

CAPITAL CASE

No. \_\_\_\_\_

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IN THE SUPREME COURT OF THE UNITED STATES

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CHARLES MICHAEL HALL

*Petitioner*

v.

UNITED STATES OF AMERICA

*Respondent*

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*On Petition for Writ of Certiorari to the  
United States Court of Appeals for the Eighth Circuit*

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APPENDIX TO PETITION

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FREDERICK A. DUCHARDT, JR.  
COUNSEL OF RECORD  
Mo.Bar Enrollment Number 28868  
P.O. Box 216  
Trimble MO 64492  
Phone: 816-213-0782  
Fax: 816-635-5155  
e-mail: fduchardt@yahoo.com

MICHAEL W. WALKER  
MO Bar Enrollment Number 29425  
5545 N. Oak Tfwy, Suite 8  
Kansas City MO 64118  
Ph. 816-455-6511  
Fax 816-455-6594  
e-mail: mwwalk@sbcglobal.net

ATTORNEYS FOR PETITIONER

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# *APPENDIX 1*

945 F.3d 1035

United States Court of Appeals, Eighth Circuit.

UNITED STATES of America, Plaintiff-Appellee,

v.

Charles Michael HALL, Defendant-Appellant.

No. 14-2742

Submitted: January 15, 2019

Filed: December 19, 2019

Rehearing and Rehearing En  
Banc Denied March 17, 2020 \*

### Synopsis

**Background:** Defendant was convicted in the United States District Court for the Western District of Missouri, [Gary A. Fenner](#), Senior District Judge, of first-degree murder, and was subsequently, [2014 WL 1356692](#), sentenced to death. Defendant appealed, challenging his sentence.

**Holdings:** The Court of Appeals, [Stras](#), Circuit Judge, held that:

- [1] District Court's failure to sever joint guilt phase did not unfairly prejudice defendant during penalty phase;
- [2] jury's consideration of defendant's grave indifference to human life during penalty phase was proper;
- [3] evidence was sufficient to support finding that defendant killed victim in an especially heinous, cruel, or depraved manner;
- [4] trial court did not abuse its discretion in limiting scope of defense counsel's cross-examination of government's mental health expert;
- [5] probative value of defendant's threats and prior crimes was not outweighed by danger of unfair prejudice during penalty phase;
- [6] trial court did not abuse its discretion in admitting defendant's letters during penalty phase; and

[7] trial court did not abuse its discretion in excluding comparative proportionality evidence.

Affirmed.

West Headnotes (18)

[1] **Constitutional Law** ⚡ Severance  
**Criminal Law** ⚡ Prejudice; fair trial

District Court's failure to sever joint guilt phase in first-degree capital murder trial did not unfairly prejudice defendant during joint penalty phase, as required to demonstrate due process violation; although joint trial resulted in same jury hearing co-defendant's guilt phase defense that defendant was driving force behind the murder and prosecution's case for the death penalty, co-defendant's guilt-phase evidence did not unfairly infect the sentencing proceeding with unfairness. [U.S. Const. Amend. 5](#).

[2] **Criminal Law** ⚡ Preferences or presumptions

A joint trial is often preferable when the joined defendants' criminal conduct arises out of a single chain of events, because it gives the jury a chance to assign fairly the respective responsibilities of each defendant.

[3] **Sentencing and Punishment** ⚡ Dual use of evidence or aggravating factor

Jury's consideration during penalty phase of capital murder trial of aggravating factor of defendant's grave indifference to human life was proper, under death penalty statute, even though jury had already considered defendant's mental state in determining whether he was eligible for the death penalty. [18 U.S.C.A. §§ 3591\(a\)\(2\), 3592\(c\)\(5\)](#).

[4] **Sentencing and Punishment** ⚡ Aggravating circumstances in general

The federal death-penalty statute divides aggravating factors into two categories: the listed ones that the jury is required to consider and other aggravating factors that it may consider. 18 U.S.C.A. § 3592(c).

**[5] Sentencing and Punishment** 🔑 Dual use of evidence or aggravating factor

The federal death-penalty statute does not limit the jury to only consider a defendant's mental state once; to the contrary, the statute contemplates the possibility that the jury will do so at least twice, that is, first when determining whether the death penalty is on the table at all, and again when evaluating the aggravating factors presented by the government. 18 U.S.C.A. §§ 3592(a), 3592(c).

**[6] Sentencing and Punishment** 🔑 Vileness, heinousness, or atrocity

Evidence was sufficient to support finding during penalty phase of capital murder trial that defendant killed victim in an especially heinous, cruel, or depraved manner; defendant initially recounted to investigators how he bound victim's hands and feet, stuffed rag in his mouth, blindfolded him, watched co-defendant assault him, and then stood on victim's throat until he stopped breathing, he also acknowledged that if victim had not been available, he would have randomly selected another person to kill, and medical examiner confirmed that victim's injuries were consistent with defendant's account, estimated that it likely took more than three minutes for victim to die, and stated that victim possibly remained conscious nearly the entire time. 18 U.S.C.A. § 3592(c)(6).

**[7] Sentencing and Punishment** 🔑 Harmless and reversible error

Any mistake jury likely made during penalty phase of capital murder trial in finding non-existence of mitigating factors of defendant's good behavior in prison after murder and

his difficulties with chronic gastrointestinal disease, which were not disputed by prosecution, amounted to harmless error, where record demonstrated that at least some jurors assigned some weight to these factors. 18 U.S.C.A. § 3595(c)(2).

**[8] Sentencing and Punishment** 🔑 Physical illness or disability

**Sentencing and Punishment** 🔑 Remorse and actual or potential rehabilitation

A jury is not required during penalty phase of capital murder trial to give any mitigating weight to mitigating factors of defendant's post-murder good behavior or medical condition, even though defendant has a right to present them to the jury. 18 U.S.C.A. § 3595(c)(2).

**[9] Sentencing and Punishment** 🔑 Admissibility

Under the federal death-penalty statute, the standard for admission of evidence at penalty-phase proceedings is relaxed: parties may present ordinarily inadmissible evidence without worrying about the federal rules of evidence. 18 U.S.C.A. § 3593(c).

**[10] Sentencing and Punishment** 🔑 Admissibility

**Sentencing and Punishment** 🔑 Reception of evidence

During the penalty phase of a capital murder trial, under the death penalty statute, the trial court has more gatekeeping power, even though a greater range of evidence can potentially pass through the door. 18 U.S.C.A. § 3593(c).

**[11] Sentencing and Punishment** 🔑 Expert evidence

Trial court did not abuse its discretion during penalty phase of capital murder trial in limiting scope of defense counsel's cross-examination of government's mental health expert, who was

called to rebut opinions of defense experts who testified that defendant's bipolar disorder caused him to lose self-control, by not allowing questions about judge's refusal in unrelated case to appoint him as expert, where trial court did allow thorough cross-examination of expert about false statements he admittedly made during another trial that led to overturned conviction, judge's decision not to appoint expert in unrelated case was due to false testimony during other trial, so that additional questioning had low probative value, and it carried high risk of confusing or misleading jury. 18 U.S.C.A. §§ 3593(c), 3595(c)(2).

[12] **Criminal Law** 🔑 Nature or stage of proceeding

The Confrontation Clause does not apply to sentencing proceedings, even those involving a potential death sentence. U.S. Const. Amend. 6.

[13] **Sentencing and Punishment** 🔑 Other offenses, charges, or misconduct

Probative value of evidence of threats of violence defendant made against various officials, including threats to bomb former President's home, statements defendant made about wanting to harm people in prison, and his numerous prior crimes, including non-violent ones, was not outweighed by danger of unfair prejudice, during penalty phase of capital murder trial; although some of the older convictions and non-violent crimes were of mixed value, evidence collectively was highly relevant to prove aggravating factor of defendant's future dangerousness. 18 U.S.C.A. § 3593(c).

[14] **Criminal Law** 🔑 Plea Negotiations and Offers to Plead Guilty

**Sentencing and Punishment** 🔑 Documentary evidence

Trial court did not abuse its discretion during penalty phase of capital murder trial in admitting letters defendant wrote to prosecutor and defense counsel explaining that he wanted a death

sentence, and setting forth in detail reasons that he believed he was eligible for death penalty; the letters were highly probative of several aggravating factors, including defendant's future dangerousness, lack of remorse, and indifference to human life, and although such statements would be excluded during guilt phase as statements made during plea negotiations, that evidentiary rule did not apply during penalty phase. 18 U.S.C.A. § 3593(c).

[15] **Sentencing and Punishment** 🔑 Documentary evidence

Trial court did not abuse its discretion during penalty phase of capital murder trial in excluding comparative proportionality evidence, consisting of charts and lists summarizing aggravating and mitigating circumstances in other similar death penalty cases; evidence had limited probative value, as jury had no way of knowing whether selected cases were representative, admitting the evidence could have opened door to debate about whether it accurately captured details of the other cases, and using the evidence could have invited jurors to tally aggravating and mitigating factors, rather than make requisite individualized determinations. 18 U.S.C.A. § 3593(c).

[16] **Sentencing and Punishment** 🔑 Individualized determination  
**Sentencing and Punishment** 🔑 Manner and effect of weighing or considering factors

Under the federal death penalty statute, the jury is required to make an individualized determination, balancing the aggravating and mitigating factors presented during the penalty phase of a capital murder trial, based on the facts and circumstances of each case. 18 U.S.C.A. §§ 3591(a), 3593(c).

[17] **Sentencing and Punishment** 🔑 Deliberations

Trial court's responses to two notes from jury which indicated that they could not reach a unanimous decision, while they were

deliberating during penalty phase of capital murder trial, advising jury to continue its deliberations and asking them to try to reach unanimous verdict, were not coercive; jury had been deliberating for less than a full day at time it sent notes, court did not tell jurors to reconsider their positions or that they had to reach a unanimous verdict in the end, and although jury only continue to deliberate for about another hour, it requested exhibits, suggesting that they continued to examine the evidence and debate whether death penalty was justified.

**[18]** **Criminal Law** 🔑 Time of keeping jury together

Courts incontestably have the authority to insist that jurors deliberate further, at least under certain circumstances.

**\*1038** Appeal from United States District Court for the Western District of Missouri–Springfield

**Attorneys and Law Firms**

[Frederick A. Duchardt, Jr.](#), Trimble, MO, argued ([Robert D. Lewis](#), Springfield, MO, [Michael W. Walker](#), Kansas City, MO, on the brief), for appellant.

[Francesco Valentini](#), Appellate Section, Crim. Div., U.S. Dept. of Justice, Washington, DC, argued ([John P. Cronan](#), Acting Asst. Atty. Gen., [Matthew S. Minor](#), Deputy Asst. Atty. Gen., [James P. Peterson](#), Capital Case Section, U.S. Dept. of Justice, Washington, DC, [Timothy A. Garrison](#), U.S. Atty., Kansas City, MO, [Randall D. Eggert](#), Asst. U.S. Atty., Springfield, MO, on the brief), for appellee.

Before [LOKEN](#), [GRASZ](#), and [STRAS](#), Circuit Judges.

**Opinion**

[STRAS](#), Circuit Judge.

Charles Hall and Wesley Coonce killed Victor Castro-Rodriguez after brutally beating him. A jury found Hall guilty of first-degree murder, see 18 U.S.C. § 1111(b), and following the presentation of a number of aggravating and mitigating factors, returned a death sentence. Hall appeals only his

sentence and challenges, among other issues, the aggravating and mitigating factors the jury considered, the evidence it heard, and the instructions it received. We affirm.

I.

The three men were serving federal sentences in a mental-health ward at a medical center for federal prisoners in Springfield, Missouri, when Hall and **\*1039** Coonce attacked Castro-Rodriguez. As Hall admitted, they had discussed the crime two or three days in advance. Hall has said that killing calms him and that if Castro-Rodriguez had not been available, he “would have randomly selected another inmate” to kill instead.

According to the testimony of one inmate, Hall lured Castro-Rodriguez by promising him money if he would pretend to be a hostage. Hall allegedly told him that if he would go along, prison officials might agree to give them additional privileges, including cable television, in exchange for his release. After Castro-Rodriguez agreed, Hall and Coonce followed him into his cell, where they made him lie on his back, bound his hands and feet, stuffed a rag in his mouth, and blindfolded him. Once he could no longer move or call for help, Coonce repeatedly kicked him and stomped on his neck. Hall then stood on his throat. After several minutes, Hall stepped off, checked for a pulse, and punched his stomach “to see if he would react.” An autopsy revealed that Castro-Rodriguez died from suffocation caused by compression of his larynx, although he also had internal bleeding, scrapes, and bruises from the repeated blows to his head, neck, and chest.

Hall and Coonce were tried together. The jury found them both guilty after deliberating for less than three hours. At a joint sentencing hearing, the jury heard evidence about various aggravating and mitigating factors. After deliberating again—this time into a second day—the jury unanimously recommended a death sentence for both of them. The district court<sup>1</sup> accepted the jury’s recommendation and entered judgment.

II.

[1] The first question is whether the district court abused its discretion by trying Hall and Coonce together. See *United States v. Ortiz*, 315 F.3d 873, 898 (8th Cir. 2002). Both initially objected to a joint trial, but after the jury found

them guilty, Hall withdrew his objection to a joint sentencing hearing. His position now is that the refusal to sever the proceedings at the *guilt* phase allowed the jury to hear evidence that unfairly prejudiced him during the *penalty* phase.

[2] A joint trial is “often preferable when the joined defendants’ criminal conduct arises out of a single chain of events,” because it gives the jury a chance “to assign fairly the respective responsibilities of each defendant.” *Kansas v. Carr*, — U.S. —, 136 S. Ct. 633, 645, 193 L.Ed.2d 535 (2016) (citation omitted). This case is a good example. Hall and Coonce agreed ahead of time to murder Castro-Rodriguez. Once they entered his cell together, Hall tied him up, Coonce took the lead in assaulting him, and then Hall dealt the fatal blow by standing on his throat. They acted side by side at every step, so it was logical for the district court to allow “their fates [to be] determined by a single jury.” *Id.* at 646.

To be sure, holding a joint trial resulted in the same jury hearing both Coonce’s guilt-phase defense that Hall was the driving force behind the crime and the government’s case for the death penalty. This made the proceeding unfair, according to Hall, because Coonce’s theory “logically supported” and supplemented the government’s penalty-phase argument that Hall would likely be violent in the future.

**\*1040** Even if these arguments overlapped to some degree, Hall cannot establish that Coonce’s guilt-phase evidence “so infected the sentencing proceeding with unfairness as to render the jury’s imposition of the death penalty” unconstitutional. *Id.* at 644–45 (citation omitted). In arguing that he was less blameworthy than Hall, Coonce never suggested that Hall, as the alleged mastermind, would do something similarly violent in the future. Nor did the government connect those dots. Its theory was simpler: Hall was dangerous because he repeatedly said he would commit crimes and had a lengthy history of threatening violence. *See infra* Part IV.B (addressing the admissibility of the government’s evidence). For us to accept Hall’s theory that the joint trial unfairly prejudiced him would require “an exercise in speculation, rather than reasoned judgment.” *Romano v. Oklahoma*, 512 U.S. 1, 14, 114 S.Ct. 2004, 129 L.Ed.2d 1 (1994). And speculation is not enough. *See Carr*, 136 S. Ct. at 646.

### III.

Hall’s next group of challenges focuses on the aggravating and mitigating factors presented to the jury. In determining whether a death sentence was “justif[ied],” the jury’s task during the penalty phase was to “consider” whether the aggravating factors “sufficiently outweigh[ed]” the mitigating factors. 18 U.S.C. § 3593(e); *see also id.* § 3592 (identifying potential aggravating and mitigating factors).

#### A.

[3] [4] The federal death-penalty statute divides aggravating factors into two categories: the listed ones that the jury “shall” consider and those “other aggravating factor[s]” that it “may” consider. *Id.* § 3592(c). Despite this open-ended language, Hall claims that one unlisted factor, grave indifference to human life, should never have been submitted to the jury.<sup>2</sup> He points out that the jury already considered his mental state once in determining that he was eligible for the death penalty, so doing it again improperly counted the same factor twice. The premise is correct, but his conclusion is not.

[5] Nothing in the federal death-penalty statute says that the jury can only consider a defendant’s mental state once. To the contrary, the statute contemplates the possibility that the jury will do so at least twice, first when determining whether the death penalty is on the table at all and again when evaluating the aggravating factors presented by the government. *Compare id.* § 3591(a)(2) (listing the various mental states giving rise to death-sentence eligibility), *with id.* § 3592(c)(5) (requiring a “grave risk of death”); *id.* § 3592(c)(6) (committing the offense in an “especially heinous, cruel, or depraved manner”); *id.* § 3592(c)(9) (demonstrating “substantial planning and premeditation”); *id.* § 3592(c)(16) (having the intent to kill or attempting “to kill more than one person in a single criminal episode”). And some of the factors even seem to overlap with one another, further weakening Hall’s double-counting theory. *See, e.g., id.* § 3592(a)(1) (acting with a “significantly impaired” capacity to “appreciate the wrongfulness” of the conduct); *id.* **\*1041** § 3592(a)(6) (carrying out the offense “under severe mental or emotional disturbance”). Hall’s argument, in other words, is contrary to the statute, which constructs a two-stage process with overlapping inquiries, *see id.* §§ 3591(a)(2), 3592(a), (c), and is inclusive when it comes to the factors that a jury may consider, *see id.* § 3592(c).



## B.

[6] Hall challenges another aggravating factor for a different reason. He argues that the government did not provide enough evidence for the jury to find that he killed Castro-Rodriguez in an especially heinous, cruel, or depraved manner. *See id.* § 3592(c)(6).

In explaining this factor, the district court told the jury that the killing was heinous if it was “extremely wicked or shockingly evil”; it was cruel if Hall “intended to inflict a high degree of pain”; and it was depraved if Hall “relished the killing or showed indifference to [Castro-Rodriguez’s] suffering.” The government also had to show “serious physical abuse,” which the instructions defined as “a significant or considerable amount of injury or damage to [Castro-Rodriguez’s] body.” *See 18 U.S.C. § 3592(c)(6)* (requiring “torture” or “serious physical abuse”); *see also United States v. Montgomery*, 635 F.3d 1074, 1095–96 (8th Cir. 2011) (defining “serious physical abuse” to include “inflict[ing] suffering ... above and beyond that necessary to cause death” (internal quotation marks and citation omitted)).

Contrary to Hall’s suggestion, the government’s evidence was sufficient to find that the killing was heinous, cruel, or depraved, and that it involved the infliction of serious physical abuse. The primary source of the government’s evidence was Hall’s initial statement to investigators shortly after the murder. In it, he recounted how he had bound Castro-Rodriguez’s hands and feet, stuffed a rag in his mouth, blindfolded him, watched Coonce assault him, and then stood on his throat until he stopped breathing. He also acknowledged the senselessness of the crime, explaining that if Castro-Rodriguez had not been available, he “would have randomly selected another inmate and killed him” instead. The medical examiner, after describing the injuries and confirming that they were consistent with Hall’s account, estimated that it likely took “more than three minutes, maybe [even] five minutes” for Castro-Rodriguez to die and that it was possible that he remained conscious nearly the entire time.

From this evidence, a reasonable juror could conclude that Hall intended to “inflict a high degree of pain” and was “indifferen[t] to [Castro-Rodriguez’s] suffering.” The fact that Castro-Rodriguez had been tricked and rendered helpless only increased his distress, and the prolonged beating inflicted

gratuitous pain. And even as the assault was coming to a close, Hall extended Castro-Rodriguez’s suffering by suffocating him slowly, even as he likely remained conscious.

It is true, as Hall argues, that other death-penalty cases have involved greater cruelty and more extreme violence. *See, e.g., id. at 1079–80*. But those cases do not set the floor, and the fact that some murders are even more heinous, cruel, or depraved does not mean that this one was not.

## C.

[7] Turning to the mitigating factors, the district court allowed the jury to consider, as relevant here, Hall’s good behavior in prison after the murder and his difficulties with a chronic [gastrointestinal disease](#), neither of which was disputed factually. \*1042 Even so, some jurors found that the factors did not “exist[ ],” which Hall attributes to a failure to follow the court’s instructions to make factual findings on each of the mitigating factors first, before deciding whether to assign them weight.

We agree that the most likely explanation is that some jurors misunderstood the instructions on the verdict form. The form required the foreperson to record “the number of jurors who ... found the existence of [each] mitigating factor to be proven by a preponderance of the evidence,” yet she wrote “6” in the space for Hall’s medical condition and “0” in the other. Following their discharge, some jurors informed the district court that the foreperson may have recorded the number who voted to give these factors mitigating weight, rather than the number who found that they “had been proved.” *See Fed. R. Evid. 606(b)(2)(C)* (providing an exception for juror testimony when it involves “a mistake ... in entering the verdict on the verdict form”). Given that the government did not dispute either factor, however, there was no reason for the foreperson to write anything other than “12” for both.

