the defendant or any other person.

You must be convinced that the government has proved all of these elements beyond a reasonable doubt in order to find the defendant guilty of Aggravated Sexual Abuse with Children as charged in Count 12.

SOURCE: Ninth Circuit Pattern Jury Instructions § 8.137 (2003) (Aggravated Sexual Abuse of Child – 18 U.S.C. § 2241(c)); Eleventh Circuit Pattern Jury Instructions § 74 (2003) (18 U.S.C. § 2241(c)); MEJA, 18 U.S.C. § 3261(a)(2).

Counts 13, 14, 15, and 16 – Use of a Firearm During a Crime of Violence

Counts 13, 14, 15, and 16 of the indictment charge the defendant with violating federal law by the Use of a Firearm During a Crime of Violence. For you to find the defendant guilty of these crimes, you must find that for each count the government has proved every one of the following elements beyond a reasonable doubt:

First, the defendant committed the crime identified in each Count. (For example: Count 13 requires that the defendant committed the crime of the Premeditated Murder of Abeer Kassem Hamza Al-Janabi charged in Count 3; Count 14 requires that the defendant committed the crime of Premeditated Murder of Hadeel Kassem Hamza Al-Janabi charged in Count 4; Count 15 requires that the defendant committed the crime of Premeditated Murder of Kassem Hamza Rachid Al-Janabi charged in Count 5; and Count 16 requires that the defendant committed the crime of Premeditated Murder of Fakhriya Taha Mohsine Al-Janabi charged in Count 6.) Premeditated Murder is a crime of violence which may be prosecuted in a court of the United States.

Second, the defendant knowingly used or carried a firearm in committing the crime identified in each Count.

Third, the use or carrying of the firearm was during and in relation to the crime identified in each Count.

Fourth, the defendant's use or carrying of the firearm during and in relation to the crime identified in each Count occurred outside the United States.

Fifth, the defendant's use or carrying of the firearm during and in relation to the crime identified in each Count occurred while the defendant was a member of the Armed Forces subject to the Uniform Code of Military Justice.

And Sixth, the defendant's use or carrying of the firearm during and in relation to the crime identified in each Count would constitute an offense punishable by imprisonment for more than 1 year if the conduct had been engaged in within the special maritime and territorial jurisdiction of the United States. As a matter of law, I instruct you that this crime is punishable by imprisonment for more than 1 year if the conduct had been engaged in within the special maritime and territorial jurisdiction of the United States.

Now I will give you more detailed instructions on some of these terms.

To establish "use," the government must prove active employment of the firearm during and in relation to the crime identified in each Count. "Active employment" means activities such as brandishing, displaying, bartering, striking with, and most obviously, firing or attempting to fire, a firearm. "Use" also includes a person's reference to a firearm in his possession for the purpose of helping to commit the crime identified in each Count. "Use" requires more than mere possession or storage.

“Carrying” a firearm includes carrying it on or about one’s person.

The term “firearm” means any weapon which will or is designed to or may readily be converted to expel a projectile by the action of an explosive.

The term “during and in relation to” means that the firearm must have some purpose or effect with respect to the crime identified in each Count; in other words, the firearm must facilitate or further, or have the potential of facilitating or furthering the crime identified in each Count, and its presence or involvement cannot be the result of accident or coincidence.

The term “knowingly” means voluntarily and intentionally, and not because of mistake or accident.

You must be convinced that the government has proved all of these elements beyond a reasonable doubt in order to find the defendant guilty for the Use of a Firearm During a Crime of Violence as charged in Counts 13, 14, 15, or 16.

SOURCE: Sixth Circuit Pattern Jury Instructions §§ 12.2, 3.01A (2003); MEJA, 18 U.S.C. § 3261(a)(2).

Count 17 – Obstruction of Justice

Count 17 of the indictment charges the defendant with violating federal law by Obstruction of Justice. For you to find the defendant guilty of this crime, you must find that the government has proved each and every one of the following elements beyond a reasonable doubt:

First, the defendant corruptly destroyed, mutilated, or concealed objects, or attempted to corruptly destroy, mutilate, or conceal objects.

Second, that the defendant did so knowingly.

Third, that the defendant did so with the intent to impair the object's integrity or availability for use in an official proceeding.

An "official proceeding" means a proceeding before a judge or court of the United States or a federal grand jury. However, the defendant need not know that the proceeding was a federal proceeding. Further, it is not necessary that a proceeding actually be pending or about to be instituted.

You must be convinced that the government has proved all of these elements beyond a reasonable doubt in order to find the defendant guilty of Obstruction of Justice as charged in Count 17.

SOURCE: 18 U.S.C. §§ 1512(c)(1), 1512(f)(1), and 1515(a)(1); Sixth Circuit Pattern Jury Instructions § 3.01A (2007).

ON OR ABOUT

Next, I want to say a word about the date mentioned in the indictment.

The indictment charges that the crime happened "on or about" March 12, 2006. The government does not have to prove that the crime happened on that exact date. But the government must prove that the crime happened reasonably close to that date.

SOURCE: Sixth Circuit Pattern Criminal Jury Instructions § 2.04 (2007) (On or About).

INFERRING REQUIRED MENTAL STATE

Next, I want to explain something about proving a defendant's state of mind.

Ordinarily, there is no way that a defendant's state of mind can be proved directly, because no one can read another person's mind and tell what that person is thinking.

But a defendant's state of mind can be proved indirectly from the surrounding circumstances. This includes things like what the defendant said, what the defendant did, how the defendant acted, and any other facts or circumstances in evidence that show what was in the defendant's mind.

You may also consider the natural and probable results of any acts that the defendant knowingly did, and whether it is reasonable to conclude that the defendant intended those results. This, of course, is all for you to decide.

SOURCE: Sixth Circuit Pattern Criminal Jury Instructions § 2.08 (2007) (Inferring Required Mental State).

AIDING AND ABETTING

For you to find the defendant guilty of Premeditated Murder, Felony Murder, Aggravated Sexual Abuse, Aggravated Sexual Abuse with Children, Use of a Firearm During a Crime of Violence, or Obstruction of Justice, it is not necessary for you to find that he personally committed the crime. You may also find him guilty if he intentionally helped or encouraged someone else to commit the crime. A person who does this is called an aider and abettor.

But for you to find the defendant guilty of Premeditated Murder, Felony Murder, Aggravated Sexual Abuse, Aggravated Sexual Abuse with Children, Use of a Firearm During a Crime of Violence, or Obstruction of Justice as an aider and abettor, you must be convinced that the government has proved each and every one of the following elements beyond a reasonable doubt:

First, that the crime identified in Counts 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, or 17 was committed.

Second, that the defendant helped to commit the crime or encouraged someone else to commit the crime.

Third, that the defendant intended to help commit or encourage the crime.

Fourth, that the defendant's conduct in helping or encouraging the crime took place outside the United States.

Fifth, that the defendant's conduct in helping or encouraging the crime took place while the defendant was a member of the Armed Forces subject to the Uniform Code of Military Justice.

