

REVISED INSTRUCTIONS* (GENERAL)

Members of the jury, the defendant has been found guilty of first degree murder. You must now decide whether to sentence him to life in prison or to death. The law requires me to impose whichever sentence you decide -- life or death. I cannot change your sentence. You should also be aware that if you sentence the defendant to life in prison, a recently-passed state law requires that he remain in prison permanently. He will never be eligible for parole.

You have heard evidence about the facts of this case that you will use to decide between these two sentences. The prosecuting attorney has presented evidence about aggravating circumstances that may exist in this case. An aggravating circumstance is a fact or group of facts that tend to make a murder deserving of the death penalty. Aggravating circumstances which might justify a death sentence are identified in state laws. The only aggravating circumstances you may consider must be identified both in the law and by me in these instructions. There are only two possible aggravating circumstances that you may consider in this case.

When you are considering aggravating circumstances, there are two important points to keep in mind. First, the prosecuting attorney must have proven that an aggravating circumstance exists beyond a reasonable doubt. This does not mean proof beyond any possible doubt; rather it means that the evidence fully satisfies and entirely convinces you that the aggravating circumstance exists and that you do not have any doubt about it based on your own reason and common sense.

Second, you must agree unanimously that an aggravating circumstance exists. Thus, to find that an aggravating circumstance exists, all of you must agree a) that the aggravating circumstance exists, and b) that it was proven to exist beyond a reasonable doubt.

I now turn to mitigating circumstances. Mitigating circumstances are not excuses or justifications for a killing. They do not reduce the crime from first degree murder. They do, however, reduce the defendant's moral responsibility for the murder or in some way make the defendant less deserving of the death penalty. The defense attorney has presented evidence about some mitigating circumstances. The law also allows you to consider any information you

have learned in this courtroom about the defendant or the crime as mitigating factors, whether or not the defense attorney or I have specifically mentioned them.

The requirements of proof for mitigating circumstances are not as strict as those for aggravating circumstances. A mitigating circumstance does not need to be proven beyond a reasonable doubt. A mitigating circumstance has to be proven only by a preponderance of the evidence. This means that if the evidence makes the scales tip even slightly in favor of the existence of the mitigating circumstance, that is enough for you to decide that it exists.

Also, any one of you can decide individually that a mitigating circumstance exists. You do not have to agree unanimously on a mitigating circumstance. A single juror can decide that a mitigating circumstance exists even if none of the other jurors think so and that juror can consider that mitigating circumstance in deciding what sentence to impose.

There are legal rules about how to make your sentencing decision. I am going to explain these rules to you. These rules may not be how you would like them to be or may not be what you thought they were before you became a juror. It is important, however, that you base your sentencing decision only on the facts of this case and that you follow the rules I am now going to describe.

Your decision may involve up to four steps.

Step one. First, you must decide whether any of the possible aggravating circumstances I listed earlier actually exists in this case. To find that an aggravating circumstance exists, you must all agree unanimously that it was proven beyond a reasonable doubt. Remember, reasonable doubt means that the evidence fully satisfies and entirely convinces you of something and that you do not have a doubt about it based on your own reason and common sense. If all of you agree unanimously that no aggravating circumstances exist, or if you are unable to agree unanimously that at least one aggravating circumstance exists, you must impose a sentence of life in prison and your deliberations are over.

Step two. If you agree unanimously that at least one aggravating circumstance exists, you must then decide if any mitigating circumstances exist. Remember, any one of you may

consider any factor as a mitigating circumstance as long as you are satisfied that it has been proven by a preponderance of the evidence. You do not all have to agree on the existence of any mitigating circumstance. If none of you finds any mitigating circumstances, you would skip this next step and move on to the fourth step.

Step three. If any of you decides that any mitigating circumstance exists, then the jury as a whole must decide if the aggravating circumstances it found outweigh the mitigating circumstances that any of you found individually.

When weighing the aggravating and mitigating circumstances, each of you must decide for yourself the weight to give to any individual circumstance. You should not just add up the number of aggravating and mitigating circumstances. Rather, each of you must decide how much importance to give to each circumstance and then weigh the circumstances against each other to determine whether the aggravating circumstances outweigh the mitigating circumstances or whether the mitigating circumstances outweigh the aggravating circumstances. For example, three circumstances of one kind do not automatically outweigh one circumstance of another kind. You may give so much weight to a single circumstance of one kind that it would outweigh all of the other kind.

After this consideration, if you then decide unanimously and beyond a reasonable doubt that the mitigating circumstances outweigh the aggravating circumstances, then you must impose a sentence of life in prison and your deliberations are over. If you decide unanimously and beyond a reasonable doubt that the aggravating circumstances outweigh the mitigating circumstances, you must go on to the final step.

Step four. The final step is to decide whether the aggravating circumstances are substantial enough to call for the death penalty even though you have already decided that the aggravating circumstances outweigh the mitigating circumstances. When deciding this issue, you must not consider the aggravating circumstances by themselves. You must consider them along with any mitigating circumstances any of you have determined to exist. If none of you found that any mitigating circumstances exist, you must still determine whether the aggravating

circumstances you have found are important enough or substantial enough to call for the death penalty.

Aggravating circumstances may exist in a particular case and still not be severe enough to call for the death penalty. Therefore, you may not impose the death penalty simply because you found that an aggravating circumstance exists or simply because you found that the aggravating circumstances outweigh the mitigating circumstances. To impose the death penalty you must agree unanimously beyond a reasonable doubt, that the totality of the aggravating circumstances call for the death penalty, even when you take into account the totality of any mitigating circumstances any of you found.

If all of you are satisfied beyond a reasonable doubt that the aggravating circumstances are not substantial enough to call for the death penalty, then you must sentence the defendant to life in prison without possibility of parole. If all of you are satisfied beyond a reasonable doubt that the aggravating circumstances are serious enough to call for the death penalty, then you must sentence the defendant to death.

When you are discussing the sentence, keep in mind the following points. You must decide for yourselves whether to believe the testimony of any witness. You may believe all, part, or none of what any witness has said. In determining whether to believe any witness, you should apply the same test of truthfulness you apply in your everyday life. For this trial, these tests may include: whether the witness had the opportunity to see, hear, know or remember the facts he or she testified about; the manner and appearance of the witness; any interests, bias or prejudice the witness might have; the understanding and fairness of the witness; whether his or her testimony is reasonable; and whether his or her testimony is consistent with other evidence you believe in the case.

You are also the only judges of the weight to give to any evidence. If you decide to believe certain evidence, you must then determine the importance of that piece of evidence in relation to all the other evidence you believe about the case.

Now members of the jury, you have heard the evidence and the arguments by the prosecuting attorney and the defense attorney. I have not summarized all the evidence, but it is your duty to remember all of it, whether I have called it to your attention or not. If your memory of the evidence differs from mine, the prosecuting attorney's, or the defense attorney's, you are to rely upon your own memory of the evidence in your deliberations. I have not reviewed the claims of the prosecution or of the defense, but it is your duty to consider not only all the evidence, but also all the arguments, the contentions and positions urged by the prosecuting attorney and the defense attorney in their speeches to you, to weigh them in light of your common sense, and to make your recommendation as to punishment.

When you are ready to make a recommendation, have your foreman write in your recommendation as directed on the "Issues and Recommendation" form.

* These Revised Instructions are based on research by Teri L. Kaasa, Ph.D.