[8] Unlike Hall, however, we are convinced beyond a reasonable doubt that any mistake the jury may have made was harmless. *See 18 U.S.C. § 3595(c)(2)*. As a baseline principle, the jurors were not required to give any mitigating weight to Hall’s post-murder good behavior or his medical condition, *see United States v. Paul*, 217 F.3d 989, 999 (8th Cir. 2000), even if he had a right to present them to the jury. Only if the jurors assigned no weight to them because they believed, “*as a matter of law*,” that they were “unable even to consider the evidence” would a constitutional problem arise.

*Eddings v. Oklahoma*, 455 U.S. 104, 113, 102 S.Ct. 869, 71 L.Ed.2d 1 (1982).

Nothing in the record suggests that this was the case. To the contrary, the fact that six jurors assigned some weight to Hall's medical condition suggests that they understood that it was their call to make. See *Paul*, 217 F.3d at 1000 (explaining that the test is whether "there exists a reasonable likelihood that the jurors believed themselves precluded from considering relevant mitigating evidence"). There is, in short, no reason to believe that marking the form with one piece of information rather than another affected the jury's decision-making or changed its overall conclusion.

#### IV.

[9] [10] Hall also challenges several evidentiary rulings. Under the federal death-penalty statute, the standard for admission of evidence at penalty-phase proceedings is "relaxed": parties may present ordinarily inadmissible evidence without worrying about the Federal Rules of Evidence. *United States v. Purkey*, 428 F.3d 738, 758 (8th Cir. 2005); see 18 U.S.C. § 3593(c). The idea is that the more information the jury has when choosing between life and death, the better. See *United States v. Lee*, 274 F.3d 485, 494 (8th Cir. 2001). Yet the statute also vests the district court with broad discretion to exclude evidence if it is irrelevant or "its probative value is outweighed by the danger of creating unfair prejudice, confusing the issues, or misleading the jury." 18 U.S.C. § 3593(c). Compare *id.* (requiring only that the probative value be "outweighed" by the "danger[s]" created by the evidence), with *Fed. R. Evid.* 403 (adopting a similar standard, but requiring the probative value to be "substantially outweighed" by these risks (emphasis added)). The court has more gatekeeping power, in other words, even though a greater range of evidence can potentially pass through the door. See *Purkey*, 428 F.3d at 756.

#### \*1043 A.

[11] The first evidentiary ruling that we have been asked to review was the decision to limit the scope of Dr. Park Dietz's cross-examination. The government called him to rebut the opinions of several mental-health experts who testified that Hall's bipolar disorder caused him to lose self-control. While explaining his qualifications, Dr. Dietz stated that he had been asked to testify in over one thousand cases, including some

high-profile prosecutions. He admitted that in one of them, he had made false statements that eventually led to an overturned conviction. See *Yates v. State*, 171 S.W.3d 215, 221–22 (Tex. App. 2005).

[12] The district court allowed Hall's attorney to thoroughly question Dr. Dietz about what happened in *Yates*. But it would not allow him to question Dr. Dietz about a judge's refusal to appoint him as a court-appointed expert in another case, *Gates v. Chappell*, No. C 88-2779 WHA (N.D. Cal.). Because the judge in *Gates* had refused to appoint Dr. Dietz based solely on concerns about his impartiality after *Yates*, the court reasoned, there was little to be gained from the additional questioning. In Hall's view, cutting off this line of inquiry was an abuse of discretion.<sup>3</sup> See 18 U.S.C. § 3595(c)(2). We disagree.

The additional questioning had low probative value even if it was arguably relevant. The first possibility was that it could have shed light on Dr. Dietz's credibility. But the opinion of a single district judge on his fitness for a different type of role in an unrelated case only marginally assisted the jurors in answering the critical question they faced: should they believe his testimony?

The second possibility was that it could have rebutted Dr. Dietz's claim that he had testified in over one thousand cases. See *id.* § 3593(c) (allowing both the government and the defendant to "rebut any information received at the hearing"). This is an impressive-sounding number, and as Hall points out, *Gates* was one case in which Dr. Dietz was not allowed to testify. Still, the evidence had limited probative value, especially after Dr. Dietz admitted that the figure was not as impressive as it sounded. Earlier in his career, he explained, he worked in a hospital and participated in about a dozen commitment hearings per week. More recently, by contrast, he had not appeared in court nearly as often.

Not only was the probative value low, it carried a high risk of confusing or misleading the jury. It is unlikely that the jurors could have understood the differences between the roles of a court-appointed expert and a government witness, at least without additional factual development. In fact, some may well have concluded that a federal judge's decision not to appoint Dr. Dietz superseded their own opinions about his testimony, no matter what he said about Hall. Cf. *Rosales-Lopez v. United States*, 451 U.S. 182, 188, 101 S.Ct. 1629, 68 L.Ed.2d 22 (1981) (stating that jurors "must reach conclusions as to impartiality and credibility by relying on

their own evaluations of demeanor evidence and of responses to questions”). Given these risks, we cannot say that the court abused its discretion in cutting off this line of questioning. *See id.*

**\*1044 B.**

[13] Another contested evidentiary ruling was allowing the government to prove Hall’s future dangerousness through, among other things, evidence of threats Hall had made against various officials, his pre-murder misbehavior in prison, and his numerous prior crimes. According to Hall, this evidence was minimally probative and highly prejudicial and never should have been admitted.

During the penalty-phase proceedings, the jury heard that Hall had threatened to kill a federal judge and prosecutors; to bomb various sensitive locations, including an airport and President George H.W. Bush’s home; and to orchestrate a mass poisoning. This evidence was presented along with various statements that he had made to psychiatrists, psychologists, nurses, and other staff about wanting to harm or kill people in prison. As the government pointed out, he even acted on those desires once before murdering Castro-Rodriguez, when he assaulted another inmate. Although the victim suffered only minor injuries, Hall later stated in a letter to a psychiatrist that his intent “wasn’t ... just to punch him. ... [It] was to choke him to death.” The letter went on to say that if he “was on the open unit today, [killing someone] would” have been his “intent and goal.”

The jury also heard that Hall had difficulty following the rules, both inside and outside of prison. The government introduced evidence that he had been convicted of a number of crimes over a 25-year period, including burglary, forgery, theft, false public alarm, receiving stolen goods, and assault. His behavior was problematic in prison too, where he fought, gambled, and possessed contraband prior to the murder.

All of this evidence was relevant. *See* 18 U.S.C. § 3593(c). A reasonable juror could view Hall’s threats as reflecting a propensity for violence. It is true, of course, that Hall could have been bluffing, as he now claims, knowing full well that he could not possibly carry out some of his threats. But that was a credibility determination for the jury to make. *See id.*; *see also* *Lee*, 274 F.3d at 494 (discussing the “very low barriers to the admission of evidence”).

To be sure, the evidence was of mixed value. For example, Hall’s decades-old convictions, some for nonviolent crimes, arguably shed less light on his future dangerousness. But collectively, the evidence tended to show that Hall wanted to hurt others and might do so if given an opportunity, regardless of where he was or what constraints were placed on him.

On the other side of the scale, the evidence was only prejudicial in the sense that it made it hard for Hall to argue that he was not dangerous. But there was nothing unfair about its admission. *Cf. United States v. Looking Cloud*, 419 F.3d 781, 785 (8th Cir. 2005) (“Evidence is not unfairly prejudicial because it tends to prove guilt, but because it tends to encourage the jury to find guilt from improper reasoning.”). It did not cause confusion or lead the jury to consider a factor it should not have in making its sentencing recommendation. Without showing that one of those things may have occurred, Hall has given us little reason to question the district court’s discretionary decision to admit it. *See Lee*, 274 F.3d at 494 (“[D]etermining whether there is a threat of unfair prejudice [under 18 U.S.C. § 3593(c)] is a fact specific inquiry ....”).

C.

[14] Hall also questions the district court’s decision to allow the government to introduce two letters that he sent to the prosecutor before trial. In the first, he \*1045 expressed his desire to be executed and offered to “enter a ple[a] of guilty” if the prosecutor “could guarantee” that he received a death sentence. He also explained that “[t]he only thing that [would] stop [him] from killing again [was] to put [him] to death.” In the second, which was delivered both to the prosecutor and to his own attorney, he explained in detail why he thought he was eligible for the death penalty, directed his attorney to work toward a death sentence, and requested a guilty plea “as long as” the prosecutor would recommend one. The government did not respond to either letter.

The district court admitted both letters during the guilt phase of Hall’s trial, but they played a significant role at sentencing too. *See* 18 U.S.C. § 3593(c) (allowing the jury to consider information from the guilt phase when evaluating aggravating and mitigating factors). Because Hall is appealing only his sentence, however, we review their admissibility under the “more lenient” evidentiary standard applicable at the penalty phase, *Purkey*, 428 F.3d at 756, leaving aside whether the jury should have seen them earlier when it was evaluating Hall’s guilt. *Coonce*, 932 F.3d at 637.

Under this standard, the district court did not abuse its discretion when it admitted the letters. They contained expressions of guilt and threats to kill again, both of which were highly probative of several aggravating factors, including his future dangerousness, lack of remorse, and indifference to human life.

It does not matter that admitting the letters left him with an uphill battle during the penalty-phase proceedings, because there was nothing unfair about their admission, even if, as Hall claims, his “notions about the case changed dramatically after [he] benefitted from different legal advice offered by new counsel.” *Cf. Looking Cloud*, 419 F.3d at 785 (explaining that “unfair prejudice” refers to encouraging “the jury to find guilt from improper reasoning”). Just because he changed his mind does not mean that it was unfair to use his earlier admissions against him.<sup>4</sup> *Cf. United States v. Muhlenbruch*, 634 F.3d 987, 1001 (8th Cir. 2011) (holding that a district court did not abuse its discretion under Rule 403 when it permitted the government to play a defendant’s videotaped confession).

His argument to the contrary is really just an attempt to import Federal Rule of Evidence 410(a)(4)—which prohibits using statements made during plea negotiations against a defendant at trial—into penalty-phase proceedings. But this theory gets him nowhere because, according to the federal death-penalty statute, “[i]nformation is admissible” at the sentencing hearing “regardless of its admissibility under the rules governing admission of evidence at criminal trials.” 18 U.S.C. § 3593(c). So it makes no difference whether, as Hall insists, the statements would otherwise count as having been “made during plea negotiations.” They were admissible either way.

#### \*1046 D.

[15] The final evidentiary issue was the exclusion of Hall’s “comparative proportionality” evidence, which summarized the aggravating and mitigating circumstances in other death-penalty cases. Hall’s theory was that the jury might be less likely to think that he deserved the death penalty if it could evaluate how he compared to others who committed similar crimes. The evidence consisted of short summaries of sixteen cases—all involving murders committed in federal prison—along with a list of the aggravating and mitigating factors

in each case. Also included were three spreadsheets that repackaged this information in various ways.

As the district court recognized, the evidence had limited probative value. The most obvious shortcoming was that no one had any way of knowing whether the selected cases were representative. According to Hall’s attorney, they shared three characteristics: each went to trial, a death sentence was on the table, and information was available from public sources or the attorneys who tried them. This approach made sense from a practical, information-gathering perspective, but relevant information could have been missing for a variety of reasons. Indeed, Hall has trimmed his list down even more on appeal. The explanation, according to his brief, is that “the detailed facts ... necessary for a proper comparative analysis could not be assembled” for five of his original sixteen cases. It is unclear what, if anything, changed, but this development highlights the problems posed by the evidence.

The presentation of the cases posed other potential problems. The nuances were arguably lost in the long lists of aggravating and mitigating factors that he provided. For example, two cases might involve the same future-dangerousness aggravating factor, but a jury might find a death sentence appropriate in one case and not the other, leaving the jurors in this case to wonder why. Compare *United States v. Houston*, 648 F.3d 806, 811–12 (9th Cir. 2011) (involving a life sentence for a racially-motivated-stabbing death), with *United States v. Snarr*, 704 F.3d 368, 377 (5th Cir. 2013) (imposing a death sentence for a stabbing attack that killed a fellow inmate and left two prison guards wounded). Admitting the evidence could have opened the door to a debate about whether Hall’s lists and spreadsheets adequately captured their details, not to mention whether they were similar enough to Hall’s case. If so, the potential for confusion and distraction was clear.

[16] Another more serious risk was also looming. Using lists and spreadsheets potentially invited the jurors to view their assignment in Hall’s case in similar terms: simply tally up the aggravating and mitigating factors and see where he fell on the list, rather than undertake an “individualized determination” based on the facts and circumstances of his case. *Tuilaepa v. California*, 512 U.S. 967, 972, 114 S.Ct. 2630, 129 L.Ed.2d 750 (1994) (citation omitted); see *Purkey*, 428 F.3d at 762 (explaining that the federal death-penalty statute “avoids arbitrary death sentences by requiring juries to weigh [the] aggravating and mitigating factors rather than [just] tally the factors on each side and declare a winner based on sheer numbers”).

It is possible, of course, that the district court could have found a way to manage these difficulties. But this was a discretionary call, and the court was entitled to conclude that admitting the evidence would have caused more trouble than it was worth.<sup>5</sup> See 18 U.S.C. § 3593(c) (giving the \*1047 district court broad authority as gatekeeper).

## V.

Hall's remaining challenge is to the district court's response to two notes from the jury foreperson during penalty-phase deliberations. One of them stated that the jury could not reach a unanimous decision on Hall's sentence, but the court directed the jury to keep trying. Hall's position is that it felt pressured after that point to recommend a death sentence.

[17] In evaluating Hall's argument, context matters. See *United States v. Walrath*, 324 F.3d 966, 970 (8th Cir. 2003) (listing factors that help identify impermissible jury coercion). The jury began its deliberations on Friday afternoon, had the weekend off, and then resumed on Monday morning. Shortly after lunch, the foreperson sent a note asking if "the lawyers have the option to poll the jury if [it] can't reach a unanimous decision[?]" The court replied that the jury "w[ould] not be polled if a nonunanimous verdict [was] accepted." The foreperson then sent a second note, this time announcing that the jury had reached a decision on Coonce, but "with 100% certainty" could not reach one on Hall. Hall's attorney urged the court to declare that the jury was "hung," which would have resulted in a life sentence. See *Jones v. United States*, 527 U.S. 373, 380–81, 119 S.Ct. 2090, 144 L.Ed.2d 370 (1999). Instead, the court told the jury to "continue [its] deliberations, and [to] try to reach unanimous verdicts." After deliberating for approximately another hour, the jury returned a recommendation of death.

[18] The district court was faced with a choice: declare the jury deadlocked or direct it to continue its deliberations. Given that the jury had been deliberating for less than one full day, it sent the jury back so that it could keep trying. See *United States v. Hagan*, 412 F.3d 887, 890 (8th Cir. 2005) (reviewing a coercive-instruction claim for an abuse of discretion). In making this decision, the court did not have to automatically acquiesce in the jury's assessment. *Lowenfield v. Phelps*, 484 U.S. 231, 238, 108 S.Ct. 546, 98 L.Ed.2d 568 (1988). Rather, as the Supreme Court has recognized, courts

"incontestably" have the "authority to insist that [jurors] deliberate further," at least under certain circumstances. *Id.*

This is one of those circumstances. The jury had previously been instructed that its task was to choose between life in prison and a death sentence. Telling the jurors to deliberate further in an effort to reach unanimity did not "coerce" them into picking one alternative over the other. Nor did the court tell the jurors to reconsider their positions or that they *must* be unanimous in the end, which are the types of statements that have necessitated prophylactic instructions in the past. See *United States v. Robinson*, 953 F.2d 433, 437 (8th Cir. 1992). Here, the court was simply exercising its judgment that it was sensible under the circumstances to ask the jury to deliberate longer before giving up. *Lowenfield*, 484 U.S. at 238, 108 S.Ct. 546; see also *United States v. Reed*, 686 F.2d 651, 652 n.1 (8th Cir. 1982) ("A supplemental instruction merely to continue deliberating after impasse ... is not properly characterized as a traditional *Allen* charge." (citing *Allen v. United States*, 164 U.S. 492, 501–02, 17 S.Ct. 154, 41 L.Ed. 528 (1896))).

The jury's response showed that it did not feel pressured to choose either alternative. \*1048 Although it continued to deliberate for only about an hour more, the jury requested three exhibits connected to the lack-of-remorse and future-dangerousness aggravating factors. Cf. *United States v. Warfield*, 97 F.3d 1014, 1022 (8th Cir. 1996) ("Although the jury's return with a verdict approximately one hour after receiving the *Allen* charge is somewhat expeditious, we do not believe the postinstruction deliberation time ... raises an inference of coercion."). This timeline suggests that the jurors continued to debate whether the death penalty was justified; discussed and reexamined the evidence that they found most compelling; and eventually agreed on a recommendation. If they felt no choice but to impose the death penalty, as Hall now claims, there would have been little reason to request the exhibits. The bottom line is that nothing here raises a red flag that there may have been coercion.

The design of the verdict form does not change our conclusion. Hall argues that by instructing the jurors to "proceed to" consideration of a life sentence if it could not unanimously agree on a death sentence, the district court should have known that the second note reported that the jury had effectively ruled out death.<sup>6</sup> There are two flaws in this argument. First, the second note said only that the jury was not unanimous, not that death was off the table. Second, the argument ignores the fact that the jury had a binary choice to

make: life in prison or a death sentence. Nothing prevented the jury from moving back and forth between these two alternatives, and the second note simply reflected the fact that, up to that point, there was a lack of agreement on which of the two to choose. Under these circumstances, it was reasonable for the court to conclude that the jury was not trying to return a final verdict and that further deliberations would eventually allow it to do so.

and it was unconstitutional to treat his lack of remorse as both proof of future dangerousness and as a standalone aggravating factor. Controlling precedent squarely forecloses Hall's positions on these three issues.<sup>7</sup> See *Barefoot v. Estelle*, 463 U.S. 880, 896, 103 S.Ct. 3383, 77 L.Ed.2d 1090 (1983) (future dangerousness); *Montgomery*, 635 F.3d at 1099 (the jury instruction); *Purkey*, 428 F.3d at 762 (overlapping aggravating factors).

## VI.

Finally, we note that Hall has raised three issues for potential en banc or Supreme Court review: it was unconstitutional to use future dangerousness as an aggravating factor, the district court misstated the law when it instructed the jury that Hall "must be sentenced to death" if it made certain findings,

## \*1049 VII.

We accordingly affirm the judgment of the district court.

## All Citations

945 F.3d 1035

## Footnotes

- \* Judge Kelly did not participate in the consideration or decision of this matter.
- 1 The Honorable Gary A. Fenner, United States District Judge for the Western District of Missouri.
- 2 Hall also argues that future dangerousness should not have been submitted as an aggravating factor because a prediction about events yet to occur cannot be proved beyond a reasonable doubt. See 18 U.S.C. § 3593(c) (requiring the government to prove the "existence of any aggravating factor" beyond a reasonable doubt). We recently considered and rejected this argument, see *United States v. Coonce*, 932 F.3d 623, 642–43 (8th Cir. 2019), and do so here too.
- 3 Hall also claims that the decision violated his rights under the Confrontation Clause of the Sixth Amendment. As we recently explained, however, the Confrontation Clause does not apply to sentencing proceedings, even those involving a potential death sentence. See *Coonce*, 932 F.3d at 640–41; see also *Williams v. New York*, 337 U.S. 241, 251–52, 69 S.Ct. 1079, 93 L.Ed. 1337 (1949).
- 4 Hall vaguely asserts that allowing the jury to see that he had previously asked for the death penalty was unfairly prejudicial. But this is a different argument than he raised before the district court or in his briefs, which took the position that the letters were completely inadmissible because they contained statements made during plea negotiations. See *Fed. R. Evid.* 410(a)(4). In any event, Hall never sought a limiting instruction or argued that the court should have redacted the letters, so we can hardly fault it for failing to take one of these actions on its own. Cf. *United States v. Melton*, 870 F.3d 830, 837–38 (8th Cir. 2017) (holding that admitting a document containing potentially prejudicial statements was not an abuse of discretion because, although the defendant requested a limiting instruction, he "did not pursue the government's offer to redact" them).
- 5 In light of this conclusion, we leave for another day the broader question of whether comparative-proportionality evidence is ever admissible as a mitigating factor. See 18 U.S.C. § 3592(a) (providing a nonexclusive list of mitigating factors).
- 6 It is true that at some point the foreperson marked "NO" in the space for recommending a death sentence, before scratching it out and marking "YES" instead. But we have no way of knowing when it happened or why. Cf. *Blueford v. Arkansas*, 566 U.S. 599, 607, 132 S.Ct. 2044, 182 L.Ed.2d 937 (2012) (explaining that until deliberations are over and the jury announces its final decision, jurors are free to "rethink" their votes). Neither did the district court, because even if the foreperson marked "NO" before sending the second note, the court never saw the partially completed form. So this possibility cannot have a bearing on our assessment of its decision to send the jury back for further deliberations.
- 7 Moreover, to the extent that Hall argues that he is entitled to a new trial because of cumulative error, this argument fails on its own terms. See *supra* Part III.C (identifying as the only *potential* error that the jury may have misunderstood one part of the verdict form); see also *United States v. Darden*, 70 F.3d 1507, 1549 (8th Cir. 1995) (rejecting a cumulative-error argument because the court had only identified one error).