And Sixth, that the defendant's conduct in helping or encouraging the crime would constitute an offense punishable by imprisonment for more than 1 year if the conduct had been engaged in within the special maritime and territorial jurisdiction of the United States. As a matter of law, I instruct you that Aiding and Abetting the crimes identified in Counts 3 - 17 is punishable by imprisonment for more than 1 year if the conduct had been engaged in within the special maritime and territorial jurisdiction of the United States.

Proof that the defendant may have known about the crime, even if he was there when it was committed, is not enough for you to find him guilty. You can consider this in deciding whether the government has proved that he was an aider and abettor, but without more it is not enough.

What the government must prove is that the defendant did something to help or encourage the crime with the intent that the crime be committed.

You must be convinced that the government has proved all of these elements beyond a reasonable doubt in order to find the defendant guilty of Aiding and Abetting as charged in Counts 3-17.

SOURCE: Sixth Circuit Pattern Criminal Jury Instructions §§ 4.01, 3.01A (2007) (Aiding and Abetting); 18 U.S.C. § 3261(a)(2).

ATTEMPT – BASIC ELEMENTS

Counts 11, 12, and 17 of the indictment accuse the defendant of violating federal law by attempting to commit the crimes of Aggravated Sexual Abuse, Aggravated Sexual Abuse with Children, and Obstruction of Justice. Under the law, it is not necessary for you to find that the defendant actually succeeded in committing these crimes. You may also find him guilty of each crime if he attempted to commit the crime.

For you to find the defendant guilty of Attempt, you must be convinced that the government has proved all of the following elements beyond a reasonable doubt:

First, that the defendant intended to commit the crime of Aggravated Sexual Abuse (as charged in Count 11), or Aggravated Sexual Abuse with Children (as charged in Count 12), or Obstruction of Justice (as charged in Count 17).

Second, that the defendant did some overt act that was a substantial step towards committing the crimes of Aggravated Sexual Abuse, Aggravated Sexual Abuse with Children, or Obstruction of Justice.

Third, that the defendant's conduct in attempting to commit the crime took place outside the United States.

Fourth, that the defendant's conduct in attempting to commit the crime took place while the defendant was a member of the Armed Forces subject to the Uniform Code of Military Justice.

And Fifth, that the defendant's conduct in attempting to commit the crime would constitute an offense punishable by imprisonment for more than 1 year if the conduct had been engaged in within the special maritime and territorial jurisdiction of the United States. As a matter of law, I instruct you that Attempted Aggravated Sexual Abuse (Count 11), Attempted Aggravated Sexual Abuse with Children (Count 12), or Attempted Obstruction of Justice (Count 17) are crimes punishable by imprisonment for more than 1 year if the conduct had been engaged in within the special maritime and territorial jurisdiction of the United States.

Merely preparing to commit a crime is not a substantial step. The defendant's conduct must go beyond mere preparation, and must strongly confirm that he intended to commit the crimes charged in Counts 11, 12, or 17. But the government does not have to prove that the defendant did everything except the last act necessary to complete the crime. A substantial step beyond mere preparation is enough.

You must be convinced that the government has proved all of these elements beyond a reasonable doubt in order to find the defendant guilty of Attempt as charged in Counts 11, 12, or 17.

SOURCE: Sixth Circuit Pattern Criminal Jury Instructions §§ 5.01, 3.01A, 4.01 (2007);
MEJA, 18 U.S.C. § 3261(a)(2).

INTRODUCTION

That concludes the part of my instructions explaining the elements of the crime. Next I will explain some rules that you must use in considering some of the testimony and evidence.

SOURCE: Sixth Circuit Pattern Criminal Jury Instructions § 7.01 (2007) (Introduction).

DEFENDANT'S ELECTION NOT TO TESTIFY OR PRESENT EVIDENCE

A defendant has an absolute right not to testify. The fact that he did not testify cannot be considered by you in any way. Do not even discuss it in your deliberations.

Remember that it is up to the government to prove the defendant guilty beyond a reasonable doubt. It is not up to the defendant to prove that he is innocent.

SOURCE: Sixth Circuit Pattern Criminal Jury Instructions § 7.02A (2007) (Defendant's Election Not to Testify).

DEFENDANT'S TESTIMONY

You have heard the defendant testify. Earlier, I talked to you about the "credibility" or the "believability" of the witnesses. And I suggested some things for you to consider in evaluating each witness's testimony.

You should consider those same things in evaluating the defendant's testimony.

SOURCE: Sixth Circuit Pattern Criminal Jury Instructions § 7.02B (2007) (Defendant's Testimony).

TESTIMONY OF AN ACCOMPLICE

You have heard the testimony of _____. You have also heard that he was involved in the same crime that the defendant is charged with committing. You should consider _____'s testimony with more caution than the testimony of other witnesses.

Do not convict the defendant based on the unsupported testimony of such a witness, standing alone, unless you believe his testimony beyond a reasonable doubt.

The fact that _____ has pleaded guilty to a crime is not evidence that the defendant is guilty, and you cannot consider this against the defendant in any way.

SOURCE: Sixth Circuit Pattern Criminal Jury Instructions § 7.08 (2007) (Testimony of an Accomplice).

IDENTIFICATION TESTIMONY

You have heard the testimony of _____, who has identified the defendant as the person who _____. You should carefully consider whether this identification was accurate and reliable.

In deciding this, you should especially consider if the witness had a good opportunity to see the person at that time. For example, consider the visibility, the distance, whether the witness had known or seen the person before, and how long the witness had to see the person.

Consider all these things carefully in determining whether the identification was accurate and reliable.

Remember that the government has the burden of proving beyond a reasonable doubt that the defendant was the person who committed the crime charged.

SOURCE: Sixth Circuit Pattern Criminal Jury Instructions § 7.11 (2007) (Identification Testimony).

TRANSCRIPTIONS OF TAPE RECORDINGS

You have heard some tape recordings that were received in evidence, and you were given some written transcripts of the tapes.

Keep in mind that the transcripts are not evidence. They were given to you only as a guide to help you follow what was being said. The tapes themselves are the evidence. If you noticed any differences between what you heard on the tapes and what you read in the transcripts, you must rely on what you heard, not what you read. And if you could not hear or understand certain parts of the tapes, you must ignore the transcripts as far as those parts are concerned.

SOURCE: Sixth Circuit Pattern Criminal Jury Instructions § 7.17 (2007) (Transcriptions of Tape Recordings).

INTRODUCTION

That concludes the part of my instructions explaining the rules for considering some of the testimony and evidence. Now let me finish up by explaining some things about your deliberations in the jury room, and your possible verdicts.

The first thing that you should do in the jury room is choose someone to be your foreperson. This person will help to guide your discussions, and will speak for you here in court.

Once you start deliberating, do not talk to the jury officer, or to me, or to anyone else except each other about the case. If you have any questions or messages, you must write them down on a piece of paper, sign them, and then give them to the jury officer. The officer will give them to me, and I will respond as soon as I can. I may have to talk to the lawyers about what you have asked, so it may take me some time to get back to you. Any questions or messages normally should be sent to me through your foreperson.

One more thing about messages. Do not ever write down or tell anyone how you stand on your votes. For example, do not write down or tell anyone that you are split 6-6, or 8-4, or whatever your vote happens to be. That should stay secret until you are finished.

SOURCE:Sixth Circuit Pattern Criminal Jury Instructions § 8.01 (2007) (Introduction).

EXPERIMENTS, RESEARCH AND INVESTIGATION

Remember that you must make your decision based only on the evidence that you saw and heard here in court. Do not try to gather any information about the case on your own while you are deliberating.

For example, do not conduct any experiments inside or outside the jury room; do not bring any books, like a dictionary, or anything else with you to help you with your deliberations; do not conduct any independent research, reading or investigation about the case; and do not visit any of the places that were mentioned during the trial.

Make your decision based only on the evidence that you saw and heard here in court.

SOURCE: Sixth Circuit Pattern Criminal Jury Instructions § 8.02 (2007) (Experiments, Research and Investigation).

UNANIMOUS VERDICT

Your verdict, whether it is guilty or not guilty, must be unanimous.

To find the defendant guilty, every one of you must agree that the government has overcome the presumption of innocence with evidence that proves his guilt beyond a reasonable doubt.

To find him not guilty, every one of you must agree that the government has failed to convince you beyond a reasonable doubt.

Either way, guilty or not guilty, your verdict must be unanimous.

SOURCE: Sixth Circuit Pattern Criminal Jury Instructions § 8.03 (2007) (Unanimous Verdict).

DUTY TO DELIBERATE

Now that all the evidence is in and the arguments are completed, you are free to talk about the case in the jury room. In fact, it is your duty to talk with each other about the evidence, and to make every reasonable effort you can to reach unanimous agreement. Talk with each other, listen carefully and respectfully to each other's views, and keep an open mind as you listen to what your fellow jurors have to say. Try your best to work out your differences. Do not hesitate to change your mind if you are convinced that other jurors are right and that your original position was wrong.

But do not ever change your mind just because other jurors see things differently, or just to get the case over with. In the end, your vote must be exactly that – your own vote. It is important for you to reach unanimous agreement, but only if you can do so honestly and in good conscience.

No one will be allowed to hear your discussions in the jury room, and no record will be made of what you say. So you should all feel free to speak your minds.

Listen carefully to what the other jurors have to say, and then decide for yourself if the government has proved the defendant guilty beyond a reasonable doubt.

SOURCE: Sixth Circuit Pattern Criminal Jury Instructions § 8.04 (2007) (Duty to Deliberate).

PUNISHMENT

If you decide that the government has proved the defendant guilty, then and only then will you consider, in a separate hearing, the issue of penalty.

Deciding punishment is not an issue in your present deliberations. It would violate your oaths as jurors to even consider the possible punishment in deciding your verdict on whether the defendant is guilty of the charged offenses.

Your job is to look at the evidence and decide if the government has proved the defendant guilty beyond a reasonable doubt.

SOURCE: Sixth Circuit Pattern Criminal Jury Instructions § 8.05 (2007) (Punishment) (modified to incorporate jurors' duties in the penalty phase of this case).

VERDICT FORM

I have prepared a verdict form that you should use to record your verdict. The form reads as follows: _____.

If you decide that the government has proved the charge against the defendant beyond a reasonable doubt, say so by having your foreperson mark the appropriate place on the form. If you decide that the government has not proved the charge against him beyond a reasonable doubt, say so by having your foreperson mark the appropriate place on the form. Your foreperson should then sign the form, put the date on it, and return it to me.

SOURCE: Sixth Circuit Pattern Criminal Jury Instructions § 8.06 (2007)(Verdict Form).

VERDICT LIMITED TO CHARGES AGAINST THIS DEFENDANT

Remember that the defendant is only on trial for the particular crimes charged in the indictment. Your job is limited to deciding whether the government has proved the crimes charged.

Also remember that whether anyone else should be prosecuted and convicted for this crime is not a proper matter for you to consider. The possible guilt of others is no defense to a criminal charge. Your job is to decide if the government has proved this defendant guilty. Do not let the possible guilt of others influence your decision in any way.

SOURCE: Sixth Circuit Pattern Criminal Jury Instructions § 8.08 (2007) (Verdict Limited to Charges against this Defendant).

COURT HAS NO OPINION

Let me finish up by repeating something that I said to you earlier. Nothing that I have said or done during this trial was meant to influence your decision in any way. You decide for yourselves if the government has proved the defendant guilty beyond a reasonable doubt.

SOURCE: Sixth Circuit Pattern Criminal Jury Instructions § 8.09 (2007) (Court Has No Opinion).

JUROR NOTES

Remember that if you elected to take notes during the trial, your notes should be used only as memory aids. You should not give your notes greater weight than your independent recollection of the evidence. You should rely upon your own independent recollection of the evidence or lack of 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 impression of each juror.

Whether you took notes or not, each of you must form and express your own opinion as to the facts of the case.

SOURCE: Sixth Circuit Pattern Criminal Jury Instructions § 8.10 (2007)(Juror Notes).

**Sentencing Jury Instructions
United States of America v. Steven D. Green**

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¹Note, the Eighth Circuit's chapter designation, i.e. "12.00," has been retained.

12.00 HOMICIDE - DEATH PENALTY - SENTENCING
(18 U.S.C. § 3591 et seq.)

Instructions 12.01-.03 are to be given at the beginning of the sentencing phase, before the introduction of evidence. They are intended to be a concise overview, so that the jury has a basic understanding of the decisions it will be called upon to make.

Instructions 12.04-.21 are to be given after all evidence has been presented and prior to deliberations.

Death Penalty - Preliminary Instructions

12.01 INTRODUCTION TO PRELIMINARY INSTRUCTIONS

Members of the jury, you have unanimously found the defendant, Steven Green, guilty of the offenses of [Premeditated Murder (Counts 3-6), Felony Murder (Counts 7-10), and Use of a Firearm During a Crime of Violence, (Counts 13-16)] of the indictment. You must now consider whether imposition of a sentence of death is justified, or whether the defendant should be sentenced to life imprisonment without the possibility of release.

This decision is left exclusively to you, the jury. If you determine that the defendant should be sentenced to death, or to life imprisonment without possibility of release, the court is required to impose that sentence.

Before you may consider whether to impose a sentence of death, you must make each of the following three findings unanimously and beyond a reasonable doubt:

First, you must find unanimously and beyond a reasonable doubt that defendant was at least 18 years of age at the time of the offenses; and

Second, you must find unanimously and beyond a reasonable doubt that defendant:

- Intentionally killed Abeer, Hadeel, Kassem, or Fakhriya Al-Janabi; or
- Intentionally inflicted serious bodily injury that resulted in the death of Abeer Al-Janabi; or
- 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 Abeer, Hadeel, Kassem, or Fakhriya Al-Janabi died as a direct result of the act; or
- 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 Abeer, Hadeel, Kassem, and Fakhriya Al-Janabi died as a direct result of the act; and

Third, you must find unanimously and beyond a reasonable doubt that the government has proved the existence of at least one statutory aggravating factor. I will define the term "aggravating factors" for you shortly.