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# **APPENDIX 2**



A-017  
**UNITED STATES COURT OF APPEALS  
FOR THE EIGHTH CIRCUIT**

No: 14-2742

United States of America

Appellee

v.

Charles Michael Hall

Appellant

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Appeal from U.S. District Court for the Western District of Missouri - Springfield  
(6:10-cr-03029-GAF-2)

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**ORDER**

The petition for rehearing en banc is denied. The petition for rehearing by the panel is also denied.

Judge Kelly did not participate in the consideration or decision of this matter.

March 17, 2020

Order Entered at the Direction of the Court:  
Clerk, U.S. Court of Appeals, Eighth Circuit.

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/s/ Michael E. Gans

# **APPENDIX 3**

(ORDER LIST: 589 U.S.)

THURSDAY, MARCH 19, 2020

**ORDER**

In light of the ongoing public health concerns relating to COVID-19, the following shall apply to cases prior to a ruling on a petition for a writ of certiorari:

**IT IS ORDERED** that the deadline to file any petition for a writ of certiorari due on or after the date of this order is extended to 150 days from the date of the lower court judgment, order denying discretionary review, or order denying a timely petition for rehearing. See Rules 13.1 and 13.3.

**IT IS FURTHER ORDERED** that motions for extensions of time pursuant to Rule 30.4 will ordinarily be granted by the Clerk as a matter of course if the grounds for the application are difficulties relating to COVID-19 and if the length of the extension requested is reasonable under the circumstances. Such motions should indicate whether the opposing party has an objection.

**IT IS FURTHER ORDERED** that, notwithstanding Rules 15.5 and 15.6, the Clerk will entertain motions to delay distribution of a petition for writ of certiorari where the grounds for the motion are that the petitioner needs additional time to file a reply due to difficulties relating to COVID-19. Such motions will ordinarily be granted by the Clerk as a matter of course if the length of the extension requested is reasonable under the circumstances and if the motion is actually received by the Clerk at least two days prior to the relevant distribution date. Such motions should indicate whether the opposing party has an objection.

**IT IS FURTHER ORDERED** that these modifications to the Court's Rules and practices do not apply to cases in which certiorari has been granted or a direct appeal or original action has been set for argument.

These modifications will remain in effect until further order of the Court.

# **APPENDIX 4**

**IN THE UNITED STATES DISTRICT COURT FOR THE  
WESTERN DISTRICT OF MISSOURI  
SOUTHERN DIVISION**

<b>United States of America,</b>	)	
	)	
<b>Plaintiff,</b>	)	
	)	
<b>v.</b>	)	<b>Criminal Action Number</b>
	)	<b>10-03029-02-CR-S-GAF</b>
<b>Charles Michael Hall,</b>	)	
	)	
<b>Defendant.</b>	)	

**REPORT AND RECOMMENDATION**

Defendant Charles Michael Hall (“Hall”) has been charged in a superceding indictment [Doc. 59] with committing a murder in a Bureau of Prisons facility. The superceding indictment sets forth certain “special findings” made pursuant to 18 U.S.C. §§ 3591, 3592, and, in that regard, the Government has filed a NOTICE OF INTENT TO SEEK DEATH PENALTY, [Doc. 62] for Hall pursuant to 18 U.S.C. § 3593(a). Pending before the Court is CHARLES MICHAEL HALL’S MOTION FOR THE COURT TO FIND ERRONEOUS THE USE OF CERTAIN EIGHTH CIRCUIT PATTERN PENALTY PHASE INSTRUCTIONS AND INSTEAD USE PARTICULAR ALTERNATIVE INSTRUCTIONS [DOC. 212].

Hall contends that certain Eighth Circuit Model Jury Instructions used in capital trials are violative of the FDPA and Hall’s rights under the Fifth, Sixth and Eighth Amendments. Specifically Hall contends that Model Jury Instructions 12.01 and 12.11 violate statutory and constitutional provisions because the instructions are “poorly and confusingly worded and do not accurately account the applicable law.” Hall appends to his motion two proposed instructions, “A” and “B” but also requests, in the alternative, that the Court consider two other appended

proposed instructions, “C” and “D” which are patterned on instructions developed in the Tenth and Fourth Circuits. In preparing this REPORT AND RECOMMENDATION, the Court notes that it is generally persuaded to follow the precedent set forth by the Eighth Circuit and to instruct the jury in the manner approved by the Eighth Circuit Court of Appeals -- unless and until the Eighth Circuit rules otherwise. However, as this stage in these proceedings, the ultimate decision as to the merits of Hall’s arguments regarding these proffered jury instructions more appropriately resides with the District Court.

Accordingly, it is

**RECOMMENDED** that the Court, after making an independent review of the record and applicable law, enter an order **DENYING CHARLES MICHAEL HALL’S MOTION FOR THE COURT TO FIND ERRONEOUS THE USE OF CERTAIN EIGHTH CIRCUIT PATTERN PENALTY PHASE INSTRUCTIONS AND INSTEAD USE PARTICULAR ALTERNATIVE INSTRUCTIONS**, filed November 28, 2012 [Doc. 212].

Counsel are reminded that each has 14 days from the date of receipt of a copy of this report and recommendation to file and serve specific objections to the same. A failure to file and serve timely objections shall bar attack on appeal of the factual findings in this report which are accepted or adopted by the district judge except upon the ground of plain error or manifest injustice.

*/s/ John T. Maughmer*

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**John T. Maughmer**  
**United States Magistrate Judge**

# **APPENDIX 5**



**IN THE UNITED STATES DISTRICT COURT FOR THE  
WESTERN DISTRICT OF MISSOURI  
SOUTHERN DIVISION**

**UNITED STATES OF AMERICA,**            )  
  )  
  )  
  )  
  )  
**Plaintiff,**                                 )  
  )  
**vs.**    )  
  )  
  )  
  )  
**CHARLES MICHAEL HALL,**            )  
  )  
  )  
  )  
  )  
**Defendant.**                             )

**Case No. 10-3029-02-CR-S-GAF**

**ORDER**

Now pending before the Court is Defendant Charles Michael Hall’s Motion for the Court to Find Erroneous the Use of Certain Eighth Circuit Pattern Penalty Phase Instructions and Instead Use Particular, Alternative Instructions (Doc. #212).

On February 11, 2014, United States Magistrate Judge John T. Maughmer issued his Report and Recommendation (Doc. #495). On April 21, 2014, Defendant's Objections to the Report and Recommendation (Doc. #692) were filed.

Upon careful and independent review of the pending motion, Defendant’s Objections to the Magistrate's Report and Recommendation, as well as the applicable law, this Court hereby adopts and incorporates as its own Opinion and Order the Report and Recommendation of United States Magistrate Judge John T. Maughmer.

Accordingly, it is hereby ORDERED that Defendant Charles Michael Hall's Motion for the Court to Find Erroneous the Use of Certain Eighth Circuit Pattern Penalty Phase Instructions and Instead Use Particular Alternative Instructions (Doc. #212) is OVERRULED and DENIED.

SO ORDERED.

s/ Gary A. Fenner  
GARY A. FENNER, JUDGE  
UNITED STATES DISTRICT COURT

DATED: April 22, 2014

# **APPENDIX 6**

**IN THE UNITED STATES DISTRICT COURT FOR THE  
WESTERN DISTRICT OF MISSOURI  
WESTERN DIVISION**

**UNITED STATES OF AMERICA**

**-vs-**

**Case No.: 10-03029-02-CR-S-GAF**

**CHARLES MICHAEL HALL**

**USM Number: 03766-036**

Frederick A. Duchardt, Jr., CJA  
Michael W. Walker, CJA

**JUDGMENT IN A CRIMINAL CASE**

The defendant was found guilty on Count 1s on June 2, 2014, of the Superseding Indictment. Accordingly, the court has adjudicated that the defendant is guilty of the following offense(s):

<u>Title &amp; Section</u>	<u>Nature of Offense</u>	<u>Date Offense Concluded</u>	<u>Count Number(s)</u>
18 U.S.C. § 1111	Murder, First Degree	1/26/2010	1s

The defendant is sentenced as provided in the following pages of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

**IT IS ORDERED** that the defendant shall notify the United States attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs and special assessments imposed by this judgment are fully paid. If ordered to pay restitution, the defendant shall notify the court and United States attorney of any material change in the defendant's economic circumstances.

Date of Imposition of Sentence: July 18, 2014

/s/ Gary A. Fenner  
GARY A. FENNER  
UNITED STATES DISTRICT JUDGE

July 18, 2014

**IMPRISONMENT**

It is the judgment of the Court that the defendant is sentenced to **Death** on Count 1s.

The time, place and manner of execution are to be determined by the Attorney General, provided that the time shall not be sooner than 61 days nor later than 90 days after the date of this judgment. If an appeal is taken from the conviction or sentence, execution of the judgment shall be stayed pending further order of this Court upon receipt of the Mandate of the Court of Appeal.

The defendant is remanded to the custody of the United States Marshal.

**RETURN**

I have executed this judgment as follows:

---

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---

Defendant delivered on \_\_\_\_\_ to \_\_\_\_\_

at \_\_\_\_\_, with a certified copy of this judgment.

\_\_\_\_\_  
UNITED STATES MARSHAL

By: \_\_\_\_\_  
Deputy U.S. Marshal

## SUPERVISED RELEASE

Should he be released from imprisonment, the defendant shall be on supervised release for a term of **5 Years**.

The defendant shall report to the probation office in the district to which the defendant is released within 72 hours of release from custody of the Bureau of Prisons.

The defendant shall not commit another federal, state or local crime.

The defendant shall not unlawfully possess a controlled substance. The defendant shall refrain from any unlawful use of a controlled substance. The defendant shall submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter, as determined by the court.

The defendant shall not possess a firearm, destructive device, or any other dangerous weapon.

The defendant shall cooperate in the collection of DNA as directed by the probation officer.

If this judgment imposes a fine or restitution, it is a condition of supervision that the defendant pay in accordance with the Schedule of Payments sheet of this judgment.

The defendant must comply with the standard conditions that have been adopted by this court as well as with any additional conditions on the attached page.

## STANDARD CONDITIONS OF SUPERVISION

1. The defendant shall not leave the judicial district without the permission of the court or probation officer;
2. The defendant shall report to the probation officer in a manner and frequency directed by the court or probation officer;
3. The defendant shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer;
4. The defendant shall support his or her dependents and meet other family responsibilities;
5. The defendant shall work regularly at a lawful occupation, unless excused by the probation officer for schooling, training, or other acceptable reasons;
6. The defendant shall notify the probation officer **at least ten (10) days prior** to any change in residence or employment;
7. The defendant shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute, or administer any controlled substance or any paraphernalia related to any controlled substances, except as prescribed by a physician;
8. The defendant shall not frequent places where controlled substances are illegally sold, used, distributed, or administered;
9. The defendant shall not associate with any persons engaged in criminal activity and shall not associate with any person convicted of a felony, unless granted permission to do so by the probation officer;
10. The defendant shall permit a probation officer to visit him or her at any time at home or elsewhere and shall permit confiscation of any contraband observed in plain view by the probation officer;

11. The defendant shall notify the probation officer within **seventy-two (72) hours** of being arrested or questioned by a law enforcement officer;
12. The defendant shall not enter into any agreement to act as an informer or a special agent of a law enforcement agency without the permission of the court;
13. As directed by the probation officer, the defendant shall notify third parties of risks that may be occasioned by the defendant's criminal record or personal history or characteristics, and shall permit the probation officer to make such notifications and to confirm the defendant's compliance with such notification requirement.

### **SPECIAL CONDITION OF SUPERVISED RELEASE**

Should he be released from imprisonment, the defendant shall also comply with the following special condition of supervised release:

1. The defendant shall submit his person and any property, house, residence, office, vehicle, papers, computer, other electronic communication or data storage devices or media and effects to a search, conducted by a U.S. Probation Officer at a reasonable time and in a reasonable manner, based upon reasonable suspicion of contraband or evidence of a violation of a condition of release; failure to submit to a search may be grounds for revocation; the defendant shall warn any other residents that the premises may be subject to searches pursuant to this condition.

### **CRIMINAL MONETARY PENALTIES**

The assessed criminal monetary penalties of \$100 are ordered waived.

<b><u>Total Assessment</u></b>	<b><u>Total Fine</u></b>	<b><u>Total Restitution</u></b>
<b>\$100.00</b> <b>(FEES ORDERED WAIVED)</b>	<b>\$</b>	<b>\$</b>

The defendant shall pay interest on any fine or restitution of more than \$2,500, unless the fine or restitution is paid in full before the fifteenth day after the date of the judgment, pursuant to 18 U.S.C. § 3612(f). All of the payment options on the Schedule of Payments may be subject to penalties for delinquency and default, pursuant to 18 U.S.C. § 3612(g).

Note: Findings for the total amount of losses are required under Chapters 109A, 110, 110A, and 113A of Title 18, United States Code, for offenses committed on or after September 13, 1994 but before April 23, 1996.

# **APPENDIX 7**



**APPLICABLE CONSTITUTIONAL AND STATUTORY PROVISIONS**

**Constitutional Provisions**

Amendment V to the Constitution of the United States is as follows:

No person shall be held to answer for a capital, or otherwise infamous crime, unless presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb, nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use without just compensation.

Amendment VI to the Constitution of the United States is as follows:

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defence.

Amendment VIII to the Constitution of the United States is as follows:

Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

**Statutes**

18 U.S.C. 3591(a) is as follows:

A defendant who has been found guilty of--

1. an offense described in section 794 or section 2381; or
2. any other offense for which a sentence of death is provided, if the defendant, as determined beyond a reasonable doubt at the hearing under section 3593—
  - a. intentionally killed the victim;
  - b. intentionally inflicted serious bodily injury that resulted in the death of the victim;
  - c. intentionally participated in an act, contemplating that the life of a person would be taken or intending that lethal force would be used in connection with a person, other than one of the participants in the offense, and the victim died as a direct result of the act; or

- d. intentionally and specifically engaged in an act of violence, knowing that the act created a grave risk of death to a person, other than one of the participants in the offense, such that participation in the act constituted a reckless disregard for human life and the victim died as a direct result of the act

shall be sentenced to death if, after consideration of the factors set forth in section 3592 in the course of a hearing held pursuant to section 3593, it is determined that imposition of a sentence of death is justified, except that no person may be sentenced to death who was less than 18 years of age at the time of the offense.

18 U.S.C.A. § 3593 (c), (d) and (e) are as follows:

**(c) Proof of mitigating and aggravating factors.**--Notwithstanding rule 32 of the Federal Rules of Criminal Procedure, when a defendant is found guilty or pleads guilty to an offense under section 3591, no presentence report shall be prepared. At the sentencing hearing, information may be presented as to any matter relevant to the sentence, including any mitigating or aggravating factor permitted or required to be considered under section 3592. Information presented may include the trial transcript and exhibits if the hearing is held before a jury or judge not present during the trial, or at the trial judge's discretion. The defendant may present any information relevant to a mitigating factor. The government may present any information relevant to an aggravating factor for which notice has been provided under subsection (a). Information is admissible regardless of its admissibility under the rules governing admission of evidence at criminal trials except that information may be excluded if its probative value is outweighed by the danger of creating unfair prejudice, confusing the issues, or misleading the jury. For the purposes of the preceding sentence, the fact that a victim, as defined in section 3510, attended or observed the trial shall not be construed to pose a danger of creating unfair prejudice, confusing the issues, or misleading the jury. The government and the defendant shall be permitted to rebut any information received at the hearing, and shall be given fair opportunity to present argument as to the adequacy of the information to establish the existence of any aggravating or mitigating factor, and as to the appropriateness in the case of imposing a sentence of death. The government shall open the argument. The defendant shall be permitted to reply. The government shall then be permitted to reply in rebuttal. The burden of establishing the existence of any aggravating factor is on the government, and is not satisfied unless the existence of such a factor is established beyond a reasonable doubt. The burden of establishing the existence of any mitigating factor is on the defendant, and is not satisfied unless the existence of such a factor is established by a preponderance of the information.

**(d) Return of special findings.**--The jury, or if there is no jury, the court, shall consider all the information received during the hearing. It shall return special findings identifying any aggravating factor or factors set forth in section 3592 found to exist and any other aggravating factor for which notice has been provided under subsection (a) found to exist. A finding with respect to a

mitigating factor may be made by 1 or more members of the jury, and any member of the jury who finds the existence of a mitigating factor may consider such factor established for purposes of this section regardless of the number of jurors who concur that the factor has been established. A finding with respect to any aggravating factor must be unanimous. If no aggravating factor set forth in section 3592 is found to exist, the court shall impose a sentence other than death authorized by law.

**(e) Return of a finding concerning a sentence of death.**--If, in the case of--

1. an offense described in section 3591(a)(1), an aggravating factor required to be considered under section 3592(b) is found to exist;
2. an offense described in section 3591(a)(2), an aggravating factor required to be considered under section 3592(c) is found to exist; or
3. an offense described in section 3591(b), an aggravating factor required to be considered under section 3592(d) is found to exist,

the jury, or if there is no jury, the court, shall consider whether all the aggravating factor or factors found to exist sufficiently outweigh all the mitigating factor or factors found to exist to justify a sentence of death, or, in the absence of a mitigating factor, whether the aggravating factor or factors alone are sufficient to justify a sentence of death. Based upon this consideration, the jury by unanimous vote, or if there is no jury, the court, shall recommend whether the defendant should be sentenced to death, to life imprisonment without possibility of release or some other lesser sentence.