If, after fair and impartial consideration of all the evidence in this case, any one of you does not make these three findings beyond a reasonable doubt, your deliberations will be over. If

Death Penalty - Preliminary Instructions

you do unanimously make these three findings beyond a reasonable doubt, you will then proceed to determine whether you unanimously find that the government has proved the existence of any non-statutory aggravating factors beyond a reasonable doubt, and whether any of you find that the defendant has proved any mitigating factors by a preponderance of the evidence. You must then engage in a weighing process. If you unanimously find that the aggravating factor or factors, which you all found to exist, sufficiently outweigh any mitigating factor or factors, which any one of you found to exist to justify imposition of a sentence of death, or, if, in the absence of a mitigating factor or factors, you find that the aggravating factor or factors alone are sufficient to justify imposition of a sentence of death, and that death is therefore the appropriate sentence in this case, the law provides that the defendant must be sentenced to death.

If, after weighing the aggravating and mitigating factors, any one of you finds that a sentence of death is not justified, the jury must then determine whether the defendant should be sentenced to life imprisonment without possibility of release, or be given a lesser sentence to be determined by the court.

Again, whether or not the circumstances in this case justify a sentence of death is a decision that is entirely yours. You must not take anything I may say or do during this phase of the trial as indicating what I think of the evidence or what I think your verdict should be.

Two terms that you have already heard and will hear throughout this phase of the case are "aggravating factors" and "mitigating factors." These factors concern the circumstances of the crime or the personal traits, character or background of the defendant and the effect of the offense on the victim and the victim's family.

The word "aggravate" means "to make worse or more offensive" or "to intensify." The word "mitigate" means "to make less severe" or "to moderate." An aggravating factor, then, is a fact or circumstance which would tend to support imposition of the death penalty. A mitigating factor is any aspect of a defendant's character or background, any circumstance of the offense(s), or any other relevant fact or circumstance which might indicate that the defendant should not be sentenced to death.

In the death penalty statute, a number of aggravating factors are listed. These are called "statutory aggravating factors." As I instructed you earlier, before you may consider imposition of the death penalty, you must find that the government proved at least one of these aggravating factors specifically listed in the death penalty statute, and your finding must be unanimous and beyond a reasonable doubt. In addition to statutory aggravating factors, there may also be aggravating factors not specifically set out in the death penalty statute. Again, your finding that any non-statutory aggravating factor exists must be unanimous and beyond a reasonable doubt.

The defendant has the burden of proving any mitigating factors. However, there is a different standard of proof as to mitigating factors. You need not be convinced beyond a

Death Penalty - Preliminary Instructions

reasonable doubt about the existence of a mitigating factor; you need only be convinced that it is more likely true than not true in order to find that it exists. A unanimous finding is not required. Any one of you may find the existence of a mitigating factor, regardless of the number of other jurors who may agree.

If you have unanimously found that at least one statutory aggravating factor exists, you then must weigh the aggravating factors you have all found to exist against any mitigating factors you have individually found to exist, to determine the appropriate sentence. I will give you detailed instructions regarding the weighing of aggravating and mitigating factors before you begin your deliberations. However, I instruct you now that you must not simply count the number of aggravating and mitigating factors and reach a decision based on which number is greater; you must consider the weight and value of each factor.

The government alleges the following statutory aggravating factors:

1. The defendant committed the offenses alleged in Counts 3, 7, and 13 in an especially heinous, cruel, and depraved manner in that the offenses involved serious physical abuse to Abeer Al-Janabi.
2. The defendant committed the offenses charged in Counts 3-10 and 13-16 after substantial planning and premeditation to cause the death of a person.
3. The victims of the charged offenses – Abeer Al-Janabi (Counts 3, 7, and 13) and Hadeel Al-Janabi (Counts 4, 8, and 14) – were particularly vulnerable due to youth.
4. The defendant intentionally killed more than one person in a single criminal episode as charged in Counts 3-10 and 13-16.

The government also alleges the following non-statutory aggravating factors:

1. The defendant killed the victim and witnesses of the rape he committed, including Abeer Al-Janabi, Hadeel Al-Janabi, Kassem Al-Janabi, and Fakhriya Al-Janabi, in order to eliminate them as possible witnesses to his crimes.
2. 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. 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

Death Penalty - Preliminary Instructions

the impact of her death on her family.

4. The defendant caused injury, harm, and loss to the family of Kassem Al-Janabi, as evidenced by his personal characteristics as a human being and the impact of his death on his family.
5. 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. 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.

The defendant alleges the following mitigating factors:

[list factors]

Death Penalty - Preliminary Instructions

12.02 BURDEN OF PROOF

This instruction is to be given at the beginning of the sentencing phase, before the introduction of evidence.

As I have just instructed you, the government must meet its burden of proof beyond a reasonable doubt. A "reasonable doubt" is a doubt based upon reason and common sense after careful and impartial consideration of all the evidence received in this trial. It is the kind of doubt that would make a reasonable person hesitate to act. Proof beyond a reasonable doubt, therefore, must be proof of such a convincing character that a reasonable person would not hesitate to rely and act upon it. However, proof beyond a reasonable doubt does not mean proof beyond all possible doubt.

The defendant does not have the burden of disproving the existence of anything the government must prove beyond a reasonable doubt. The burden is wholly upon the government; the law does not require the defendant to produce any evidence at all.

It is the defendant's burden to establish any mitigating factors, by a preponderance of the evidence. To prove something by the preponderance of the evidence is to prove that it is more likely true than not true. It is determined by considering all of the evidence and deciding which of the evidence is more believable. If, on any issue in the case, the evidence is equally balanced, you cannot find that issue has been proved.

The preponderance of the evidence is not necessarily determined by the greater number of witnesses or exhibits presented by the government or the defendant.

To prove something by the preponderance of the evidence is a lesser standard of proof than proof beyond a reasonable doubt.

Death Penalty - Preliminary Instructions

12.03 EVIDENCE

This instruction is to be given at the beginning of the sentencing phase, before the introduction of evidence.

In making all the determinations you are required to make in this phase of the trial, you may consider any evidence that was presented during the guilt phase of the trial as well as evidence that is presented at this sentencing phase of the trial. The evidence in this phase of the trial includes only what the witnesses say while testifying under oath; the exhibits that I allow into evidence; the stipulations that the lawyers agreed to; and the facts that I have judicially noticed.

Nothing else is evidence. The lawyers' statements and arguments are not evidence. Their questions and objections are not evidence. My legal rulings are not evidence. And my comments and questions are not evidence.

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

Death Penalty - Final Instructions

12.04 INTRODUCTION TO FINAL INSTRUCTIONS

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 stage of the case. I have also prepared a special verdict form that you must complete. The form details special findings you must make in this case and will help you perform your duties properly.

Death Penalty - Final Instructions

**12.05 FINDING AS TO DEFENDANT'S AGE
(18 U.S.C. § 3591) (Homicide)**

Before you may consider the imposition of the death penalty, you must first unanimously agree beyond a reasonable doubt that the defendant was eighteen years of age or older at the time of the offense.

If you unanimously make that finding, you should so indicate on page [] of the Special Verdict Form and continue your deliberations. If you do not unanimously make that finding, you should so indicate on page [] of the Special Verdict Form and follow the directions on page [] of the form. No further deliberations will be necessary.

Death Penalty - Final Instructions

12.06 FINDING OF REQUISITE MENTAL STATE (18 U.S.C. § 3591) (Homicide)

Before you may consider the imposition of the death penalty, you must also unanimously find beyond a reasonable doubt that the defendant killed Abeer Al-Janabi, Hadeel Al-Janabi, Kassem Al-Janabi, or Fakhriya Al-Janabi in one of the manners described below. If you unanimously make such findings as to the murders of Abeer Al-Janabi, Hadeel Al-Janabi, Kassem Al-Janabi, or Fakhriya Al-Janabi, you should so indicate on page [] of the Special Verdict Form and continue your deliberations. If you do not unanimously make such findings as to the murder of Abeer Al-Janabi, Hadeel Al-Janabi, Kassem Al-Janabi, or Fakhriya Al-Janabi, you should so indicate on page [] of the Special Verdict Form, and follow the direction on page []. No further deliberations will be necessary with respect to a murder in which you do not make such a finding.

The government alleges that –

With regard to Counts 3, 7, and 13:

- 1(A). The defendant intentionally killed the victim, Abeer Al-Janabi, by shooting her in the face. To establish that the defendant intentionally killed the victim, the government must prove that the defendant killed the victim with a conscious desire to cause the victim's death.

- 1(B). The defendant intentionally inflicted serious bodily injury that resulted in the death of the victim, Abeer Al-Janabi, by shooting her in the face, which resulted in the death of Abeer Al-Janabi. The government must prove that the defendant deliberately caused serious injury to the victim's body which in turn caused the victim's death.

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

- 1(C). 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, by shooting Abeer Al-Janabi in the face, which directly resulted in her death. The government must prove that the defendant deliberately shot Abeer Al-Janabi with a conscious desire that she be killed or that lethal force be employed against her. The phrase "lethal force" means an act [or acts] of violence capable of causing death.

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- 1(D). 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 Abeer Al-Janabi died as a direct result of the act, by sustaining injuries caused by a firearm.

With regard to Counts 4, 8, and 14:

- 2(A). The defendant intentionally killed the victim, Hadeel Al-Janabi, by shooting her with a gun. To establish that the defendant intentionally killed the victim, the government must prove that the defendant killed the victim with a conscious desire to cause the victim's death.
- 2(B). The defendant intentionally inflicted serious bodily injury that resulted in the death of the victim, Hadeel Al-Janabi, by shooting her with a gun, which resulted in the death of Hadeel Al-Janabi. The government must prove that the defendant deliberately caused serious injury to the victim's body which in turn caused the victim's death.

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

- 2(C). 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, by shooting Hadeel Al-Janabi with a gun, which directly resulted in her death. The government must prove that the defendant deliberately shot Hadeel Al-Janabi with a conscious desire that she be killed or that lethal force be employed against her.

The phrase "lethal force" means an act or acts of violence capable of causing death.

- 2(D). 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 Hadeel Al-Janabi died as a direct result of the act, by sustaining injuries caused by a firearm.

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With regard to Counts 5, 9, and 15:

- 3(A). The defendant intentionally killed the victim, Kassem Al-Janabi, by shooting him in the head. To establish that the defendant intentionally killed the victim, the government must prove that the defendant killed the victim with a conscious desire to cause the victim's death.
- 3(B). The defendant intentionally inflicted serious bodily injury that resulted in the death of the victim, Kassem Al-Janabi, by shooting him in the head, which resulted in the death of Kassem Al-Janabi. The government must prove that the defendant deliberately caused serious injury to the victim's body which in turn caused the victim's death.

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

- 3(C). 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, by shooting Kassem Al-Janabi in the head, which directly resulted in his death. The government must prove that the defendant deliberately shot Kassem Al-Janabi with a conscious desire that he be killed or that lethal force be employed against him.

The phrase "lethal force" means an act or acts of violence capable of causing death.

- 3(D). 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 Kassem Al-Janabi died as a direct result of the act, by sustaining injuries caused by a firearm.

With regard to Counts 6, 10, and 16:

- 4(A). The defendant intentionally killed the victim, Fakhriya Al-Janabi, by shooting her with a gun. To establish that the defendant intentionally killed the victim, the government must prove that the defendant killed the victim with a conscious desire to cause the victim's death.

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- 4(B). The defendant intentionally inflicted serious bodily injury that resulted in the death of the victim, Fakhriya Al-Janabi, by shooting her with a gun, which resulted in the death of Fakhriya Al-Janabi. The government must prove that the defendant deliberately caused serious injury to the victim's body which in turn caused the victim's death.

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

- 4(C). 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, by shooting Fakhriya Al-Janabi with a gun, which directly resulted in her death. The government must prove that the defendant deliberately shot Fakhriya Al-Janabi with a conscious desire that she be killed or that lethal force be employed against her.

The phrase "lethal force" means an act or acts of violence capable of causing death.

- 4(D). 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 Fakhriya Al-Janabi died as a direct result of the act, by sustaining injuries caused by a firearm.

Intent or knowledge may be proved like anything else. You may consider any statements made and acts done by the defendant, and all the facts and circumstances in evidence which may aid in a determination of defendant's knowledge or intent.

You may, but are not required to, infer that a person intends the natural and probable consequences of acts knowingly done or knowingly omitted.

Death Penalty - Final Instructions

12.07 STATUTORY AGGRAVATING FACTORS (18 U.S.C. § 3592) (Homicide)

If you unanimously find beyond a reasonable doubt that the defendant committed the murder of Abeer Al-Janabi, Hadeel Al-Janabi, Kassem Al-Janabi, or Fakhriya Al-Janabi in a manner described in Instruction 12.06, you must then proceed to determine whether the government has proved beyond a reasonable doubt the existence of any of the following alleged statutory aggravating factors with respect to the same murder or murders. If you unanimously make that finding in the affirmative as to the murder of Abeer Al-Janabi, Hadeel Al-Janabi, Kassem Al-Janabi, or Fakhriya Al-Janabi, you should so indicate in Section III on page [] of the Special Verdict Form and continue your deliberations. If you do not unanimously make that finding in the affirmative as to the murder of Abeer Al-Janabi, Hadeel Al-Janabi, Kassem Al-Janabi, or Fakhriya Al-Janabi, you should so indicate on page [] of the Special Verdict Form, and follow the directions on page []. No further deliberations will be necessary as to those murders for which you do not unanimously find a statutory aggravating factor.

The government alleges the following statutory aggravating factors:

1. The defendant committed the offense 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.

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"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.

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

2. The defendant committed the offenses of Premeditated Murder, Felony Murder, and Use of a Firearm During a Crime of Violence, as charged in Counts 3, 7, and 13 of the indictment, for which you have found him guilty, after substantial planning and premeditation to cause the death of Abeer Al-Janabi.

Note: To establish the existence of factors 2, 3, 4, or 5, "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.

3. The defendant committed the offenses of Premeditated Murder, Felony Murder, and Use of a Firearm During a Crime of Violence, as charged in Counts 4, 8, and 14 of the indictment, for which you have found him guilty, after substantial planning and premeditation to cause the death of Hadeel Al-Janabi.
4. The defendant committed the offenses of Premeditated Murder, Felony Murder, and Use of a Firearm During a Crime of Violence, as charged in Counts 5, 9, and 15 of the indictment, for which you have found him guilty, after substantial planning and premeditation to cause the death of Kassem Al-Janabi.
5. The defendant committed the offenses of Premeditated Murder, Felony Murder, and Use of a Firearm During a Crime of Violence, as charged in Counts 6, 10, and 16 of the indictment, for which you have found him guilty, after substantial planning and premeditation to cause the death of Fakhriya Al-Janabi.