# **APPENDIX 8**

**FDPA CASES TRIED TO VERDICT**  
**TOTAL-197**

**A. LIFE SENTENCED DEFENDANTS**  
**Total-126**

**1. Jury instructed they were never required to sentence to death**  
**Total-84-8<sup>th</sup> Circuit Cases-1**

**a. Cases tried before 2010-Total-67-8<sup>th</sup> Circuit cases-1**

Nguyen, Phouc H. D. KS CR No. 94-10129-01, Doc. 206, p. 8, 20

Nichols, Terry Lynn D. CO No. 96-CR-68 (See McVeigh)

Gonzales-Lauzan, Jr., Luis S.D. FL No. 02-CR-20572, Doc. 233, p. 24

Hargrove, Demetrius R. D. KS # 2:03-CR-20192-Hall case Doc. 212, Appendix I

Bass, John E.D. MI CR No. 97-80235, Tr. 1890, 2085

Al-'Owhali, Mohamed Rashed Daoud S.D. NY No. 98-CR-1023, Tr. 7256

Mohamed, Khalfan Khamis S.D. NY, 98-CR-1023, See Al-'Owhali

Gilbert, Kristin D. MA CR No. 98-30044-MAP, Tr. 10501, 10507, 10509

Edelin, Tommy D. DC CR No. 98-264, Doc. 691, p. 21

Shakir, Jamal M.D. TN CR No. 3:98-00038, Doc. 3989, p. 43, 44

Garrett, Lemond S.D. GA CR No. 4-99-133, Doc. 570, p. 24

Sanders, Marcus S.D. AL CR No. 98-0056-CB, Tr. 1173

Denis, Jose S.D. FL No. 99-00714, Hall case Doc. 212, Appendix JJ

Gray, Kevin D. DC No. 1:00-CR-00157, Doc. 1308, p. 40-41

Moore, Rodney D. DC No. 1:00-CR-00157, Doc. 1308, p. 40-41

Johnson, Coleman W.D. VA 3:00-CR-00026, Hall Case Doc. 212, Appendix GG

Quinones, Alan S.D. NY No. 00-CR-0761, Tr. 3993

Rodriguez, Diego S.D. NY No. 00-CR-0761, Tr. 3993

Ealy, Samuel Stephen W.D. VA No. 00-CR-104, Chamber's copy of instructions, p. 15, 47

Mosher, Ellis E.D. TX No. 1:06-CR-00101-Hall Case Doc. 212, Appendix CC

Britt, L.J. N.D. TX No. 00-CR-260, Hall Case Doc. 212, Appendix II

Lentz, Jay E.D. VA No. 01-CR-150, Hall Case Doc. 212, Appendix Q

Ostrander, Michael Paul W.D. MI No. 01-CR-00218, Doc. 374, p. 353

Ostrander, Robert Norman W.D. MI No. 01-CR-00218, Doc. 460, p. 498-499

Davis, Johnny E.D. LA No. 2:01-CR-282, Doc. 510, p. 17

Haynes, Aaron W.D. TN No. 01-CR-20247, 265 F.Supp.2d 914, 915-923

Aguilar, Martin E.D. NY No. 01-CR-1367, Chambers Copy, p. 2

Caraballo, Gilberto E.D. NY No. 01-CR-1367, SEE AGUILAR

Krylov, Petro C.D. CA No. 02-220, Hall Case Doc. 212, APPENDIX V

Mills, Barry Byron C.D. CA No. 02-00938-GHK, Doc. 3857, p. 47

Bingham, Tyler Davis C.D. CA No. 02-00938-GHK, Doc. 3857, p. 47

Bridgewater, Wayne C.D. CA No. 02-00938-GHK, Hall Case Doc. 212, Appendix W

Houston, Henry Michael C.D. CA No. 02-00938-GHK, Hall Case, Doc. 212, Appendix W

Breeden, Shawn W.D. VA No. 03-CR-13, sentencing instructions transcript, p. 6, 11-12

Carpenter, Michael Anthony W.D. VA No. 03-CR-13, SEE BREEDEN

Simmons, Brent W.D. VA No. 5:04-CR-30014-SGW, Hall Case, Appendix HH

Williams, Michael S.D. NY No. 00-CR-1008, Tr. 3969, 3710

Williams, Elijah Bobby S.D. NY No. 00-CR-1008, SEE MICHAEL WILLIAMS

James, Richard E.D. NY No. 02-778, Tr. 951

Mallay, Ronald E.D. NY No. 02-778, SEE JAMES

McGriff, Kenneth E.D. NY No. 04-966, Hall Case Doc. 212, Appendix U

Pepin-Taveras, Humberto E.D. NY CR No. 04-0156, Doc. 593, p. 17

Wilk, Kenneth S.D. FL No. 04-CR-60216, Hall Case Doc. 212, Appendix KK

Barnes, Khalid S.D. NY No. 7:04-CR-00186, Hall Case Doc. 212, Appendix EE

Natson, Michael Antonio M.D. GA No. 4:05-CR-00021, Doc. 199, p. 20, 22, 169

Henderson, Thomas S.D. OH No. 2:06-CR-00039, Doc. 160-18, p.157, 167, 169

Mayhew, John Richard S.D. OH No. 03-165, Hall Case Doc. 212, Appendix N

Baskerville, William D.N.J. No. 03-836, Hall Case, Doc. 212, Appendix Z-1

Moonda, Donna N.D.OH No. 1:06-CR-00395, Hall Case Doc. 212, Appendix Y

Julian, Jermaine Michael M.D. FL No. 8:07-CR-9-JDW, Doc. 245, p. 3, 15

Perez, Wilfredo D. CT No. 02-CR-7, Doc. 1078, p. 32

Gonzalez, Fausto D. CT No. 02-CR-7, Doc. 1312, p. 27-28

Moses, Keon D. MD No. 02-CR-410, Doc. 486, p. 64

Taylor, Michael Lafayette D. MD No. 02-CR-410, SEE MOSES

Dinkins, James D. MD No. 1:06-CR-00309-JFM, Chambers Copy, p. 40

Gilbert, Melvin D. MD No. 1:06-CR-00309-JFM, SEE DINKINS

Byers, Patrick Albert, Jr. D. MD No. 08-056, Doc. 334, p. 35

Williams, Jamain E.D. PA No. 01-CR-512, Hall Case Doc. 212, Appendix R

Cooper, Andre E.D. PA No. 01-CR-512, Hall Case Doc. 212, Appendix R

Villegas, Hernardo Medina D. PR No. 3:02-CR-117, Hall Case Doc. 212,  
Appendix K

Roman, Lorenzo Catalan D. PR No. 3:02-CR-117, Hall Case Doc. 212, Appendix J

Ayala-Lopez, Carlos L. D. PR No. 03-CR-55, Hall Case Doc. 212, Appendix L

Tatum, Kenneth A. E.D. TX No. 2:99-CR-164, Doc. 542, p. 22

Smith, Daymon E.D. TX No. 2:99-CR-164, Doc. 389, p. 34

Wills, Christopher Andaryl E.D. VA No. 99-00396, sentencing transcript, p. 35, 37

Matthews, Lavin N.D.N.Y Case # 3:00-CR-269, sentencing charge transcript, p. 30

Tucker, Tebiah N.D.N.Y. Case # 3:00-CR-269 (SEE MATTHEWS)

**Street, John P. WDMO 4:04-CR-00298GAF, Doc. 586, p. 3, 19**

b. Cases tried 2010 and after-Total-16

Phillips, Maurice E.D. PA No. 2:07-CR-00549-JCJ, Doc. 696, p. 133

Argueta, Antonio D. MD No. 8:05-CR-00393-DKC, Doc. 1567, p. 18

Duong, Anh The N.D. CA No. 5:01-CR-20154 JF, Doc. 1490, p. 15



Lecco, George S.D. WV CR No. 2:05-00107, Tr. 1385

O'Reilly, Timothy E.D. MI No. 05-80025, Doc. 746, p. 84

Richardson, Brian N.D. GA No. 1:08CR139, sentencing transcript, p. 39

Burgos-Montes, Edison D. PR No. 06-009 JAG, Doc. 862, p. 33, 38

Northington, Steven E.D. PA No. 2:07-CR-00550-RBS, 1501, p. 88

Candelario-Santana, Alexis D. PR No. 3:09-CR-00427-JAF, Doc. 1046, p. 20

Casey, Lashaun D. PR No. 3:05-CR-0277-JAG, Doc. 1074, p. 30)

Jimenez-Bencevi, Xavier D. PR No. 3:12-CR-00221-JAF, Doc. 801, p. 88

Salad, Ahmed Muse E.D. VA No. 2:11CR34RBS, Doc. 934, p. 8)

Beyle, Abukar Osman E.D. VA No. 2:11CR34, SEE SALAD

Abrar, Shani Nurani Shiekh E.D. VA No. 2:11CR34, SEE SALAD

Briseno, Juan N.D. IN No. 2:11-CR-077, Doc. 2784-1, p. 3

Con-Ui, Jesse M.D.Pa., 3:13-CR-00123, sentencing transcript, p. 165

**2. Clerks still searching for records**  
**Reported by attorneys that "never" instruction used**  
**Total-6**

Haynes, Willis D. MD CR No. 98-0520

Finley, James W.D.N.C. Case # 98-CR-243

Minerd, Joseph W.D. PA CR No. 99-215

O'Driscoll, Michael M.D.PA Case # 4:01-CR-277

Dixon, Emile E.D. NY No. 01-CR-389

Hans, Eric Preston D. SC No. 6:05-CR-01227-HMH

**3. “May” without use of “never”**  
**Total-5**

Dhinsa, Gurmeet Singh E.D. NY CR No. 97-672, Chambers copy, p. 16

Galan, Thomas A. N.D. OH No. 3:06-CR-00730-JGC, Doc. 160, p. 23

Bobbitt, LaFawn E.D. VA No. 3:97-CR-169, Doc. 392, p. 124

Jones, Rashi E.D. VA No. 97-CR-129, Doc. 392, p. 124

Jones, Anthony A. MD CR No. 1:96cr458WMN, Doc. 879, p. 34

**4. “Must” and “never”**  
**Total-2**

Grande, Oscar E.D. VA No. 1:04-CR-283, Chambers Copy, Instruction # 3, p. 7,  
Instruction #12, p. 37

Cisneros, Ismael E.D. VA No. 04-CR-283, Chambers Copy, Instruction # 3, p. 7,  
Instruction #12, p. 37

**5. “Must” or “Shall” or “Are to”**  
**Total-23-8<sup>th</sup> Circuit Cases-13**

1. Cases tried before 2010-Total-21-8<sup>th</sup> Circuit Cases-12

**Ingle, Trinity Edward W.D. AR No. 6:96-CR-60023 (See United States v. Paul)**

**Kehoe, Chevy E.D. AR No. CR-97-243, Doc. 812, p. 21**

**Tello, Plutarco W.D. MO No. 98- 00311-CR-W-2, Doc. 773**

**Hinestroza, Edwin R. W.D. MO No. 98-00311-CR-W- Doc. 1230, p. 22**

**Lightfoot, Xavier Lamar W.D. MO No. 00-CR-395, Doc. 786, p. 21**

**Haskell, Carl W.D. MO No. 00-CR-395, Doc. 473, p. 28-29**

**Cannon, Amesheo D. E.D. MO No. 1:01CR00073RWS, Doc. 575, Instruction 60**

**Hyles, Tyrese E.D. MO No. 01-CR-73, Doc. 575, Instruction 60**

**Smith, Thomas W.D. MO No. 3:02-CR-05025, Doc. 685, p. 39**

**Clay, Vertis E.D. AR No. 4:04-CR-00035, Chambers Copy, p. 14**

**Eye, Gary W.D. MO No. 4:05-CR-00344-ODS, Doc. 491, p. 26**

**Sandstrom, Steven W.D. MO No. 4:05-CR-00344-ODS, Doc. 498, p. 27**

Martinez, Mariano C.D. CA CR No. 99-83, Doc. 2130, p. 3

Lyon, Billy Joe W.D. KY No. 4:99-CR-11, Doc. 473, p. 20

Taylor, Styles N.D. IN CR No. 2:01-CR-073, Doc. 914, p. 31

Frye, James Ernest S.D. MS No. 01-CR-8, Doc. 354-9, p. 82-83, Doc. 354-12, p. 31

Cooper, Billy D. S.D. MS No. 01-CR-8, Doc. 212-7, p. 27-28

Williams, Tyrone S.D. TX No. 03-CR-221, Chambers copy, p. 9

McTier, James E.D. NY CR No. 05-40, Doc. 380, p. 40

Solomon, Jelani W.D. PA No. 2:05-CR-00385-TFM, Doc. 861, p. 16, Doc. 865, p. 96

Cyrus, Dennis, Jr. N.D. CA No. 05-00324-MMC, Doc. 1526, p. 19

b. Cases tried 2010 and after-Total 2-8<sup>th</sup> Circuit Cases-1

**Jones, Ulysses, W.D.MO 6:10-CR-03090-DGK-USMCFP Doc. 434 , p. 16**

Basciano, Vincent E.D. NY No. 05-CR-0060, Doc. 1260, p. 19

**6. Tenth Circuit Model Instructions**  
**Total-6**

**1. Cases tried before 2010-Total- 3**

Sablan, William D. CO No. 00-CR-531, Doc. 2945, p. 13-14

Sablan, Rudy D. CO No. 00-CR-531, Doc. 2959-6, p. 6

Green, Steven W.D. KY No. 5:06-CR-00019-TBR, Doc. 256, p. 21, 23

**b. Cases tried 2010 and after-Total-3**

Lujan, Larry D. NM No. 05-924, Doc. 1377, p. 4, 22

Williams, Naeem D. HI No. 1:06-CR-00079-DAE, Doc. 2784-1, p. 30

McCluskey, John Charles D. NM No. 1:10-CR-02734, Doc. 1515, p. 105, 140

**B. DEATH SENTENCED DEFENDANTS**  
**TOTAL-71**

**1. FDPA Cases-jury instructed they were never required to sentence to death**  
**Total-36-8<sup>th</sup> Circuit Cases-2**

**1. Cases tried before 2010-Total 28-8<sup>th</sup> Circuit Cases-2**

**Honken, Dustin N.D. IA No.3:01-CR-03047-MWB, Doc. 524, p. 11-12**

**Johnson, Angela N.D.IA. No.3:01-CR-03047-MWB, Doc. 524, p. 11-12**

Bountaem Chanthadara D.KS. 6:94-CR-10128-JTM, Doc. 457, p. 8, 24

Davis, Len E.D. LA CR No. 94-381, Doc. 510, p. 16-17

Hardy E.D.LA. 94-381, Doc. 529, p. 21-22

Hall, Orlando C. N.D. TX No. 4:94-CR-121, Doc. 458, p. 12

Webster, Bruce N.D. TX No. 4:94-CR-121, Doc. 744, p. 18)

Battle, Anthony N.D. GA No. 1:95-CR-528, Doc. 259, p. 11, Doc. 263, p. 19

Jones, Louis N.D.TX. 6:95-CR-0015, Doc. 141, p. 14

McVeigh, Timothy D.CO. 1:96-CR-00068, Chambers Copy, p. 12

Hammer, David M.D.PA. 4:96-CR-239, Doc. 551, p. 26

Higgs, Dustin D. MD 98- 0520, Doc. 395, p. 44

Gabrion, Marvin W.D. MI No. 1:99-CR-76, Hall Case Doc. 212, APPENDIX DD,  
p. 28

Jackson, Richard W.D. NC No. 00-CR-74, Tr. 1286, 1512, 1515

Robinson, Julias Omar N.D. TX No. 00-CR-260, Doc. 1659, p. 11, 13, 30

Fell, Donald D.VT. 2:01-CR00012, Doc. 197, p. 23, 25

Mikos, Ronald N.D. IL No. 02-CR-137, Doc. 380, p. 23-24

Fulks, Chadrick D. SC No. 02-CR-992, Hall Case Doc. 212, Appendix G, p. 3,  
250, 281-282

LeCroy, William Emmett N.D. GA No. 02-CR-38, Tr. 2733, 2747

Taylor, Rejon E.D. TN No. 1:04-CR-00160, Hall Case, Appendix BB, p. 21

Barrett, Kenneth Eugene E.D. OK CR No. 04-100, Hall Case, Appendix P,  
Instruction 20

Brown, Meier Jason S.D. GA CR No. 4:03-01, 441 F.3d 1330, 1355-56

Bourgeois, Alfred S.D. TX CR No. 02-216, Doc. 294, p. 14

Hager, Thomas Morocco E.D. VA No. 1:05-CR-00264-TSE, Sentencing

Transcript, p. 165, 174

Ebron, Joseph E.D. TX 09-40544, 10-40108, Doc. 184, p. 11-12

Duncan, Joseph D. ID CR No. 07-23, Hall Case, Doc. 212, Appendix FF, p. 19

Runyon, David E.D. VA CR No. 4:08-CR-16, Tr. 2673, 2684

b. Cases tried 2010 and after-Total 8

Snarr, Mark E.D. TX 1:09-CR-00015, Doc. 411, p. 26, 47-48

Garcia, Edgar B. E.D. TX 1:09-CR-00015 (SEE SNARR)

Sanders, Thomas Steven W.D. LA No. 1:10-CR-00351, Doc. 292, p. 44-45

Torrez, Jorge Avila E.D. VA No. 1:11-CR-115, DOC. 450, P. 36, 41

Aquart, Azibo D. CT 3:06CR160, Doc. 930, p. 35-36

Savage, Kaboni E.D. PA No. 2:07-CR-00550-RBS, Sentencing Tr. 7, 49

Fackrell, Ricky EDTX # 1:16-CR-00026MAC, Doc. 667, p. 14-15

Cramer, Christopher EDTX # 1:16-CR-00026MAC, Doc. 665, p. 14-15

**2. “May” without use of “never”**

**Total-2**

Mikhel, Iouri C.D. CA No. 02-220, Doc. 1540, p. 41

Kadamovas, Jurijus C.D. CA No. 02-220, (SEE MIKHEL)

**3. “Must” and “never”**

**Total-9-8<sup>th</sup> Circuit Cases-1**

**1. Cases tried before 2010-Total-6-Eighth Circuit Cases- 1**

**Paul, Jeffrey Williams W.D. AR No. 6:96-CR-60022, Doc. 430-5, p. 1129, 217  
F.3d 989, 999**

Barnette, Aquila Marcivicci W.D. NC No. 3:97-CR-23, Tr. 1197

Vialva, Christopher Andre W.D. TX No. 99-CR-070, jury charge transcript, p. 23-24

Bernard, Brandon W.D. TX No. 99-CR-070, jury charge transcript, p. 23-24

Fields, Sherman Lamont W.D. TX No. 01-CR-164, Hall Case, Doc. 212, APPENDIX H, p. 13

Johnson, John EDLA 2:04-CR-00017, Doc. 1239, p. 3, 13, 14

b. Cases tried 2010 and after-Total-3

Wilson, Ronell, EDNY 04-CR-1016, Doc. 1416-1, p. 20, 22

Tsarnaev, Dzhokhar D. MA No. 1:13-CR-10200-GAO, (Doc. 1418, p. 56-58

Sampson, Gary D. MA No. 1:01-CR-10384-LTS, Doc. 2820, p. 47, 50-51

**4. “Must” or “Shall” or “Are to”**  
**Total-16-8<sup>th</sup> Circuit Cases-12**

1. Cases tried before 2010-Total-14-8<sup>th</sup> Circuit cases-10

**Allen, Billie Jerome E.D. MO No. 4:97-CR-0141 ERW, 247 F.3d 741, 780**

**Holder, Norris G. E.D. MO CR No. 4:97-0141-ERW, 247 F.3d 741, 780**

**Lee, Daniel Louis E.D. AR No. 97-243, Doc. 815, p. 21**

**Ortiz, Arboleda W.D. MO No. 98- 00311, 315 F.3d 873, 900-901**

**Sinisterra, German WDMO No. 98-311, 315 F.3d 873, 900-901**

**Nelson, Keith D. W.D. MO No. 99-CR-303-1, 347 F.3d 701, 712**

**Purkey, Wesley Ira W.D. MO No. 01-CR-308, 428 F.3d 738, 762-763**

**Bolden, Robert, Sr. E.D. MO No. 4:02-CR 0557, Doc. 435, p. 13**

**Montgomery, Lisa W.D. MO No. 5:05-CR-06002-GAF, 635 F.3d 1074, 1098-1099**

**Rodriguez, Alfonso, Jr. D. ND No. 04-CR-55, Doc. 616, Instruction 4**

Agofsky, Shannon Wayne E.D. TX 1:03-CR-173, Doc. 163, p. 14

Corley, Odell N.D. IN No. 02-CR-116-2017, Doc. 721, p. 32

Lawrence, Daryl S.D. OH No. 2:05-CR-00011-GLF, Chambers Copy, p. 37

Jackson, David Lee E.D. TX 1:06-CR-00051-MAC-ESH, Doc. 326, p. 20

b. Cases tried 2010 and after-Total-2-8<sup>th</sup> Circuit Cases-2

**Coonce, Wesley Paul Jr. W.D. MO 10-03029-CR-S-GAF, Doc. 807**

**Hall, Charles Michael W.D. MO 10-03029-CR-S-GAF, Doc. 807**

**5. Tenth Circuit Model Instructions**

**Total-4**

Fields, Edward E.D. OK No. 6:03-CR-00073-2017, Doc. 227, p. 28-29

Caro, Carlos David W.D. VA No. 06-CR-00001, Chambers Copy, p. 13-14

Sanchez, Ricardo S.D. FL 06-80171, Doc. 848, p. 79-80

Troya, Danny S.D. FL 06-80171 (SEE SANCHEZ)

**6. Fourth Circuit Approach**

**Total-3**

1. Cases tried before 2010-Total-1

Lighty, Kenneth Jamal D. MD No. 8:03-CR-00457-PJM, Sentencing Transcript, p. 36-38



b. Cases tried 2010 and after-Total-2

Umana, Alejandro Enrique W.D. NC No. 3:08-CR-134-RJC, Doc. 1261, p. 117

Roof, Dylan, D.S.C. No. 15-472, Doc. 948, p. 88-89

**7. Clerks still searching for instructions, unsure about language used**  
**Total-1**

Mitchell, Lezmond D. AZ No. 01-CR-1062

# **APPENDIX 9**

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF MISSOURI  
SOUTHERN DIVISION**

<b>UNITED STATES OF AMERICA,</b>	)	
	)	
<b>Plaintiff,</b>	)	
	)	
<b>vs.</b>	)	<b>Case No. 10-03029-CR-S-GAF</b>
	)	
<b>WESLEY PAUL COONCE, JR.</b>	)	
<b>and CHARLES MICHAEL HALL,</b>	)	
	)	
<b>Defendants.</b>	)	

**PENALTY PHASE JURY INSTRUCTIONS**

**INSTRUCTION NO. 1**

Members of the jury, you have unanimously found Defendant Wesley Paul Coonce, Jr. guilty of the offense of murder in the first degree within the special maritime and territorial jurisdiction of the United States, as charged in Count I of the Indictment, and of the offense of murder by a federal prisoner, as charged in Count II of the Indictment. You have also unanimously found Defendant Charles Michael Hall guilty of the offense of murder in the first degree within the special maritime and territorial jurisdiction of the United States, as charged in Count I of the Indictment. You must now consider whether to impose a sentence of death or a sentence of life imprisonment without the possibility of release for commission of the crime or crimes for which each Defendant was found guilty.