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6. Abeer Al-Janabi was 14-years-old and particularly vulnerable due to youth.
7. Hadeel Al-Janabi was 6-years-old and particularly vulnerable due to youth.

Note: To establish the existence of factors 6 or 7 listed above, the government must prove that the victim was particularly vulnerable due to old age, youth, or infirmity.

"Particularly" means especially, significantly, unusually, or high in degree. "Vulnerable" means subject to being attacked or injured by reason 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, a 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.

8. The defendant intentionally killed Abeer Al-Janabi, Hadeel Al-Janabi, Kassem Al-Janabi, and Fakhriya Al-Janabi in a single criminal episode.

Note: To establish the existence of this factor, the government must prove that the defendant intentionally killed or attempted to kill more than one person 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).

"A single criminal episode" is an act or series of related criminal acts which occur within a relatively limited time(s) and place(s), or are directed at the same person(s), 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 an ordinary, natural, and probable consequence of the defendant's acts (even if the person's death did not actually result, in the case of an attempt); and (3) that the defendant committed these acts knowingly and voluntarily. But once again, you are not required to make such an inference.

Death Penalty - Final Instructions

The law directs you to consider and decide at this point the existence or nonexistence of only the statutory aggravating factors specifically claimed by the government. You are reminded that to find the existence of a statutory aggravating factor, your decision must be unanimous and beyond a reasonable doubt.

Death Penalty - Final Instructions

12.08 NON-STATUTORY AGGRAVATING FACTORS

If you have found the existence of one or more statutory aggravating factors unanimously and beyond a reasonable doubt, you must then consider whether the government has proved the existence of any non-statutory aggravating factors. As in the case for statutory aggravating factors, you must unanimously agree that the government has proved beyond a reasonable doubt the existence of any of the alleged non-statutory aggravating factors. You may not consider an alleged non-statutory aggravating factor in your sentencing decision if you do not find that the government has proved beyond a reasonable doubt that it is a fact or circumstance that tends to support imposition of the death penalty.

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

The government alleges the following non-statutory aggravating factors:

1. 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. 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. 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. The defendant caused injury, harm, and loss to the family of Kassem Al-Janabi, as evidenced by his personal characteristics as a human being and the impact of his death on his family.
5. 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. 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.

At this point you must record your findings regarding whether you unanimously find that the government has proven beyond a reasonable doubt the existence of any of these non-statutory aggravating factors. Please enter that finding on page [] of the Special Verdict Form, and continue your deliberations.

Death Penalty - Final Instructions

12.09 MITIGATING FACTORS

Before you may consider the appropriate punishment, you must consider whether the defendant has established the existence of any mitigating factors. A mitigating factor is a fact about the defendant's life or character, or about the circumstances surrounding the offenses that would suggest, in fairness, that a sentence of death is not the most appropriate punishment, or that a lesser sentence is the more appropriate punishment.

Unlike aggravating factors, which you must unanimously find proved beyond a reasonable doubt in order to consider them in your deliberations, the law does not require unanimous agreement with regard to mitigating factors. Any juror persuaded of the existence of a mitigating factor must consider it in this case. Further, any juror may consider a mitigating factor found by another juror, even if he or she did not find that factor to be mitigating.

It is the defendant's burden to establish any mitigating factors, but 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 so than not so. In other words, a preponderance of the evidence means such evidence as, when considered and compared with that opposed to it, produces in your mind the belief that what is sought to be established is, more likely than not, true. In Part V of the Special Verdict Form relating to mitigating factors, you are asked, but not required, to report the total number of jurors that find a particular mitigating factor established by a preponderance of the evidence.

Death Penalty - Final Instructions

**12.10 MITIGATING FACTORS ENUMERATED
(18 U.S.C. § 3592(a))**

The mitigating factors which the defendant asserts he has proved by a preponderance of the evidence are: [list applicable mitigating factors]

- 1.
- 2.
-

With regard to alleged factors [*non-statutory factors*], you may not consider the factor in your sentencing decision if you do not find that the defendant has proved by a preponderance of the evidence that it is a fact or circumstance that tends to support imposition of a sentence less than death.

You are permitted to consider anything else about the commission of the crime or about defendant's background or character that would mitigate against imposition of the death penalty. If there are any such mitigating factors, whether or not specifically argued by defense counsel, which are established by a preponderance of the evidence, you are free to consider them in your deliberations.

In Part V on page [] of the Special Verdict Form, you are asked to identify any mitigating factors that any one of you finds has been proved by a preponderance of the evidence, but you are not required to do so.

Death Penalty - Final Instructions

12.11 WEIGHING AGGRAVATION AND MITIGATION

If you find unanimously and beyond a reasonable doubt as to one or more of the offenses charged in Counts 3-10 and Counts 13-16 that the defendant was eighteen years of age or older when he committed the offenses; that he acted with the requisite intent; and that the government proved the existence of at least one statutory aggravating factor, 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 factors that you individually found to exist, and may weigh any mitigating factors that another of your fellow jurors found to exist. 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 factor outweighs all aggravating factors combined, or that the aggravating factors proved do not, standing alone, justify imposition of a sentence of death. Similarly, you may unanimously find that a particular aggravating factor sufficiently outweighs all mitigating factors combined to justify a sentence of death. You are to decide what weight or value is to be given to a particular aggravating or mitigating factor in your decision-making process.

If you unanimously conclude that the aggravating factor or factors found to exist sufficiently outweigh any mitigating factor or factors which any of you found to exist to justify a sentence of death, and that therefore death is the appropriate sentence in this case, you must record your determination that a sentence of death shall be imposed in Section VI(A), on page [] of the Special Verdict Form.

If you determine that death is not justified, you must complete Section VI(A) of the Special Verdict Form, and you must then record your determination that defendant be sentenced to life imprisonment without possibility of release in Section VI(B) on page [] of the Special Verdict Form.

Death Penalty - Final Instructions

**12.12 CONSEQUENCES OF DELIBERATIONS
(18 U.S.C. § 3594)**

At the end of your deliberations, if you unanimously determine that the defendant should be sentenced to death, or to life imprisonment without possibility of release, the court is required to impose that sentence. There is no parole in the federal system.

Death Penalty - Final Instructions

**12.13 JUSTICE WITHOUT DISCRIMINATION
(18 U.S.C. § 3593(f))**

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

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

Death Penalty - Final Instructions

12.14 DEFENDANT'S RIGHT NOT TO TESTIFY

The defendant did not 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 is justified. Accordingly, the fact that a defendant did not testify must not be discussed or considered by you in any way in arriving at your decision.

Death Penalty - Final Instructions

12.15 - 12.19 [Reserved for Future Use]

Death Penalty - Final Instructions

**12.20 SPECIAL VERDICT
(18 U.S.C. § 3593(d); 21 U.S.C. § 848(k), (q))**

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

Section I of the Special Verdict Form contains space to record your findings on 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; and 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, if you choose to do so. If you choose not to do so, cross out each page of Section V with a large "X."