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

Before you may consider whether to impose a sentence of death or life imprisonment without the possibility of release as to Defendant Coonce, you must first determine whether each of the following three (3) propositions has been proved unanimously and beyond a reasonable doubt for each count as to Defendant Coonce:

*First*, you must determine whether or not the Government has proved unanimously and beyond a reasonable doubt that Defendant Coonce was at least eighteen (18) years of age at the time of the offense;

*Second*, you must determine whether or not the Government has proved unanimously and beyond a reasonable doubt that Defendant Coonce acted with one (1) of the following four (4) mental states; that Defendant Coonce:

- A. intentionally killed Victor Castro-Rodriguez;
- B. intentionally inflicted serious bodily injury that resulted in the death of Victor Castro-Rodriguez;
- C. 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 (1) of the participants in the offense, and Victor Castro-Rodriguez died as a direct result of the act; or
- D. 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 (1) of the participants in the offense, such that participation in the act constituted a reckless disregard for human life and Victor Castro-Rodriguez died as a direct result of the act; and

*Third*, you must determine whether the Government has proved unanimously and beyond a reasonable doubt the existence of at least one (1) statutory aggravating factor as to Defendant Coonce. I will define the term “aggravating factors” for you shortly.

Before you may consider whether to impose a sentence of death or life imprisonment without the possibility of release as to Defendant Hall, you must first determine whether each of the following three (3) propositions has been proved unanimously and beyond a reasonable doubt as to Defendant Hall:

*First*, you must determine whether or not the Government has proved unanimously and beyond a reasonable doubt that Defendant Hall was at least eighteen (18) years of age at the time of the offense;

*Second*, you must determine whether or not the Government has proved unanimously and beyond a reasonable doubt that Defendant Hall acted with one (1) of the following four (4) mental states; that Defendant Hall:

- A. intentionally killed Victor Castro-Rodriguez;
- B. intentionally inflicted serious bodily injury that resulted in the death of Victor Castro-Rodriguez;
- C. 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 (1) of the participants in the offense, and Victor Castro-Rodriguez died as a direct result of the act; or
- D. 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 (1) of the participants in the offense, such that participation in the act constituted a reckless disregard for human life and Victor Castro-Rodriguez died as a direct result of the act; and

*Third*, you must determine whether or not the Government has proved unanimously and beyond a reasonable doubt the existence of at least one (1) statutory aggravating factor as to Defendant Hall. I will define the term “aggravating factors” for you shortly.

If, after fair and impartial consideration of all the evidence in this case for each Defendant for the crime for which he is charged, any one (1) of you does not determine that the Government has proved those three (3) things beyond a reasonable doubt, your deliberations will be over. If you do unanimously determine that the Government has proved those three (3) things beyond a reasonable doubt for any Defendant for each count for which he is charged, 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 for that Defendant. Next, you will determine whether any of you find that any 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 (1) 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 for that Defendant for each count for which he is charged, the law provides that that Defendant must be sentenced to death.

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 (2) 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 a Defendant.

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 that 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, or any other relevant fact or circumstance that might indicate that a 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 either life imprisonment without the possibility of release or the death penalty, you must first determine whether the Government proved at least one (1) of these aggravating factors specifically listed in the death penalty statute, and your finding must be unanimous and beyond a reasonable doubt for each Defendant for each count for which he is charged. In addition to statutory aggravating factors, there may also be aggravating factors not specifically set out in the death penalty statute. These are called “non-statutory aggravating factors.” Again, your finding that any non-statutory aggravating factor exists must be unanimous and beyond a reasonable doubt for each Defendant for each count for which he is charged. You may only consider aggravating factors, whether statutory or non-statutory, which have been specifically alleged by the Government and listed in these instructions. I will instruct you at the close of the evidence in this penalty phase on the statutory and non-statutory aggravating factors that you must unanimously determine the Government has proved beyond a reasonable doubt for each Defendant and for each count.

Each 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 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. Instead, any one (1) of you may find the existence of a mitigating factor, regardless of the number of other jurors who may agree. I will instruct you at the close of the evidence in this penalty phase on the mitigating factors that any one (1) of you may find a Defendant has proved is more likely true than not true for each count for which he is charged.

As to each Defendant for each count for which he is charged, if you have unanimously found that at least one (1) 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. 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. 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; on the contrary, you must consider the weight and value of each factor.

**INSTRUCTION NO. 2**

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.

No Defendant has 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 any Defendant to produce any evidence at all.

However, it is each 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 Defendants.

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

**INSTRUCTION NO. 3**

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.

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.

**INSTRUCTION NO. 4**

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

**INSTRUCTION NO. 5**

The Government and Defendant Wesley Paul Coonce, Jr. have stipulated — that is, they have agreed — that Defendant Coonce was eighteen (18) years of age or older at the time of the offense. You must therefore treat that fact as having been proved.

**INSTRUCTION NO. 6**

Before you may consider whether to impose the death penalty as to Defendant Coonce for each count for which he is charged, you must determine whether the Government has proved unanimously and beyond a reasonable doubt that Defendant Coonce intentionally committed acts resulting in the death of Victor Castro-Rodriguez in one (1) of the manners described below. If you unanimously make that finding as to the murder of Victor Castro-Rodriguez as to Defendant Coonce for each count for which he is charged, you should so indicate on the appropriate page in Section II of the Special Verdict Forms for Defendant Coonce and continue your deliberations. If you do not unanimously make that finding as to the murder of Victor Castro-Rodriguez for any count for which Defendant Coonce is charged, you should so indicate on the appropriate page in Section II of the Special Verdict Form for that count and follow the instructions at the end of Section II on the appropriate page, and no further deliberations will be necessary.

Under Counts I and II as to Defendant Coonce, the Government alleges that:

- 1(A). Defendant Coonce intentionally killed the victim, Victor Castro-Rodriguez, by causing Victor Castro-Rodriguez to be bound and then causing Victor Castro-Rodriguez's neck to be stepped on as Victor Castro-Rodriguez lay on the floor, which resulted in Victor Castro-Rodriguez's death. To establish that Defendant Coonce intentionally killed Victor Castro-Rodriguez, the Government must prove that Defendant Coonce killed Victor Castro-Rodriguez with a conscious desire to cause Victor Castro-Rodriguez's death; or
- 1(B). Defendant Coonce intentionally inflicted serious bodily injury that resulted in the death of the victim, Victor Castro-Rodriguez, by causing Victor Castro-Rodriguez to be bound and then causing Victor Castro-Rodriguez's neck to be stepped on as

Victor Castro-Rodriguez lay on the floor, which resulted in Victor Castro-Rodriguez's death. The Government must prove that Defendant Coonce deliberately caused serious injury to Victor Castro-Rodriguez's body, which in turn caused Victor Castro-Rodriguez's death. "Serious bodily injury" means a significant or considerable amount of injury that 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; or

1(C). Defendant Coonce intentionally participated in an act, contemplating that the life of a person, Victor Castro-Rodriguez, would be taken, or intending that lethal force would be used in connection with a person, other than one (1) of the participants in the offense, and the victim, Victor Castro-Rodriguez, died as a direct result of the act, by causing Victor Castro-Rodriguez to be bound and then causing Victor Castro-Rodriguez's neck to be stepped on as Victor Castro-Rodriguez lay on the floor, which resulted in Victor Castro-Rodriguez's death. The Government must prove that Defendant Coonce deliberately caused Victor Castro-Rodriguez's neck to be stepped on with a conscious desire that a person be killed or that lethal force be employed against a person. The phrase "lethal force" means an act or acts of violence capable of causing death; or

1(D). Defendant Coonce 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 (1) of the participants in the offense, such that participation in the act constituted a reckless disregard for human life and Victor Castro-Rodriguez died as a direct

result of the act, by causing Victor Castro-Rodriguez to be bound and then causing Victor Castro-Rodriguez's neck to be stepped on as Victor Castro-Rodriguez lay on the floor, which resulted in Victor Castro-Rodriguez's death.

You need only find that Defendant Coonce committed one (1) of the alleged acts listed above in order to proceed to the next question for deliberation; however, you must agree unanimously and beyond a reasonable doubt as to that act or acts.

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



**INSTRUCTION NO. 7**

If you find that the Government proved unanimously and beyond a reasonable doubt that Defendant Coonce intentionally committed the murder of Victor Castro-Rodriguez in one (1) of the manners described in Instruction No. 6 for each count for which he is charged, you must then determine whether the Government proved unanimously and beyond a reasonable doubt the existence of any of the following alleged statutory aggravating factors as to Defendant Coonce for each count for which he is charged with respect to the same murder of Victor Castro-Rodriguez. If you find that the Government proved unanimously and beyond a reasonable doubt the existence of any of the following alleged statutory aggravating factors as to Defendant Coonce for each count for which he is charged with respect to the same murder of Victor Castro-Rodriguez, you should so indicate on the appropriate page in Section III of the Special Verdict Forms for Defendant Coonce and continue your deliberations. If you do not find that the Government proved unanimously and beyond a reasonable doubt the existence of any of the following alleged statutory aggravating factors as to Defendant Coonce for any count for which he is charged with respect to the same murder of Victor Castro-Rodriguez, you should so indicate on the appropriate page in Section III of the Special Verdict Form for that count and follow the instructions at the end of Section III, and no further deliberations will be necessary.

The first statutory aggravating factor alleged by the Government as to Defendant Coonce for each count is that the death, or injuries resulting in death, of Victor Castor-Rodriguez occurred during the commission, or attempted commission, of murder by a federal prisoner serving a life term.

The second statutory aggravating factor alleged by the Government for each count is that Defendant Coonce has previously been convicted of two (2) or more state or federal offenses,

each of which was punishable by a term of imprisonment of more than one (1) year, committed on different occasions, and involved the infliction, or attempted infliction, of serious bodily injury upon another person, which are:

1. Kidnaping and Car Jacking, United States District Court for the Northern District of Texas, Case No. 02-058-Y(01), date of conviction September 16, 2002, in which Defendant Coonce kidnaped at knife point L.S., carjacked her vehicle, and then forcibly raped L.S.; and
2. Assault on a Public Servant, 235th District Court of Cooke County, Gainesville, Texas, Case No. 98-024, date of conviction, March 27, 1998, in which Defendant Coonce, while attempting to evade capture by a Texas Juvenile Security Officer, threw a fist-sized rock into the officer's chest, knocking the officer to the ground and causing serious bruising to the officer's chest.

The third statutory aggravating factor alleged by the Government for each count is that Defendant Coonce committed the offense in an especially heinous, cruel, or depraved manner in that it involved torture or serious physical abuse to Victor Castro-Rodriguez because Defendant Coonce caused Victor Castro-Rodriguez to be bound and caused Victor Castro-Rodriguez's neck to be stepped on, which resulted in extensive hemorrhaging to Victor Castro-Rodriguez's chest and caused Victor Castro-Rodriguez's death by asphyxia secondary to tracheal compression. To establish that Defendant Coonce killed Victor Castro-Rodriguez in an especially heinous, cruel, or depraved manner, the Government must prove that the killing involved either torture or serious physical abuse to Victor Castro-Rodriguez. You must not find this factor to exist unless you unanimously agree as to which alternative — torture or serious physical abuse — has been

proved beyond a reasonable doubt. In other words, all twelve (12) of you must agree that it involved torture and was thus heinous, cruel, or depraved; or all twelve (12) of you must agree that it involved serious physical abuse to Victor Castro-Rodriguez 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 Victor Castro-Rodriguez as to set it apart from other killings.

“Cruel” means that Defendant Coonce intended to inflict a high degree of pain by torturing Victor Castro-Rodriguez in addition to killing Victor Castro-Rodriguez.

“Depraved” means that Defendant Coonce relished the killing or showed indifference to the suffering of Victor Castro-Rodriguez, as evidenced by torture or serious physical abuse of Victor Castro-Rodriguez.

“Torture” includes mental as well as physical abuse of Victor Castro-Rodriguez. In either case, Victor Castro-Rodriguez must have been conscious of the abuse at the time it was inflicted, and Defendant Coonce must have specifically intended to inflict severe mental or physical pain or suffering upon Victor Castro-Rodriguez, in addition to the killing of Victor Castro-Rodriguez.

“Serious physical abuse” means a significant or considerable amount of injury or damage to Victor Castro-Rodriguez’s body. Serious physical abuse — unlike torture — may be inflicted either before or after death and does not require that Victor Castro-Rodriguez be conscious of the abuse at the time it was inflicted. However, Defendant Coonce must have specifically intended the abuse in addition to the killing.

Factors to consider in determining whether a killing was especially heinous, cruel, or depraved include: an infliction of gratuitous violence upon Victor Castro-Rodriguez above and beyond that necessary to commit the killing; the needless mutilation of Victor Castro-Rodriguez's body; the senselessness of the killing; and the helplessness of Victor Castro-Rodriguez.

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

The fourth statutory aggravating factor alleged by the Government for each count is that Defendant Coonce committed the offense after substantial planning and premeditation to cause the death of Victor Castro-Rodriguez. "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.

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.

**INSTRUCTION NO. 8**

If you find the Government proved unanimously and beyond a reasonable doubt the existence of one (1) or more statutory aggravating factors as to Defendant Coonce for each count for which he is charged, you must then consider whether the Government has proved the existence of any non-statutory aggravating factors as to Defendant Coonce for each count for which he is charged. As in the case for statutory aggravating factors, you must determine whether the Government has proved unanimously and beyond a reasonable doubt the existence of any of the alleged non-statutory aggravating factors before you may consider such factors in your deliberations on the appropriate punishment for Defendant Coonce in this case.

In addition to any statutory aggravating factors you have found to exist, 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 that you think of on your own.

The first non-statutory aggravating factor alleged by the Government for each count is that Defendant Coonce presents a future danger to others based upon the probability that Defendant Coonce would commit criminal acts of violence that would constitute a continuing threat to the lives and safety of others. Defendant Coonce has engaged in a continuing pattern of violent conduct, has threatened others with violence, has demonstrated lack of remorse, and/or has demonstrated a low rehabilitative potential.

The second non-statutory aggravating factor alleged by the Government for each count is that Defendant Coonce committed conduct suggesting a grave indifference to human life.

The third non-statutory aggravating factor alleged by the Government for each count is that Defendant Coonce has shown a lack of remorse in the death of Victor Castro-Rodriguez.

The fourth non-statutory aggravating factor alleged by the Government for each count is that Defendant Coonce acted to obstruct justice or to retaliate against Victor Castro-Rodriguez because of Victor Castro-Rodriguez's assistance to prison officials and guards in reporting inmate misconduct and in physical altercations between inmates and prison guards.

At this point, you must record your findings regarding whether you find that the Government has proved unanimously and beyond a reasonable doubt the existence of any of these non-statutory aggravating factors as to Defendant Coonce for each count for which he is charged. Please enter that finding on the appropriate page in Section IV of the Special Verdict Forms for each count for Defendant Coonce and continue your deliberations.

**INSTRUCTION NO. 9**

Before you may consider the appropriate punishment for Defendant Coonce, you must consider whether Defendant Coonce has established the existence of any mitigating factors for each count for which he is charged. A mitigating factor is a fact about Defendant Coonce'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 sentence of life imprisonment without the possibility of release is the more appropriate punishment.

Unlike aggravating factors, which you must unanimously find the Government 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 Defendant Coonce's burden to establish any mitigating factors but only by the 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 the preponderance of the evidence if its existence is shown to be more likely so than not so. In other words, the 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 Section V of the Special Verdict Forms relating to mitigating factors as to Defendant Coonce for each count for which he is charged, you are asked to report the total number of jurors that find a particular mitigating factor established by the preponderance of the evidence.

**INSTRUCTION NO. 10**

The mitigating factors that Defendant Coonce asserts he has proved by the preponderance of the evidence for each count are:

1. Defendant Coonce's childhood was marked by chaos, abuse (both physical and sexual), as well as neglect and abandonment.
2. Defendant Coonce's mother, Linda Coonce, was addicted to illegal drugs and alcohol.
3. Linda Coonce used alcohol and illegal drugs while pregnant with Defendant Coonce.
4. Defendant Coonce's Father, Wesley Coonce, Sr., was addicted to drugs.
5. Mental, emotional, and behavioral disorders are widespread on both sides of Defendant Coonce's family.
6. Defendant Coonce's family has a pattern of broken relationships, abandonment, and loss.
7. Defendant Coonce has suffered from mental and emotional impairments from a very young age.
8. When Defendant Coonce was four (4) and six (6) years old, his mother admitted him to the Hawthorn Center, an in-patient psychiatric hospital for children.
9. When Defendant Coonce was a patient at the Hawthorn Center, his mother failed to cooperate with his treatment.
10. Defendant Coonce responded in a positive manner to the structure, treatment, and affection he received in the Hawthorn Center.



11. Defendant Coonce has shown remorse for what he did in connection with the offense.

12. Defendant Coonce has a loving and caring relationship with family members and former foster family members, and those relationships would continue if Defendant Coonce was sentenced to life imprisonment without the possibility of release.

13. Defendant Coonce suffers from Bipolar disorder, which was first diagnosed at age seventeen (17).

14. The chaotic and abusive life that Defendant Coonce endured as a young child increased his risk for emotional and mental disturbances in his adult life.

15. After Defendant Coonce's release from prison in Texas, he tried to get help for his mental illness.

16. When Defendant Coonce was twenty (20) years old, he sustained traumatic brain injuries as a result of a car crash.

17. Inmates like Defendant Coonce, who have committed sexual offenses, know that they are targeted by other inmates and that they are at risk of injury or death.

18. In 2007, while in federal prison, Defendant Coonce was brutally assaulted by another inmate, resulting in an additional traumatic brain injury.

19. As a result of his traumatic brain injuries, Defendant Coonce's full scale IQ dropped from 105 to a present 71.

20. Defendant Coonce's brain damage and low intelligence make him more susceptible to the influence of others.

21. Defendant Coonce played a lesser role in the murder of Victor Castro-Rodriguez than did his co-defendant, Defendant Hall.

22. Other inmates, equally culpable in the crime, will not be punished by death.

23. Defendant Coonce has attempted to kill himself many times, both in and out of prison.

24. For at least twenty-four (24) months, Defendant Coonce has committed no violations of disciplinary rules at any institution where he has been confined.

25. Successful management of Defendant Coonce's medication is a major factor in his good behavior in the last two (2) years.

26. There are other reasons that weigh against the imposition of a sentence of death for Defendant Coonce.

You are permitted to consider *anything* else about the commission of the crime or about Defendant Coonce'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 the preponderance of the evidence, you are free to consider them in your deliberations.

On the appropriate page of Section V of the Special Verdict Forms for Defendant Coonce, you are asked to identify any mitigating factors for Defendant Coonce for each count for which he is charged that any one (1) of you finds has been proved by the preponderance of the evidence.

**INSTRUCTION NO. 11**

Under Counts I and II as to Defendant Coonce, if you find the Government proved unanimously and beyond a reasonable doubt that Defendant Coonce acted with the requisite mental state; and that the Government proved unanimously and beyond a reasonable doubt the existence of at least one (1) statutory aggravating factor as to Defendant Coonce; and after you then determine whether the Government proved unanimously and beyond a reasonable doubt the existence of any non-statutory aggravating factors submitted to you as to Defendant Coonce; and whether Defendant Coonce proved by the preponderance of the evidence the existence of any mitigating factors, you will then engage in a weighing process. In determining the appropriate sentence as to Defendant Coonce for each count for which he is charged, 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 upon 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 (1) mitigating factor outweighs all aggravating factors combined, or that the aggravating factor proved does not, standing alone, justify imposition of a sentence of death. If one (1) or more of you so find, you must return a sentence of life in prison without the possibility of release. 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.

Under Counts I and II as to Defendant Coonce, if you unanimously conclude that the aggravating factor or factors found to exist sufficiently outweigh any mitigating factor or factors that any of you found to exist to justify a sentence of death, and that therefore death is an appropriate sentence in this case for each count, you must record your determination that a sentence of death shall be imposed on the appropriate page in Section VI(A) of the Special Verdict Forms as to Defendant Coonce for each count for which he is charged.

If you determine that death is not justified for any count as to Defendant Coonce, you must complete Section VI(A) on the appropriate page of the Special Verdict Form for that count, and you must then record your determination that Defendant Coonce be sentenced to life imprisonment without the possibility of release on the appropriate page in Section VI(B) of the Special Verdict Form for that count.

You are reminded that you are to make a separate determination for each count for Defendant Coonce, and you should make a separate determination for Defendant Coonce from your decision involving Defendant Hall.