You are each required to sign the Special Verdict Form.

12.21 CONCLUDING INSTRUCTION

If you want to communicate with me at any time during your deliberations, please write down your message or question and pass the note to the marshal who will bring it to my attention.

I will respond as promptly as possible, either in writing or by having you return to the courtroom so that I can address you orally.

I caution you, however, with any message or question you might send, that you should not tell me any details of your deliberations or how many of you are voting in a particular way on any issue.

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

Death Penalty - Special Verdict Form
UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF KENTUCKY
AT PADUCAH

CRIMINAL ACTION NO. 5:06 CR-00019-R

UNITED STATES OF AMERICA

PLAINTIFF

v.

STEVEN D. GREEN

DEFENDANT

SPECIAL VERDICT FORM

I. AGE OF DEFENDANT

_____ Instructions: Answer "YES" or "NO."

Do you, the jury, unanimously find that the government has established beyond a reasonable doubt that the defendant was eighteen years of age or older at the time of the offense.

YES _____
NO _____

Foreperson Signature

Instructions: If you answered "NO" with respect to the determination in this section, then stop your deliberations, cross out Sections II, III, IV, V and VI of this form, and proceed to Section VII. Each juror should then carefully read the statement in Section VII, and sign in the appropriate place if the statement accurately reflects the manner in which he or she reached his or her decision. You should then advise the court that you have reached a decision.

If you answered "YES" with respect to the determination in this Section I, proceed to Section II which follows.

Death Penalty - Special Verdict Form

II. REQUISITE MENTAL STATE

Instructions: For each of the following, answer "YES" or "NO."

1(A) Do you, the jury, unanimously find that the government has established beyond a reasonable doubt that the defendant intentionally killed Abeer Al-Janabi?

YES _____
NO _____

Foreperson Signature

1(B) Do you, the jury, unanimously find that the government has established beyond a reasonable doubt that the defendant intentionally inflicted serious bodily injury which resulted in the death of Abeer Al-Janabi?

YES _____
NO _____

Foreperson Signature

1(C) Do you, the jury, unanimously find that the government has established beyond a reasonable doubt that the defendant intentionally participated in an act, contemplating that the life of a person would be taken and/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 Abeer Al-Janabi died as a direct result of the act?

YES _____
NO _____

Foreperson Signature

Death Penalty - Special Verdict Form

1(D) Do you, the jury, unanimously find that the government has established beyond a reasonable doubt 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 Abeer Al-Janabi died as a direct result of the act?

YES _____
NO _____

Foreperson Signature

2(A) Do you, the jury, unanimously find that the government has established beyond a reasonable doubt that the defendant intentionally killed Hadeel Al-Janabi?

YES _____
NO _____

Foreperson Signature

2(B) Do you, the jury, unanimously find that the government has established beyond a reasonable doubt that the defendant intentionally inflicted serious bodily injury which resulted in the death of Hadeel Al-Janabi?

YES _____
NO _____

Foreperson Signature

Death Penalty - Special Verdict Form

2(C) Do you, the jury, unanimously find that the government has established beyond a reasonable doubt that the defendant intentionally participated in an act, contemplating that the life of a person would be taken and/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 Hadeel Al-Janabi died as a direct result of the act?

YES _____
NO _____

Foreperson Signature

2(D) Do you, the jury, unanimously find that the government has established beyond a reasonable doubt 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 Hadeel Al-Janabi died as a direct result of the act?

YES _____
NO _____

Foreperson Signature

3(A) Do you, the jury, unanimously find that the government has established beyond a reasonable doubt that the defendant intentionally killed Kassem Al-Janabi?

YES _____
NO _____

Foreperson Signature

3(B) Do you, the jury, unanimously find that the government has established beyond a reasonable doubt that the defendant intentionally inflicted serious bodily injury which resulted in the death of Kassem Al-Janabi?

YES _____
NO _____

Foreperson Signature

Death Penalty - Special Verdict Form

3(C) Do you, the jury, unanimously find that the government has established beyond a reasonable doubt that the defendant intentionally participated in an act, contemplating that the life of a person would be taken and/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 Kassem Al-Janabi died as a direct result of the act?

YES _____
NO _____

Foreperson Signature

3(D) Do you, the jury, unanimously find that the government has established beyond a reasonable doubt 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 Kassem Al-Janabi died as a direct result of the act?

YES _____
NO _____

Foreperson Signature

4(A) Do you, the jury, unanimously find that the government has established beyond a reasonable doubt that the defendant intentionally killed Fakhriya Al-Janabi?

YES _____
NO _____

Foreperson Signature

4(B) Do you, the jury, unanimously find that the government has established beyond a reasonable doubt that the defendant intentionally inflicted serious bodily injury which resulted in the death of Fakhriya Al-Janabi?

YES _____
NO _____

Foreperson Signature

Death Penalty - Special Verdict Form

4(C) Do you, the jury, unanimously find that the government has established beyond a reasonable doubt that the defendant intentionally participated in an act, contemplating that the life of a person would be taken and/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 Fakhriya Al-Janabi died as a direct result of the act?

YES _____
NO _____

Foreperson Signature

4(D) Do you, the jury, unanimously find that the government has established beyond a reasonable doubt 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 Fakhriya Al-Janabi died as a direct result of the act?

YES _____
NO _____

Foreperson Signature

Instructions: If you answered "NO" with respect to all of the determination in this section, then stop your deliberations, cross out Sections III, IV, V, and VI of this form, and proceed to Section VII. Each juror should carefully read the statement in Section VII, and sign in the appropriate place if the statement accurately reflects the manner in which he or she reached his or her decision. You should then advise the court that you have reached a decision.

If you answered "YES" with respect to one or more of the determinations in Section II, proceed to Section III which follows.

Death Penalty - Special Verdict Form

III. STATUTORY AGGRAVATING FACTORS

Instructions: For each of the following, answer "YES" or "NO."

- 1. Do you, the jury, unanimously find that the government has established beyond a reasonable doubt that the defendant committed the offenses alleged in Counts 3, 7, and 13 in an especially heinous, cruel, or depraved manner in that it involved serious physical abuse to Abeer Al-Janabi, as set out in Instruction No. 12.07(1)?

YES _____
 NO _____

Foreperson Signature

- 2. Do you, the jury, unanimously find that the government has established beyond a reasonable doubt that the defendant committed the offenses of Premeditated Murder, Felony Murder, and Use of a Firearm During a Crime of violence, as charged in Counts 3, 7, and 13 of the indictment after substantial planning and premeditation to cause the death of a Abeer Al-Janabi, as set out in Instruction No. 12.07(2)?

YES _____
 NO _____

Foreperson Signature

- 3. Do you, the jury, unanimously find that the government has established beyond a reasonable doubt that the defendant committed the offenses of Premeditated Murder, Felony Murder, and Use of a Firearm During a Crime of violence, as charged in Counts 4, 8, and 14 of the indictment after substantial planning and premeditation to cause the death of a Hadeel Al-Janabi, as set out in Instruction No. 12.07(3)?