**INSTRUCTION NO. 12**

The Government and Defendant Charles Michael Hall have stipulated — that is, they have agreed — that Defendant Hall was eighteen (18) years of age or older at the time of the offense. You must therefore treat that fact as having been proved.

**INSTRUCTION NO. 13**

Before you may consider whether to impose the death penalty as to Defendant Hall, you must determine whether the Government has proved unanimously and beyond a reasonable doubt that Defendant Hall intentionally committed acts resulting in the death of Victor Castro-Rodriguez in one (1) of the manners described below. If you unanimously make that finding as to the murder of Victor Castro-Rodriguez as to Defendant Hall, you should so indicate on the appropriate page in Section II of the Special Verdict Form for Defendant Hall and continue your deliberations. If you do not unanimously make that finding as to the murder of Victor Castro-Rodriguez as to Defendant Hall, you should so indicate on the appropriate page in Section II of the Special Verdict Form for Defendant Hall and follow the instructions on the appropriate page at the end of Section II, and no further deliberations will be necessary.

Under Count I as to Defendant Hall, the Government alleges that:

- 1(A). Defendant Hall intentionally killed the victim, Victor Castro-Rodriguez, by causing Victor Castro-Rodriguez to be bound and then causing Victor Castro-Rodriguez's neck to be stepped on as Victor Castro-Rodriguez lay on the floor, which resulted in Victor Castro-Rodriguez's death. To establish that Defendant Hall intentionally killed Victor Castro-Rodriguez, the Government must prove that Defendant Hall killed Victor Castro-Rodriguez with a conscious desire to cause Victor Castro-Rodriguez's death; or
- 1(B). Defendant Hall intentionally inflicted serious bodily injury that resulted in the death of the victim, Victor Castro-Rodriguez, by causing Victor Castro-Rodriguez to be bound and then causing Victor Castro-Rodriguez's neck to be stepped on as Victor Castro-Rodriguez lay on the floor, which resulted in Victor Castro-

Rodriguez's death. The Government must prove that Defendant Hall deliberately caused serious injury to Victor Castro-Rodriguez's body, which in turn caused Victor Castro-Rodriguez's death. "Serious bodily injury" means a significant or considerable amount of injury that 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; or

1(C). Defendant Hall intentionally participated in an act, contemplating that the life of a person, Victor Castro-Rodriguez, would be taken, or intending that lethal force would be used in connection with a person, other than one (1) of the participants in the offense, and the victim, Victor Castro-Rodriguez, died as a direct result of the act, by causing Victor Castro-Rodriguez to be bound and then causing Victor Castro-Rodriguez's neck to be stepped on as Victor Castro-Rodriguez lay on the floor, which resulted in Victor Castro-Rodriguez's death. The Government must prove that Defendant Hall deliberately caused Victor Castro-Rodriguez's neck to be stepped on with a conscious desire that a person be killed or that lethal force be employed against a person. The phrase "lethal force" means an act or acts of violence capable of causing death; or

1(D). Defendant Hall 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 (1) of the participants in the offense, such that participation in the act constituted a reckless disregard for human life and Victor Castro-Rodriguez died as a direct result of the act, by causing Victor Castro-Rodriguez to be bound and then

causing Victor Castro-Rodriguez's neck to be stepped on as Victor Castro-Rodriguez lay on the floor, which resulted in Victor Castro-Rodriguez's death.

You need only find that Defendant Hall committed one (1) of the alleged acts listed above in order to proceed to the next question for deliberation; however, you must agree unanimously beyond a reasonable doubt as to that act or acts.

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



**INSTRUCTION NO. 14**

If you find that the Government proved unanimously and beyond a reasonable doubt that Defendant Hall intentionally committed the murder of Victor Castro-Rodriguez in one (1) of the manners described in Instruction No. 13, you must then proceed to determine whether the Government proved unanimously and beyond a reasonable doubt the existence of any of the following alleged statutory aggravating factors as to Defendant Hall with respect to the same murder of Victor Castro-Rodriguez. If you find that the Government proved unanimously and beyond a reasonable doubt the existence of any of the following alleged statutory aggravating factors as to Defendant Hall with respect to the same murder of Victor Castro-Rodriguez, you should so indicate on the appropriate page in Section III of the Special Verdict Form for Defendant Hall and continue your deliberations. If you do not find that the Government proved unanimously and beyond a reasonable doubt the existence of any of the following alleged statutory aggravating factors as to Defendant Hall with respect to the same murder of Victor Castro-Rodriguez, you should so indicate on the appropriate page in Section III of the Special Verdict Form for Defendant Hall and follow the instructions on the appropriate page at the end of Section III, and no further deliberations will be necessary.

The first statutory aggravating factor alleged by the Government is that Defendant Hall committed the offense in an especially heinous, cruel, or depraved manner in that it involved torture or serious physical abuse to Victor Castro-Rodriguez because Defendant Hall caused Victor Castro-Rodriguez to be bound and caused Victor Castro-Rodriguez's neck to be stepped on, which resulted in extensive hemorrhaging to Victor Castro-Rodriguez's chest and caused Victor Castro-Rodriguez's death by asphyxia secondary to tracheal compression. To establish that Defendant Hall killed Victor Castro-Rodriguez in an especially heinous, cruel, or depraved

manner, the Government must prove that the killing involved either torture or serious physical abuse to Victor Castro-Rodriguez. You must not find this factor to exist unless you unanimously agree as to which alternative — torture or serious physical abuse — has been proved beyond a reasonable doubt. In other words, all twelve (12) of you must agree that it involved torture and was thus heinous, cruel, or depraved; or all twelve (12) of you must agree that it involved serious physical abuse to Victor Castro-Rodriguez 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 Victor Castro-Rodriguez as to set it apart from other killings.

“Cruel” means that Defendant Hall intended to inflict a high degree of pain by torturing Victor Castro-Rodriguez in addition to killing Victor Castro-Rodriguez.

“Depraved” means that Defendant Hall relished the killing or showed indifference to the suffering of Victor Castro-Rodriguez, as evidenced by torture or serious physical abuse of Victor Castro-Rodriguez.

“Torture” includes mental as well as physical abuse of Victor Castro-Rodriguez. In either case, Victor Castro-Rodriguez must have been conscious of the abuse at the time it was inflicted, and Defendant Hall must have specifically intended to inflict severe mental or physical pain or suffering upon Victor Castro-Rodriguez, in addition to the killing of Victor Castro-Rodriguez.

“Serious physical abuse” means a significant or considerable amount of injury or damage to Victor Castro-Rodriguez’s body. Serious physical abuse — unlike torture — may be inflicted either before or after death and does not require that Victor Castro-Rodriguez be conscious of the

abuse at the time it was inflicted. However, Defendant Hall must have specifically intended the abuse in addition to the killing.

Factors to consider in determining whether a killing was especially heinous, cruel, or depraved include: an infliction of gratuitous violence upon Victor Castro-Rodriguez above and beyond that necessary to commit the killing; the needless mutilation of Victor Castro-Rodriguez's body; the senselessness of the killing; and the helplessness of Victor Castro-Rodriguez.

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

The second statutory aggravating factor alleged by the Government is that Defendant Hall committed the offense after substantial planning and premeditation to cause the death of Victor Castro-Rodriguez. "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.

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.

**INSTRUCTION NO. 15**

If you find the Government proved unanimously and beyond a reasonable doubt the existence of one (1) or more statutory aggravating factors as to Defendant Hall, you must then consider whether the Government has proved the existence of any non-statutory aggravating factors as to Defendant Hall. As in the case for statutory aggravating factors, you must determine whether the Government has proved unanimously and beyond a reasonable doubt the existence of any of the alleged non-statutory aggravating factors before you may consider such factors in your deliberations on the appropriate punishment for Defendant Hall in this case.

In addition to any statutory aggravating factors you have found to exist, 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 that you think of on your own.

The first non-statutory aggravating factor alleged by the Government is that Defendant Hall presents a future danger to others based upon the probability that Defendant Hall would commit criminal acts of violence that would constitute a continuing threat to the lives and safety of others. Defendant Hall has engaged in a continuing pattern of violent conduct, has threatened others with violence, has demonstrated lack of remorse, and/or has demonstrated a low rehabilitative potential.

The second non-statutory aggravating factor alleged by the Government is that Defendant Hall committed conduct suggesting a grave indifference to human life.

The third non-statutory aggravating factor alleged by the Government is that Defendant Hall has shown a lack of remorse in the death of Victor Castro-Rodriguez.

The fourth non-statutory aggravating factor alleged by the Government is that Defendant Hall acted to obstruct justice or to retaliate against Victor Castro-Rodriguez because of Victor Castro-Rodriguez's assistance to prison officials and guards in reporting inmate misconduct and in physical altercations between inmates and prison guards.

At this point, you must record your findings regarding whether you find that the Government has proved unanimously and beyond a reasonable doubt the existence of any of these non-statutory aggravating factors as to Defendant Hall. Please enter that finding on the appropriate page in Section IV of the Special Verdict Form for Defendant Hall and continue your deliberations.

**INSTRUCTION NO. 16**

Before you may consider the appropriate punishment for Defendant Hall, you must consider whether Defendant Hall has established the existence of any mitigating factors. A mitigating factor is a fact about Defendant Hall's life or character, or about the circumstances surrounding the offense that would suggest, in fairness, that a sentence of death is not the most appropriate punishment, or that a sentence of life imprisonment without the possibility of release is the more appropriate punishment.

Unlike aggravating factors, which you must unanimously find the government 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 Defendant Hall's burden to establish any mitigating factors but only by the 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 the preponderance of the evidence if its existence is shown to be more likely so than not so. In other words, the 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 Section V of the Special Verdict Form relating to mitigating factors as to Defendant Hall, you are asked to report the total number of jurors that find a particular mitigating factor established by the preponderance of the evidence.

**INSTRUCTION NO. 17**

The mitigating factors that Defendant Hall asserts he has proved by the preponderance of the evidence are:

1. Defendant Hall has accepted responsibility for what he did in connection with this offense.
2. Defendant Hall has shown remorse for what he did in connection with this offense.
3. Defendant Hall has had no institutional rules or disciplinary violations since January 26, 2010, the date of this offense.
4. Defendant Hall has, for many years, suffered from the mental illness of Bipolar disorder.
5. Defendant Hall has, since 1993, suffered with the serious illness of Crohn's disease.
6. On September 2, 1994, Defendant Hall suffered a significant brain injury due to a motorcycle accident.
7. At the time of this offense, Defendant Hall's capacity to appreciate the wrongfulness of his conduct or to conform his conduct to the requirements of the law was significantly impaired.
8. Defendant Hall committed this offense under severe mental or emotional disturbance.
9. Defendant Hall has a loving and caring relationship with his mother, Dorothy Hall, his father, Charles V. Hall, and his sister, Michelle Bories, and those

relationships would continue if Defendant Hall was sentenced to life imprisonment without the possibility of release.

10. Defendant Hall has demonstrated the ability to help others, such as when he patiently taught his disabled nephew how to crawl.

11. Defendant Hall suffers from low self-esteem, as evidenced by him telling untruths to make himself sound more important to others.

12. Defendant Hall has strong talents in sketch art, poetry, and music.

13. While incarcerated, Defendant Hall has been the victim of serious assaults.

14. Prior to January 26, 2010, the date of the offense, Defendant Hall gave warnings to prison officials about homicidal thoughts he was having, but those warnings were not heeded by prison officials.

15. Bureau of Prisons staff failed to properly monitor Defendant Hall by failing to place him in seclusion, restraints, or twenty-four (24) hour personal observation on January 26, 2010.

16. Dangers in prison, particularly the need to retaliate for conduct by Victor Castro-Rodriguez against Defendant Hall, explain in part why this offense happened.

17. There are other reasons that weigh against the imposition of a sentence of death for Defendant Hall.

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



On the appropriate page in Section V of the Special Verdict Form for Defendant Hall, you are asked to identify any mitigating factors for Defendant Hall that any one (1) of you finds has been proved by the preponderance of the evidence.

**INSTRUCTION NO. 18**

Under Count I as to Defendant Hall, if you find that the Government proved unanimously and beyond a reasonable doubt that Defendant Hall acted with the requisite mental state; and that the Government proved unanimously and beyond a reasonable doubt the existence of at least one (1) statutory aggravating factor as to Defendant Hall; and after you then determine whether the Government proved unanimously and beyond a reasonable doubt the existence of any non-statutory aggravating factors submitted to you as to Defendant Hall; and whether Defendant Hall proved by the preponderance of the evidence the existence of any mitigating factors, you will then engage in a weighing process. In determining the appropriate sentence for Defendant Hall, 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 upon 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 (1) mitigating factor outweighs all aggravating

factors combined, or that the aggravating factors proved do not, standing alone, justify imposition of a sentence of death. If one (1) or more of you so find, you must return a sentence of life in prison without the possibility of release. 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.

Under Count I as to Defendant Hall, if you unanimously conclude that the aggravating factor or factors found to exist sufficiently outweigh any mitigating factor or factors that any of you found to exist to justify a sentence of death, and that therefore death is an appropriate sentence in this case, you must record your determination that a sentence of death shall be imposed on the appropriate page in Section VI(A) of the Special Verdict Form for Defendant Hall.

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

You are reminded that you are to make a separate determination for Defendant Hall from your decision involving Defendant Coonce.

**INSTRUCTION NO. 19**

At the end of your deliberations, if you unanimously determine that Defendant Coonce and Defendant Hall should be sentenced to death or to life imprisonment without the possibility of release, the court is required to impose that sentence.

Under Counts I and II as to Defendant Coonce, and under Count I as to Defendant Hall, if you cannot unanimously agree whether the Defendants should be sentenced to death or life imprisonment without the possibility of release, the court will sentence the Defendants to life imprisonment without the possibility of release. There is no parole in the federal system.

Again, you are reminded that you are to make a separate determination for each Defendant and for each count for which he is charged

**INSTRUCTION NO. 20**

In your consideration of whether the death penalty is justified, you must not consider the race, color, religious beliefs, national origin, or sex of either Defendant or Victor Castro-Rodriguez. 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 Defendant and Victor Castro-Rodriguez.

To emphasize the importance of this consideration, Section VII of each 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.

**INSTRUCTION NO. 21**

You have heard testimony from persons described as experts. Persons who, by knowledge, skill, training, education, or experience, have become expert in some field may state their opinions on matters in that field and may also state the reasons for their opinion.

Expert testimony should be considered just like any other testimony. You may accept or reject it, and give it as much weight as you think it deserves, considering the witness's education and experience, the soundness of the reasons given for the opinion, the acceptability of the methods used, and all the other evidence in the case.

**INSTRUCTION NO. 22**

I have prepared forms entitled “Special Verdict Form” to assist you during your deliberations as to each Defendant for each count for which he is charged. You are required to record your decisions on these forms.

Section II of each Special Verdict Form 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 each Special Verdict Form contains space to record your findings on mitigating factors.

You are each required to sign each Special Verdict Form.

**INSTRUCTION NO. 23**

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 Ms. Moore 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.



IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF MISSOURI  
SOUTHERN DIVISION

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	Case No. 10-03029-CR-S-GAF
	)	
WESLEY PAUL COONCE, JR.,	)	
	)	
Defendant.	)	

**SPECIAL VERDICT FORM**

**COUNT I**

**I. AGE OF DEFENDANT**

**Instructions:** The Government and Defendant Coonce have stipulated — that is, they have agreed — that Defendant Coonce was eighteen (18) years of age or older at the time of the offense. You must therefore treat that fact as having been proved and proceed to Section II, which follows.

**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 Defendant Coonce intentionally killed the victim, Victor Castro-Rodriguez, by causing Victor Castro-Rodriguez to be bound and then causing Victor Castro-Rodriguez’s neck to be stepped on as Victor Castro-Rodriguez lay on the floor, which resulted in Victor Castro-Rodriguez’s death, as set out in Instruction No. 6?

YES \_\_\_\_\_

NO \_\_\_\_\_

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Foreperson

1(B). Do you, the jury, unanimously find that the Government has established beyond a reasonable doubt that Defendant Coonce intentionally inflicted serious bodily injury that resulted in the death of the victim, Victor Castro-Rodriguez, by causing Victor Castro-Rodriguez to be bound and then causing Victor Castro-Rodriguez's neck to be stepped on as Victor Castro-Rodriguez lay on the floor, which resulted in Victor Castro-Rodriguez's death, as set out in Instruction No. 6?

YES \_\_\_\_\_

NO \_\_\_\_\_

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Foreperson

1(C). Do you, the jury, unanimously find that the Government has established beyond a reasonable doubt that Defendant Coonce intentionally participated in an act, contemplating that the life of a person, Victor Castro-Rodriguez, would be taken, or intending that lethal force would be used in connection with a person, other than one (1) of the participants in the offense, and the victim, Victor Castro-Rodriguez, died as a direct result of the act, by causing Victor Castro-Rodriguez to be bound and then causing Victor Castro-Rodriguez's neck to be stepped on as Victor Castro-Rodriguez lay on the floor, which resulted in Victor Castro-Rodriguez's death, as set out in Instruction No. 6?

YES \_\_\_\_\_

NO \_\_\_\_\_

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Foreperson

1(D). Do you, the jury, unanimously find that the Government has established beyond a reasonable doubt that Defendant Coonce 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 (1) of the participants in the offense, such that participation in the act constituted a reckless disregard for human life and the victim, Victor Castro-Rodriguez, died as a direct result of the act, by causing Victor Castro-Rodriguez to be bound and then causing Victor Castro-Rodriguez’s neck to be stepped on as Victor Castro-Rodriguez lay on the floor, which resulted in Victor Castro-Rodriguez’s death, as set out in Instruction No. 6?

YES \_\_\_\_\_

NO \_\_\_\_\_

\_\_\_\_\_  
Foreperson

**Instructions:** If you answered “NO” with respect to all of the determinations 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 (1) or more of the determinations in this Section II, proceed to Section III, which follows.

**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 death, or injuries resulting in the death, of Victor Castro-Rodriguez occurred during the commission of Victor Castro-Rodriguez’s murder by Defendant Coonce who

was a federal prisoner serving a term of life imprisonment at the time the murder occurred, as set out in Instruction No. 7?

YES \_\_\_\_\_

NO \_\_\_\_\_

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Foreperson

2. Do you, the jury, unanimously find that the Government has established beyond a reasonable doubt that Defendant Coonce has previously been convicted of two (2) or more state or federal offenses, each of which was punishable by a term of imprisonment of more than one (1) year, committed on different occasions, and involved the infliction, or attempted infliction, of serious bodily injury upon another person, as set out in Instruction No. 7?

YES \_\_\_\_\_

NO \_\_\_\_\_

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Foreperson

3. Do you, the jury, unanimously find that the Government has established beyond a reasonable doubt that Defendant Coonce committed the offense in an especially heinous, cruel, or depraved manner in that it involved torture or serious physical abuse to Victor Castro-Rodriguez, as set out in Instruction No. 7?

YES \_\_\_\_\_

NO \_\_\_\_\_

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Foreperson

4. Do you, the jury, unanimously find that the Government has established beyond a reasonable doubt that Defendant Coonce committed the offense after substantial planning and premeditation to cause the death of Victor Castro-Rodriguez, as set out in Instruction No. 7?

YES \_\_\_\_\_

NO \_\_\_\_\_

\_\_\_\_\_  
Foreperson

**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 mental state in Section II and answered “YES” with respect to at least one (1) or more of the statutory aggravating factors in this Section III, proceed to Section IV, which follows.

**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 Defendant Coonce presents a future danger to others based upon the probability that Defendant Coonce will commit criminal acts of violence that would constitute a continuing threat to the lives and safety of others, in that Defendant Coonce has engaged in a continuing pattern of violent conduct, has threatened others with violence, has demonstrated lack

of remorse, and/or has demonstrated a low rehabilitative potential, as set out in Instruction No. 8?

YES \_\_\_\_\_

NO \_\_\_\_\_

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Foreperson

2. Do you, the jury, unanimously find that the Government has established beyond a reasonable doubt that Defendant Coonce committed conduct suggesting a grave indifference to human life, as set out in Instruction No. 8?

YES \_\_\_\_\_

NO \_\_\_\_\_

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Foreperson

3. Do you, the jury, unanimously find that the Government has established beyond a reasonable doubt that Defendant Coonce has shown lack of remorse in the death of Victor Castro-Rodriguez, as set out in Instruction No. 8?

YES \_\_\_\_\_

NO \_\_\_\_\_

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Foreperson

4. Do you, the jury, unanimously find that the Government has established beyond a reasonable doubt that Defendant Coonce acted to obstruct justice or to retaliate against Victor Castro-Rodriguez because of Victor Castro-Rodriguez's assistance to prison officials and guards

in reporting inmate misconduct and in physical altercations between inmates and prison guards, as set out in Instruction No. 8?

YES \_\_\_\_\_

NO \_\_\_\_\_

\_\_\_\_\_  
Foreperson

**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.

**V. MITIGATING FACTORS**

**Instructions:** For each of the following mitigating factors, indicate in the space provided the number of jurors who have found the existence of that mitigating factor to be proven by the preponderance of the evidence.

A finding with respect to a mitigating factor may be made by one (1) 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.

1. Defendant Coonce’s childhood was marked by chaos, abuse (both physical and sexual), as well as neglect and abandonment.

Number of jurors who so find \_\_\_\_\_.

2. Defendant Coonce’s mother, Linda Coonce, was addicted to illegal drugs and alcohol.

Number of jurors who so find \_\_\_\_\_.

3. Linda Coonce used alcohol and illegal drugs while pregnant with Defendant Coonce.

Number of jurors who so find \_\_\_\_\_.

4. Defendant Coonce's Father, Wesley Coonce, Sr., was addicted to drugs.

Number of jurors who so find \_\_\_\_\_.

5. Mental, emotional, and behavioral disorders are widespread on both sides of Defendant Coonce's family.

Number of jurors who so find \_\_\_\_\_.

6. Defendant Coonce's family has a pattern of broken relationships, abandonment, and loss.

Number of jurors who so find \_\_\_\_\_.

7. Defendant Coonce has suffered from mental and emotional impairments from a very young age.

Number of jurors who so find \_\_\_\_\_.

8. When Defendant Coonce was four (4) and six (6) years old, his mother admitted him to the Hawthorn Center, an in-patient psychiatric hospital for children.

Number of jurors who so find \_\_\_\_\_.

9. When Defendant Coonce was a patient at the Hawthorn Center, his mother failed to cooperate with his treatment.

Number of jurors who so find \_\_\_\_\_.

10. Defendant Coonce responded in a positive manner to the structure, treatment, and affection he received in the Hawthorn Center.

Number of jurors who so find \_\_\_\_\_.



11. Defendant Coonce has shown remorse for what he did in connection with this offense.

Number of jurors who so find \_\_\_\_\_.

12. Defendant Coonce has a loving and caring relationship with family members and former foster family members, and those relationships would continue if Defendant Coonce was sentenced to life imprisonment without the possibility of release.

Number of jurors who so find \_\_\_\_\_.

13. Defendant Coonce suffers from Bipolar disorder, which was first diagnosed at age seventeen (17).

Number of jurors who so find \_\_\_\_\_.

14. The chaotic and abusive life that Defendant Coonce endured as a young child increased his risk for emotional and mental disturbances in his adult life.

Number of jurors who so find \_\_\_\_\_.

15. After Defendant Coonce's release from prison in Texas, he tried to get help for his mental illness.

Number of jurors who so find \_\_\_\_\_.

16. When Defendant Coonce was twenty (20) years old, he sustained traumatic brain injuries as a result of a car crash.

Number of jurors who so find \_\_\_\_\_.

17. Inmates like Defendant Coonce, who have committed sexual offenses, know that they are targeted by other inmates and that they are at risk of injury or death.

Number of jurors who so find \_\_\_\_\_.

18. In 2007, while in federal prison, Defendant Coonce was brutally assaulted by another inmate, resulting in an additional traumatic brain injury.

Number of jurors who so find \_\_\_\_\_.

19. As a result of his traumatic brain injuries, Defendant Coonce's full scale IQ dropped from 105 to a present 71.

Number of jurors who so find \_\_\_\_\_.

20. Defendant Coonce's brain damage and low intelligence make him more susceptible to the influence of others.

Number of jurors who so find \_\_\_\_\_.

21. Defendant Coonce played a lesser role in the murder of Victor Castro-Rodriguez than did his co-defendant, Defendant Hall.

Number of jurors who so find \_\_\_\_\_.

22. Other inmates, equally culpable in the crime, will not be punished by death.

Number of jurors who so find \_\_\_\_\_.

23. Defendant Coonce has attempted to kill himself many times, both in and out of prison.

Number of jurors who so find \_\_\_\_\_.

24. For at least twenty-four (24) months, Defendant Coonce has committed no violations of disciplinary rules at any institution where he has been confined.

Number of jurors who so find \_\_\_\_\_.

25. Successful management of Defendant Coonce's medication is a major factor in his good behavior in the last two (2) years.

Number of jurors who so find \_\_\_\_\_.

26. There are other reasons that weigh against the imposition of a sentence of death for Defendant Coonce.

Number of jurors who so find \_\_\_\_\_.

The following extra spaces are provided to write in additional mitigating factors, if any, found by any one (1) 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.

\_\_\_\_\_  
\_\_\_\_\_.

Number of jurors who so find \_\_\_\_\_.

\_\_\_\_\_  
\_\_\_\_\_.

Number of jurors who so find \_\_\_\_\_.

\_\_\_\_\_  
\_\_\_\_\_.

Number of jurors who so find \_\_\_\_\_.

\_\_\_\_\_  
\_\_\_\_\_.

Number of jurors who so find \_\_\_\_\_.

**Instructions:** Proceed to Section VI and Section VII, which follow.

**VI. DETERMINATION**

Based upon consideration of whether the aggravating factor or 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 factor or factors are 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 on Defendant Coonce.

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: \_\_\_\_\_, 2014

**B. Sentence of Life in Prison Without the Possibility of Release**

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

YES \_\_\_\_\_

NO \_\_\_\_\_

If you answer "YES," the foreperson must sign here, and then you must proceed to Section VII.

\_\_\_\_\_  
Foreperson

Date: \_\_\_\_\_, 2014

**VII. CERTIFICATION**

By signing below, each juror certifies that consideration of the race, color, religious beliefs, national origin, or sex of Defendant Coonce or Victor Castro-Rodriguez 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 Defendant Coonce or Victor Castro-Rodriguez.

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

\_\_\_\_\_  
FOREPERSON

Date: \_\_\_\_\_, 2014

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF MISSOURI  
SOUTHERN DIVISION

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	Case No. 10-03029-CR-S-GAF
	)	
WESLEY PAUL COONCE, JR.,	)	
	)	
Defendant.	)	

**SPECIAL VERDICT FORM**

**COUNT II**

**I.     AGE OF DEFENDANT**

**Instructions:** The Government and Defendant Coonce have stipulated — that is, they have agreed — that Defendant Coonce was eighteen (18) years of age or older at the time of the offense. You must therefore treat that fact as having been proved and proceed to Section II, which follows.

**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 Defendant Coonce intentionally killed the victim, Victor Castro-Rodriguez, by causing Victor Castro-Rodriguez to be bound and then causing Victor Castro-Rodriguez’s neck to be stepped on as Victor Castro-Rodriguez lay on the floor, which resulted in Victor Castro-Rodriguez’s death, as set out in Instruction No. 6?

YES \_\_\_\_\_

NO     \_\_\_\_\_

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Foreperson

1(B). Do you, the jury, unanimously find that the Government has established beyond a reasonable doubt that Defendant Coonce intentionally inflicted serious bodily injury that resulted in the death of the victim, Victor Castro-Rodriguez, by causing Victor Castro-Rodriguez to be bound and then causing Victor Castro-Rodriguez's neck to be stepped on as Victor Castro-Rodriguez lay on the floor, which resulted in Victor Castro-Rodriguez's death, as set out in Instruction No. 6?

YES \_\_\_\_\_

NO \_\_\_\_\_

---

Foreperson

1(C). Do you, the jury, unanimously find that the Government has established beyond a reasonable doubt that Defendant Coonce intentionally participated in an act, contemplating that the life of a person, Victor Castro-Rodriguez, would be taken, or intending that lethal force would be used in connection with a person, other than one (1) of the participants in the offense, and the victim, Victor Castro-Rodriguez, died as a direct result of the act, by causing Victor Castro-Rodriguez to be bound and then causing Victor Castro-Rodriguez's neck to be stepped on as Victor Castro-Rodriguez lay on the floor, which resulted in Victor Castro-Rodriguez's death, as set out in Instruction No. 6?

YES \_\_\_\_\_

NO \_\_\_\_\_

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Foreperson

1(D). Do you, the jury, unanimously find that the Government has established beyond a reasonable doubt that Defendant Coonce 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 (1) of the participants in the offense, such that participation in the act constituted a reckless disregard for human life and the victim, Victor Castro-Rodriguez, died as a direct result of the act, by causing Victor Castro-Rodriguez to be bound and then causing Victor Castro-Rodriguez’s neck to be stepped on as Victor Castro-Rodriguez lay on the floor, which resulted in Victor Castro-Rodriguez’s death, as set out in Instruction No. 6?

YES \_\_\_\_\_

NO \_\_\_\_\_

\_\_\_\_\_  
Foreperson

**Instructions:** If you answered “NO” with respect to all of the determinations 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 (1) or more of the determinations in this Section II, proceed to Section III, which follows.

**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 death, or injuries resulting in the death, of Victor Castro-Rodriguez occurred during the commission of Victor Castro-Rodriguez’s murder by Defendant Coonce,



who was a federal prisoner serving a term of life imprisonment at the time the murder occurred, as set out in Instruction No. 7?

YES \_\_\_\_\_

NO \_\_\_\_\_

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Foreperson

2. Do you, the jury, unanimously find that the Government has established beyond a reasonable doubt that Defendant Coonce has previously been convicted of two (2) or more state or federal offenses, each of which was punishable by a term of imprisonment of more than one (1) year, committed on different occasions, and involved the infliction, or attempted infliction, of serious bodily injury upon another person, as set out in Instruction No. 7?

YES \_\_\_\_\_

NO \_\_\_\_\_

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Foreperson

3. Do you, the jury, unanimously find that the Government has established beyond a reasonable doubt that Defendant Coonce committed the offense in an especially heinous, cruel, or depraved manner in that it involved torture or serious physical abuse to Victor Castro-Rodriguez, as set out in Instruction No. 7?

YES \_\_\_\_\_

NO \_\_\_\_\_

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Foreperson

4. Do you, the jury, unanimously find that the Government has established beyond a reasonable doubt that Defendant Coonce committed the offense after substantial planning and premeditation to cause the death of Victor Castro-Rodriguez, as set out in Instruction No. 7?

YES \_\_\_\_\_

NO \_\_\_\_\_

\_\_\_\_\_  
Foreperson

**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 mental state in Section II and answered “YES” with respect to at least one (1) or more of the statutory aggravating factors in this Section III, proceed to Section IV, which follows.

**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 Defendant Coonce presents a future danger to others based upon the probability that Defendant Coonce will commit criminal acts of violence that would constitute a continuing threat to the lives and safety of others, in that Defendant Coonce has engaged in a continuing pattern of violent conduct, has threatened others with violence, has demonstrated lack

of remorse, and/or has demonstrated a low rehabilitative potential, as set out in Instruction No. 8?

YES \_\_\_\_\_

NO \_\_\_\_\_

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Foreperson

2. Do you, the jury, unanimously find that the Government has established beyond a reasonable doubt that Defendant Coonce committed conduct suggesting a grave indifference to human life, as set out in Instruction No. 8?

YES \_\_\_\_\_

NO \_\_\_\_\_

---

Foreperson

3. Do you, the jury, unanimously find that the Government has established beyond a reasonable doubt that Defendant Coonce has shown lack of remorse in the death of Victor Castro-Rodriguez, as set out in Instruction No. 8?

YES \_\_\_\_\_

NO \_\_\_\_\_

---

Foreperson

4. Do you, the jury, unanimously find that the Government has established beyond a reasonable doubt that Defendant Coonce acted to obstruct justice or to retaliate against Victor Castro-Rodriguez because of Victor Castro-Rodriguez's assistance to prison officials and guards

in reporting inmate misconduct and in physical altercations between inmates and prison guards, as set out in Instruction No. 8?

YES \_\_\_\_\_

NO \_\_\_\_\_

\_\_\_\_\_  
Foreperson

**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.

**V. MITIGATING FACTORS**

**Instructions:** For each of the following mitigating factors, indicate, in the space provided, the number of jurors who have found the existence of that mitigating factor to be proven by the preponderance of the evidence.

A finding with respect to a mitigating factor may be made by one (1) 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.

1. Defendant Coonce’s childhood was marked by chaos, abuse (both physical and sexual), as well as neglect and abandonment.

Number of jurors who so find \_\_\_\_\_.

2. Defendant Coonce’s mother, Linda Coonce, was addicted to illegal drugs and alcohol.

Number of jurors who so find \_\_\_\_\_.

3. Linda Coonce used alcohol and illegal drugs while pregnant with Defendant Coonce.

Number of jurors who so find \_\_\_\_\_.

4. Defendant Coonce's Father, Wesley Coonce, Sr., was addicted to drugs.

Number of jurors who so find \_\_\_\_\_.

5. Mental, emotional, and behavioral disorders are widespread on both sides of Defendant Coonce's family.

Number of jurors who so find \_\_\_\_\_.

6. Defendant Coonce's family has a pattern of broken relationships, abandonment, and loss.

Number of jurors who so find \_\_\_\_\_.

7. Defendant Coonce has suffered from mental and emotional impairments from a very young age.

Number of jurors who so find \_\_\_\_\_.

8. When Defendant Coonce was four (4) and six (6) years old, his mother admitted him to the Hawthorn Center, an in-patient psychiatric hospital for children.

Number of jurors who so find \_\_\_\_\_.

9. When Defendant Coonce was a patient at the Hawthorn Center, his mother failed to cooperate with his treatment.

Number of jurors who so find \_\_\_\_\_.

10. Defendant Coonce responded in a positive manner to the structure, treatment, and affection he received in the Hawthorn Center.

Number of jurors who so find \_\_\_\_\_.

11. Defendant Coonce has shown remorse for what he did in connection with this offense.

Number of jurors who so find \_\_\_\_\_.

12. Defendant Coonce has a loving and caring relationship with family members and former foster family members, and those relationships would continue if Defendant Coonce was sentenced to life imprisonment without the possibility of release.

Number of jurors who so find \_\_\_\_\_.

13. Defendant Coonce suffers from Bipolar disorder, which was first diagnosed at age seventeen (17).

Number of jurors who so find \_\_\_\_\_.

14. The chaotic and abusive life that Defendant Coonce endured as a young child increased his risk for emotional and mental disturbances in his adult life.

Number of jurors who so find \_\_\_\_\_.

15. After Defendant Coonce's release from prison in Texas, he tried to get help for his mental illness.

Number of jurors who so find \_\_\_\_\_.

16. When Defendant Coonce was twenty (20) years old, he sustained traumatic brain injuries as a result of a car crash.

Number of jurors who so find \_\_\_\_\_.

17. Inmates like Defendant Coonce, who have committed sexual offenses, know that they are targeted by other inmates and that they are at risk of injury or death.

Number of jurors who so find \_\_\_\_\_.

18. In 2007, while in federal prison, Defendant Coonce was brutally assaulted by another inmate, resulting in an additional traumatic brain injury.

Number of jurors who so find \_\_\_\_\_.

19. As a result of his traumatic brain injuries, Defendant Coonce's full scale IQ dropped from 105 to a present 71.

Number of jurors who so find \_\_\_\_\_.

20. Defendant Coonce's brain damage and low intelligence make him more susceptible to the influence of others.

Number of jurors who so find \_\_\_\_\_.

21. Defendant Coonce played a lesser role in the murder of Victor Castro-Rodriguez than did his co-defendant, Defendant Hall.

Number of jurors who so find \_\_\_\_\_.

22. Other inmates, equally culpable in the crime, will not be punished by death.

Number of jurors who so find \_\_\_\_\_.

23. Defendant Coonce has attempted to kill himself many times, both in and out of prison.

Number of jurors who so find \_\_\_\_\_.

24. For at least twenty-four (24) months, Defendant Coonce has committed no violations of disciplinary rules at any institution where he has been confined.

Number of jurors who so find \_\_\_\_\_.

25. Successful management of Defendant Coonce's medication is a major factor in his good behavior in the last two (2) years.

Number of jurors who so find \_\_\_\_\_.

26. There are other reasons that weigh against the imposition of a sentence of death for Defendant Coonce.

Number of jurors who so find \_\_\_\_\_.

The following extra spaces are provided to write in additional mitigating factors, if any, found by any one (1) 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.

\_\_\_\_\_  
\_\_\_\_\_.

Number of jurors who so find \_\_\_\_\_.

\_\_\_\_\_  
\_\_\_\_\_.

Number of jurors who so find \_\_\_\_\_.

\_\_\_\_\_  
\_\_\_\_\_.

Number of jurors who so find \_\_\_\_\_.

\_\_\_\_\_  
\_\_\_\_\_.

Number of jurors who so find \_\_\_\_\_.

**Instructions:** Proceed to Section VI and Section VII, which follow.

**VI. DETERMINATION**

Based upon consideration of whether the aggravating factor or 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 factor or factors are 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 on Defendant Coonce.

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: \_\_\_\_\_, 2014

**B. Sentence of Life in Prison Without the Possibility of Release**

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

YES \_\_\_\_\_

NO \_\_\_\_\_

If you answer "YES," the foreperson must sign here, and then you must proceed to Section VII.

\_\_\_\_\_  
Foreperson

Date: \_\_\_\_\_, 2014

**VII. CERTIFICATION**

By signing below, each juror certifies that consideration of the race, color, religious beliefs, national origin, or sex of Defendant Counce or Victor Castro-Rodriguez 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 Defendant Counce or Victor Castro-Rodriguez.

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

FOREPERSON

Date: \_\_\_\_\_, 2014

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF MISSOURI  
SOUTHERN DIVISION

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	Case No. 10-03029-CR-S-GAF
	)	
CHARLES MICHAEL HALL,	)	
	)	
Defendant.	)	

**SPECIAL VERDICT FORM**

**COUNT I**

**I.    AGE OF DEFENDANT**

**Instructions:** The Government and Defendant Hall have stipulated — that is, they have agreed — that Defendant Hall was eighteen (18) years of age or older at the time of the offense. You must therefore treat that fact as having been proved and proceed to Section II, which follows.

**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 Defendant Hall intentionally killed the victim, Victor Castro-Rodriguez, by causing Victor Castro-Rodriguez to be bound and then causing Victor Castro-Rodriguez’s neck to be stepped on as Victor Castro-Rodriguez lay on the floor, which resulted in Victor Castro-Rodriguez’s death, as set out in Instruction No. 13?

YES \_\_\_\_\_

NO    \_\_\_\_\_

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Foreperson

1(B). Do you, the jury, unanimously find that the Government has established beyond a reasonable doubt that Defendant Hall intentionally inflicted serious bodily injury that resulted in the death of the victim, Victor Castro-Rodriguez, by causing Victor Castro-Rodriguez to be bound and then causing Victor Castro-Rodriguez's neck to be stepped on as Victor Castro-Rodriguez lay on the floor, which resulted in Victor Castro-Rodriguez's death, as set out in Instruction No. 13?

YES \_\_\_\_\_

NO \_\_\_\_\_

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Foreperson

1(C). Do you, the jury, unanimously find that the Government has established beyond a reasonable doubt that Defendant Hall intentionally participated in an act, contemplating that the life of a person, Victor Castro-Rodriguez, would be taken, or intending that lethal force would be used in connection with a person, other than one (1) of the participants in the offense, and the victim, Victor Castro-Rodriguez, died as a direct result of the act, by causing Victor Castro-Rodriguez to be bound and then causing Victor Castro-Rodriguez's neck to be stepped on as Victor Castro-Rodriguez lay on the floor, which resulted in Victor Castro-Rodriguez's death, as set out in Instruction No. 13?

YES \_\_\_\_\_

NO \_\_\_\_\_

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Foreperson

1(D). Do you, the jury, unanimously find that the Government has established beyond a reasonable doubt that Defendant Hall 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 (1) of the participants in the offense, such that participation in the act constituted a reckless disregard for human life and the victim, Victor Castro-Rodriguez, died as a direct result of the act, by causing Victor Castro-Rodriguez to be bound and then causing Victor Castro-Rodriguez’s neck to be stepped on as Victor Castro-Rodriguez lay on the floor, which resulted in Victor Castro-Rodriguez’s death, as set out in Instruction No. 13?

YES \_\_\_\_\_

NO \_\_\_\_\_

\_\_\_\_\_  
Foreperson

**Instructions:** If you answered “NO” with respect to all of the determinations 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 (1) or more of the determinations in this Section II, proceed to Section III, which follows.

**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 Defendant Hall committed the offense in an especially heinous, cruel, or

depraved manner in that it involved torture or serious physical abuse to Victor Castro-Rodriguez, as set out in Instruction No. 14?

YES \_\_\_\_\_

NO \_\_\_\_\_

\_\_\_\_\_  
Foreperson

2. Do you, the jury, unanimously find that the Government has established beyond a reasonable doubt that Defendant Hall committed the offense after substantial planning and premeditation to cause the death of Victor Castro-Rodriguez, as set out in Instruction No. 14?