YES _____
 NO _____

Foreperson Signature

Death Penalty - Special Verdict Form

4. Do you, the jury, unanimously find that the government has established beyond a reasonable doubt that the defendant committed the offenses of Premeditated Murder, Felony Murder, and Use of a Firearm During a Crime of violence, as charged in Counts 5, 9, and 15 of the indictment after substantial planning and premeditation to cause the death of a Kassem Al-Janabi, as set out in Instruction No. 12.07(4)?

YES _____
NO _____

Foreperson Signature

5. Do you, the jury, unanimously find that the government has established beyond a reasonable doubt that the defendant committed the offenses of Premeditated Murder, Felony Murder, and Use of a Firearm During a Crime of violence, as charged in Counts 6, 10, and 16 of the indictment after substantial planning and premeditation to cause the death of a Fakhriya Al-Janabi, as set out in Instruction No. 12.07(5)?

YES _____
NO _____

Foreperson Signature

6. Do you, the jury, unanimously find that the government has established beyond a reasonable doubt that the victim, Abeer Al-Janabi, was particularly vulnerable due to youth, as set out in Instruction No. 12.07(6)?

YES _____
NO _____

Foreperson Signature

7. Do you, the jury, unanimously find that the government has established beyond a reasonable doubt that the victim, Hadeel Al-Janabi, was particularly vulnerable due to youth, as set out in Instruction No. 12.07(7)?

YES _____
NO _____

Foreperson Signature

Death Penalty - Special Verdict Form

8. Do you, the jury, unanimously find that the government has established beyond a reasonable doubt that the defendant intentionally killed more than one person in a single criminal episode, as set out in Instruction No. 12.07(8)?

YES _____

NO _____

Foreperson Signature

Instructions: If you answered "NO" with respect to all of the Statutory Aggravating Factors in this Section III, then stop your deliberations, cross out Sections IV, V, and VI of this form, and proceed to Section VII of this form. Each juror should then carefully read the statement in Section VII, and sign in the appropriate place if the statement accurately reflects the manner in which he or she reached his or her decision. You should then advise the court that you have reached a decision.

If you found the requisite age in Section I, the requisite mental state in Section II, and answered "Yes" with respect to one or more of the aggravating factors in this Section III, proceed to Section IV which follows.

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IV. NON-STATUTORY AGGRAVATING FACTORS

Instructions: For each of the following, answer "YES" or "NO."

- 1. Do you, the jury, unanimously find that the government has established beyond a reasonable doubt that the defendant killed the victim and witnesses of a rape he committed, including Abeer Al-Janabi, Hadeel Al-Janabi, Kassem Al-Janabi, and Fakhriya Al-Janabi, in order to eliminate them as possible witnesses to his crimes, and that this factor tends to support imposition of the death penalty?

YES _____
 NO _____

Foreperson Signature

- 2. Do you, the jury, unanimously find that the government has established beyond a reasonable doubt that 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, and that this factor tends to support imposition of the death penalty?

YES _____
 NO _____

Foreperson Signature

- 3. Do you, the jury, unanimously find that the government has established beyond a reasonable doubt that 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, and that this factor tends to support imposition of the death penalty?

YES _____
 NO _____

Foreperson Signature

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4. Do you, the jury, unanimously find that the government has established beyond a reasonable doubt that the defendant caused injury, harm, and loss to the family of Kassem Al-Janabi, as evidenced by his personal characteristics as a human being and the impact of his death on his family, and that this factor tends to support imposition of the death penalty?

YES _____
NO _____

Foreperson Signature

5. Do you, the jury, unanimously find that the government has established beyond a reasonable doubt that 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, and that this factor tends to support imposition of the death penalty?

YES _____
NO _____

Foreperson Signature

6. Do you, the jury, unanimously find that the government has established beyond a reasonable doubt that 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, and that this factor tends to support imposition of the death penalty?

YES _____
NO _____

Foreperson Signature

Instructions: Regardless of whether you answered "YES" or "NO" with respect to the Non-Statutory Aggravating Factors in this Section IV, proceed to Section V, which follows.

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V. MITIGATING FACTORS

Instructions: For each of the following mitigating factors, you have the option to indicate, in the space provided, the number of jurors who have found the existence of that mitigating factor to be proven by a preponderance of the evidence. If you choose not to make these written findings, cross out each page of Section V with a large "X" and then continue your deliberations in accordance with the instructions of the court.

A finding with respect to a mitigating factor may be made by one or more of the members of the jury, and any member of the jury who finds the existence of a mitigating factor may consider such a factor established in considering whether or not a sentence of death shall be imposed, regardless of the number of other jurors who agree that the factor has been established. Further, any juror may also weigh a mitigating factor found by another juror, even if he or she did not also find that factor to be mitigating:

[List only those mitigating factors for which evidence has been offered, using the language contained in 18 U.S.C. § 3592(a)(1)-(7)]

1. _____,
_____, and this is a
fact or circumstance that tends to support imposition of a sentence less than death.
Number of jurors who so find _____.]

2. _____,
_____, and this is
a fact or circumstance that tends to support imposition of a sentence less than
death.
Number of jurors who so find _____.]

....

The following extra spaces are provided to write in additional mitigating factors, if any, found by any one or more jurors. If none, write "NONE" and line out the extra spaces with a large "X." If more space is needed, write "CONTINUED" and use the reverse side of this page.

—· _____,
_____, and this is a
fact or circumstance that tends to support imposition of a sentence less than death.
Number of jurors who so find _____.

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____. _____, and this is a fact or circumstance that tends to support imposition of a sentence less than death.

Number of jurors who so find _____.

____. _____, and this is a fact or circumstance that tends to support imposition of a sentence less than death.

Number of jurors who so find _____.

____. _____, and this is a fact or circumstance that tends to support imposition of a sentence less than death.

Number of jurors who so find _____.

Instructions: Regardless of whether you chose to make written findings for the Mitigating Factors in Section V above, proceed to Section VI and Section VII which follow.

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VI. DETERMINATION

Based upon consideration of whether the aggravating factors found to exist sufficiently outweigh any mitigating factor or factors found to exist, or in the absence of any mitigating factors, whether the aggravating factors are themselves sufficient to justify a sentence of death, and whether death is therefore the appropriate sentence in this case:

A. Death Sentence

We determine, by unanimous vote, that a sentence of death shall be imposed.

YES _____
NO _____

If you answer "YES," the foreperson must sign here, and you must then proceed to Section VII. If you answer "NO," the foreperson must sign, and you must then proceed to Section VI(B):

FOREPERSON

Date: _____, _____

B. Sentence of Life in Prison Without Possibility of Release

We determine, by unanimous vote, that a sentence of life imprisonment without possibility of release shall be imposed.

YES _____
NO _____

If you answer "YES," the foreperson must sign here, and then you must proceed to Section VII. If you answer "NO," the foreperson must sign, and you must proceed to Section VI(C):

FOREPERSON

Date: _____, _____

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VII. CERTIFICATION

By signing below, each juror certifies that consideration of the race, color, religious beliefs, national origin, or sex of the defendant or any victim was not involved in reaching his or her individual decision, and that the individual juror would have made the same recommendation regarding a sentence for the crime or crimes in question regardless of the race, color, religious beliefs, national origin, or sex of the defendant, or the victims.

_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____

FOREPERSON

Date: _____, _____