YES \_\_\_\_\_

NO \_\_\_\_\_

\_\_\_\_\_  
Foreperson

**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 mental state in Section II and answered “YES” with respect to at least one (1) or more of the statutory aggravating factors in this Section III, proceed to Section IV, which follows.

**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 Defendant Hall presents a future danger to others based upon the probability that Defendant Hall will commit criminal acts of violence that would constitute a continuing threat to the lives and safety of others, in that Defendant Hall has engaged in a continuing pattern of violent conduct, has threatened others with violence, has demonstrated lack of remorse, and/or has demonstrated a low rehabilitative potential, as set out in Instruction No. 15?

YES \_\_\_\_\_

NO \_\_\_\_\_

\_\_\_\_\_  
Foreperson

2. Do you, the jury, unanimously find that the Government has established beyond a reasonable doubt that Defendant Hall committed conduct suggesting a grave indifference to human life, as set out in Instruction No. 15?

YES \_\_\_\_\_

NO \_\_\_\_\_

\_\_\_\_\_  
Foreperson

3. Do you, the jury, unanimously find that the Government has established beyond a reasonable doubt that Defendant Hall has shown lack of remorse in the death of Victor Castro-Rodriguez, as set out in Instruction No. 15?

YES \_\_\_\_\_

NO \_\_\_\_\_

\_\_\_\_\_  
Foreperson

4. Do you, the jury, unanimously find that the Government has established beyond a reasonable doubt that Defendant Hall acted to obstruct justice or to retaliate against Victor Castro-Rodriguez because of Victor Castro-Rodriguez's assistance to prison officials and guards in reporting inmate misconduct and in physical altercations between inmates and prison guards, as set out in Instruction No. 15?

YES \_\_\_\_\_

NO \_\_\_\_\_

\_\_\_\_\_  
Foreperson

**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.

**V. MITIGATING FACTORS**

**Instructions:** For each of the following mitigating factors, indicate in the space provided the number of jurors who have found the existence of that mitigating factor to be proven by the preponderance of the evidence.

A finding with respect to a mitigating factor may be made by one (1) 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.

1. Defendant Hall has accepted responsibility for what he did in connection with this offense.



Number of jurors who so find \_\_\_\_\_.

2. Defendant Hall has shown remorse for what he did in connection with this offense.

Number of jurors who so find \_\_\_\_\_.

3. Defendant Hall has had no institutional rules or disciplinary violations since January 26, 2010, the date of this offense.

Number of jurors who so find \_\_\_\_\_.

4. Defendant Hall has, for many years, suffered from the mental illness of Bipolar disorder.

Number of jurors who so find \_\_\_\_\_.

5. Defendant Hall has, since 1993, suffered with the serious illness of Crohn's disease.

Number of jurors who so find \_\_\_\_\_.

6. On September 2, 1994, Defendant Hall suffered a significant brain injury due to a motorcycle accident.

Number of jurors who so find \_\_\_\_\_.

7. At the time of this offense, Defendant Hall's capacity to appreciate the wrongfulness of his conduct or to conform his conduct to the requirements of the law was significantly impaired.

Number of jurors who so find \_\_\_\_\_.

8. Defendant Hall committed this offense under severe mental or emotional disturbance.

Number of jurors who so find \_\_\_\_\_.

9. Defendant Hall has a loving and caring relationship with his mother, Dorothy Hall, his father, Charles V. Hall, and his sister, Michelle Bories, and those relationships would continue if Defendant Hall was sentenced to life imprisonment without the possibility of release.

Number of jurors who so find \_\_\_\_\_.

10. Defendant Hall has demonstrated the ability to help others, such as when he patiently taught his disabled nephew how to crawl.

Number of jurors who so find \_\_\_\_\_.

11. Defendant Hall suffers from low self-esteem, as evidenced by him telling untruths to make himself sound more important to others.

Number of jurors who so find \_\_\_\_\_.

12. Defendant Hall has strong talents in sketch art, poetry, and music.

Number of jurors who so find \_\_\_\_\_.

13. While incarcerated, Defendant Hall has been the victim of serious assaults.

Number of jurors who so find \_\_\_\_\_.

14. Prior to January 26, 2010, the date of the offense, Defendant Hall gave warnings to prison officials about homicidal thoughts he was having, but those warnings were not heeded by prison officials.

Number of jurors who so find \_\_\_\_\_.

15. Bureau of Prisons staff failed to properly monitor Defendant Hall by not placing him in seclusion, restraints, or twenty-four (24) hour personal observation on January 26, 2010.

Number of jurors who so find \_\_\_\_\_.

16. Dangers in prison, particularly the need to retaliate for conduct by Victor Castro-Rodriguez against Defendant Hall, explain in part why this offense happened.

Number of jurors who so find \_\_\_\_\_.

17. There are other reasons that weigh against the imposition of a sentence of death for Defendant Hall.

Number of jurors who so find \_\_\_\_\_.

The following extra spaces are provided to write in additional mitigating factors, if any, found by any one (1) 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.

\_\_\_\_\_  
\_\_\_\_\_.

Number of jurors who so find \_\_\_\_\_.

\_\_\_\_\_  
\_\_\_\_\_.

Number of jurors who so find \_\_\_\_\_.

\_\_\_\_\_  
\_\_\_\_\_.

Number of jurors who so find \_\_\_\_\_.

\_\_\_\_\_  
\_\_\_\_\_.

Number of jurors who so find \_\_\_\_\_.

**Instructions:** Proceed to Section VI and Section VII, which follow.

**VI. DETERMINATION**

Based upon consideration of whether the aggravating factor or 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 factor or factors are 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 on Defendant Hall.

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: \_\_\_\_\_, 2014

**B. Sentence of Life in Prison Without the Possibility of Release**

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

YES \_\_\_\_\_

NO \_\_\_\_\_

If you answer "YES," the foreperson must sign here, and then you must proceed to Section VII.

\_\_\_\_\_  
Foreperson

Date: \_\_\_\_\_, 2014

**VII. CERTIFICATION**

By signing below, each juror certifies that consideration of the race, color, religious beliefs, national origin, or sex of Defendant Hall or Victor Castro-Rodriguez 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 Defendant Hall or Victor Castro-Rodriguez.

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FOREPERSON

Date: \_\_\_\_\_, 2014

# **APPENDIX 10**

INSTRUCTION NO. A

Members of the jury, you have unanimously found the defendant Charles Michael Hall guilty of the offense of murder in a Federal prison as charged in the indictment. You must now consider whether the defendant should be sentenced to death 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 that the defendant was at least 18 years of age at the time he committed the offense; and

Second, you must find unanimously and beyond a reasonable doubt that defendant intentionally killed Victor Castro-Rodriguez, or intentionally inflicted serious bodily injury that resulted in the death of Victor Castro-Rodriguez; 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 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. You must decide whether the proved aggravating factors outweigh the proved mitigating factors sufficiently to justify the death sentence. If you do not find any mitigating factors, you still must decide whether the aggravating factors are sufficient to justify imposition of a death sentence. If you determine as a result of this weighing process that the factors do not justify a death sentence, such a sentence may not be imposed, and a sentence of life imprisonment without release is to be imposed. If you determine that the factors do justify a death sentence, that sentence may be imposed.

Again, whether or not the circumstances in this case justify a sentence of death is a decision that is entirely yours. You should 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 have to do with 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, 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 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 by a preponderance of the evidence to determine the appropriate sentence. 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. I will give you detailed instructions regarding the process of weighing 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. In addition, no matter what your decisions are regarding aggravating and mitigating factors, you are never required to return a sentence of death.

Source, Eighth Circuit Model Death Penalty Jury Instruction 12.01, as modified, paragraph 7 wording modified in keeping with similar language from Tenth Circuit Instruction 3.02, replacing “must” with “may”, paragraph 13 (final paragraph) adding sentence that jury is never required to sentence to death per *Jones v. United States*, 527 U.S. 373, 385 (1999); *United States v. Haynes*, 265 F.Supp.2d 915, 916-923 (W.D.Tenn. 2003); *United States v. Tavaras*, 2006 WL 1770328, \*6-7 (E.D.N.Y. 2006).

# **APPENDIX 11**

## INSTRUCTION NO. B

If you find unanimously and beyond a reasonable doubt that defendant was eighteen years of age or older when he committed the offense; that he acted with the requisite intent; and that the government proved the existence of at least one statutory aggravating factor; and after you then determine whether the government proved the existence of the nonstatutory aggravating factors submitted to you, and whether the defendant proved the existence of any mitigating factors, you will then engage in a weighing process. In determining the appropriate sentence, all of you must weigh the aggravating factor or factors that you unanimously found to exist – whether statutory or nonstatutory – 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. If one or more of you so find, you must return a sentence of life in prison without possibility of release. Similarly, you may unanimously find that a particular aggravating 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 determine that the aggravating factor or factors found to exist sufficiently outweigh any mitigating factor or factors found to exist to justify a sentence of death, or in the absence of any mitigating factors, that the aggravating factor or factors are alone sufficient to justify a sentence of death, only then can you record your determination that death is justified in Section VI of the Special Verdict Form. Please remember, however, that whatever findings you make with respect to the aggravating and mitigating factors, you are never required to impose a sentence of death.

If you do not unanimously determine that the aggravating factor or factors

found to exist sufficiently outweigh any mitigating factor or factors found to exist to justify a sentence of death, or in the absence of any mitigating factors, that the aggravating factor or factors are alone sufficient to justify a sentence of death, you shall complete Section VI(a) of the Special Verdict Form, and you shall then record your determination that defendant be sentenced to life imprisonment without possibility of release in Section VI on page \_\_\_ of the Special Verdict Form.

Source, Eighth Circuit Model Death Penalty Jury Instruction 12.11, as modified, final two paragraphs modified in keeping with instructions given in *United States v. Gabrion*, W.D.Mi. Case # 99-76 (See Doc. , Appendix DD, p. 28), and *United States v. Hargrove*, D.Ks. Case # 03-20192 (See Doc. , Appendix I, p. 18-19); see also *Jones v. United States*, 527 U.S. 373, 385 (1999); *United States v. Haynes*, 265 F.Supp.2d 915, 916-923 (W.D.Tenn. 2003); 21 U.S.C. 848(k); *United States v. Tavaras*, 2006 WL 1770328, \*6-7 (E.D.N.Y. 2006).

# **APPENDIX 12**



IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF MISSOURI  
SOUTHERN DIVISION

UNITED STATES OF AMERICA, )  
 )  
 )  
 Plaintiff, )  
 )  
 vs. )  
 )  
 CHARLES MICHAEL HALL, )  
 )  
 )  
 Defendant. )

Case No. 10-03029-CR-S-GAF

SPECIAL VERDICT FORM

COUNT I

**I. AGE OF DEFENDANT**

**Instructions:** The Government and Defendant Hall have stipulated — that is, they have agreed — that Defendant Hall was eighteen (18) years of age or older at the time of the offense. You must therefore treat that fact as having been proved and proceed to Section II, which follows.

**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 Defendant Hall intentionally killed the victim, Victor Castro-Rodriguez, by causing Victor Castro-Rodriguez to be bound and then causing Victor Castro-Rodriguez’s neck to be stepped on as Victor Castro-Rodriguez lay on the floor, which resulted in Victor Castro-Rodriguez’s death, as set out in Instruction No. 13?

YES       ✓      

NO

Kim Polheim  
Foreperson

1(B). Do you, the jury, unanimously find that the Government has established beyond a reasonable doubt that Defendant Hall intentionally inflicted serious bodily injury that resulted in the death of the victim, Victor Castro-Rodriguez, by causing Victor Castro-Rodriguez to be bound and then causing Victor Castro-Rodriguez's neck to be stepped on as Victor Castro-Rodriguez lay on the floor, which resulted in Victor Castro-Rodriguez's death, as set out in Instruction No. 13?

YES       ✓      

NO                   

Kim Polheim  
Foreperson

1(C). Do you, the jury, unanimously find that the Government has established beyond a reasonable doubt that Defendant Hall intentionally participated in an act, contemplating that the life of a person, Victor Castro-Rodriguez, would be taken, or intending that lethal force would be used in connection with a person, other than one (1) of the participants in the offense, and the victim, Victor Castro-Rodriguez, died as a direct result of the act, by causing Victor Castro-Rodriguez to be bound and then causing Victor Castro-Rodriguez's neck to be stepped on as Victor Castro-Rodriguez lay on the floor, which resulted in Victor Castro-Rodriguez's death, as set out in Instruction No. 13?

YES       ✓      

NO                   

Kim Polheim  
Foreperson

1(D). Do you, the jury, unanimously find that the Government has established beyond a reasonable doubt that Defendant Hall 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 (1) of the participants in the offense, such that participation in the act constituted a reckless disregard for human life and the victim, Victor Castro-Rodriguez, died as a direct result of the act, by causing Victor Castro-Rodriguez to be bound and then causing Victor Castro-Rodriguez's neck to be stepped on as Victor Castro-Rodriguez lay on the floor, which resulted in Victor Castro-Rodriguez's death, as set out in Instruction No. 13?

YES       ✓        
NO                   

Kim Polheim  
Foreperson

**Instructions:** If you answered "NO" with respect to all of the determinations 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 (1) or more of the determinations in this Section II, proceed to Section III, which follows.

**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 Defendant Hall committed the offense in an especially heinous, cruel, or

depraved manner in that it involved torture or serious physical abuse to Victor Castro-Rodriguez, as set out in Instruction No. 14?

YES           ✓            
NO                           

Kim Polbrin  
Foreperson

2. Do you, the jury, unanimously find that the Government has established beyond a reasonable doubt that Defendant Hall committed the offense after substantial planning and premeditation to cause the death of Victor Castro-Rodriguez, as set out in Instruction No. 14?

YES           ✓            
NO                           

Kim Polbrin  
Foreperson

**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 mental state in Section II and answered “YES” with respect to at least one (1) or more of the statutory aggravating factors in this Section III, proceed to Section IV, which follows.

**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 Defendant Hall presents a future danger to others based upon the probability that Defendant Hall will commit criminal acts of violence that would constitute a continuing threat to the lives and safety of others, in that Defendant Hall has engaged in a continuing pattern of violent conduct, has threatened others with violence, has demonstrated lack of remorse, and/or has demonstrated a low rehabilitative potential, as set out in Instruction No. 15?

YES           ✓            
NO                           

          *Ken Polheim*            
Foreperson

2. Do you, the jury, unanimously find that the Government has established beyond a reasonable doubt that Defendant Hall committed conduct suggesting a grave indifference to human life, as set out in Instruction No. 15?

YES           ✓            
NO                           

          *Ken Polheim*            
Foreperson

3. Do you, the jury, unanimously find that the Government has established beyond a reasonable doubt that Defendant Hall has shown lack of remorse in the death of Victor Castro-Rodriguez, as set out in Instruction No. 15?

YES           ✓            
NO                           

          *Ken Polheim*            
Foreperson

4. Do you, the jury, unanimously find that the Government has established beyond a reasonable doubt that Defendant Hall acted to obstruct justice or to retaliate against Victor Castro-Rodriguez because of Victor Castro-Rodriguez's assistance to prison officials and guards in reporting inmate misconduct and in physical altercations between inmates and prison guards, as set out in Instruction No. 15?

YES           ✓            
NO                           

Ken Pollock  
Foreperson

**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.

**V. MITIGATING FACTORS**

**Instructions:** For each of the following mitigating factors, indicate in the space provided the number of jurors who have found the existence of that mitigating factor to be proven by the preponderance of the evidence.

A finding with respect to a mitigating factor may be made by one (1) 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.

1. Defendant Hall has accepted responsibility for what he did in connection with this offense.

Number of jurors who so find 0.

2. Defendant Hall has shown remorse for what he did in connection with this offense.

Number of jurors who so find 0.

3. Defendant Hall has had no institutional rules or disciplinary violations since January 26, 2010, the date of this offense.

Number of jurors who so find 0.

4. Defendant Hall has, for many years, suffered from the mental illness of Bipolar disorder.

Number of jurors who so find 0.

5. Defendant Hall has, since 1993, suffered with the serious illness of Crohn's disease.

Number of jurors who so find 6.

6. On September 2, 1994, Defendant Hall suffered a significant brain injury due to a motorcycle accident.

Number of jurors who so find 0.

7. At the time of this offense, Defendant Hall's capacity to appreciate the wrongfulness of his conduct or to conform his conduct to the requirements of the law was significantly impaired.

Number of jurors who so find 0.

8. Defendant Hall committed this offense under severe mental or emotional disturbance.

Number of jurors who so find 0.

9. Defendant Hall has a loving and caring relationship with his mother, Dorothy Hall, his father, Charles V. Hall, and his sister, Michelle Bories, and those relationships would continue if Defendant Hall was sentenced to life imprisonment without the possibility of release.

Number of jurors who so find 1.

10. Defendant Hall has demonstrated the ability to help others, such as when he patiently taught his disabled nephew how to crawl.

Number of jurors who so find 0.

11. Defendant Hall suffers from low self-esteem, as evidenced by him telling untruths to make himself sound more important to others.

Number of jurors who so find 0.

12. Defendant Hall has strong talents in sketch art, poetry, and music.

Number of jurors who so find 0.

13. While incarcerated, Defendant Hall has been the victim of serious assaults.

Number of jurors who so find 0.

14. Prior to January 26, 2010, the date of the offense, Defendant Hall gave warnings to prison officials about homicidal thoughts he was having, but those warnings were not heeded by prison officials.

Number of jurors who so find 0.

15. Bureau of Prisons staff failed to properly monitor Defendant Hall by not placing him in seclusion, restraints, or twenty-four (24) hour personal observation on January 26, 2010.

Number of jurors who so find 0.

16. Dangers in prison, particularly the need to retaliate for conduct by Victor Castro-Rodriguez against Defendant Hall, explain in part why this offense happened.



Number of jurors who so find 0.

17. There are other reasons that weigh against the imposition of a sentence of death for Defendant Hall.

Number of jurors who so find 0.

The following extra spaces are provided to write in additional mitigating factors, if any, found by any one (1) 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.

NONE

~~Number of jurors who so find \_\_\_\_\_.~~

~~Number of jurors who so find \_\_\_\_\_.~~

~~Number of jurors who so find \_\_\_\_\_.~~

~~Number of jurors who so find \_\_\_\_\_.~~

**Instructions:** Proceed to Section VI and Section VII, which follow.

**VI. DETERMINATION**

Based upon consideration of whether the aggravating factor or 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 factor or factors are 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 on Defendant Hall.

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). Jan Polkreicy  
~~Jan Polkreicy~~  
Foreperson

Date: 6/2, 2014

**B. Sentence of Life in Prison Without the Possibility of Release**

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

YES \_\_\_\_\_  
NO \_\_\_\_\_

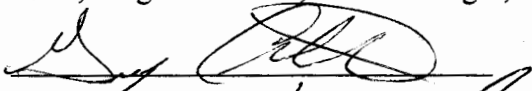


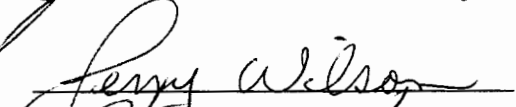
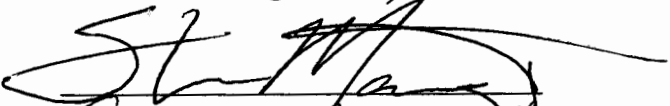



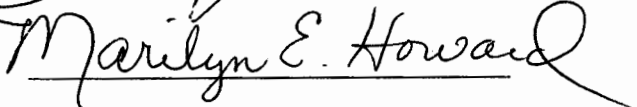
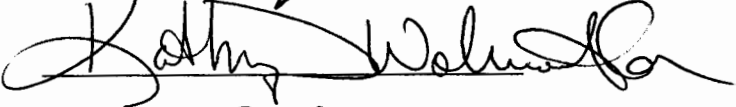
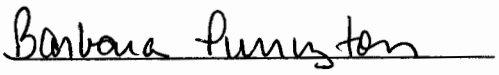

If you answer "YES," the foreperson must sign here, and then you must proceed to Section VII.

\_\_\_\_\_  
Foreperson

Date: \_\_\_\_\_, 2014

**VII. CERTIFICATION**

By signing below, each juror certifies that consideration of the race, color, religious beliefs, national origin, or sex of Defendant Hall or Victor Castro-Rodriguez 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 Defendant Hall or Victor Castro-Rodriguez.

	
	
	
	
	
	
	FOREPERSON

Date: 4/2, 2014

# **APPENDIX 13**

IN THE UNITED STATES DISTRICT COURT FOR THE  
WESTERN DISTRICT OF MISSOURI  
SOUTHERN DIVISION

**United States of America v. Wesley Paul Counce, Jr.; Charles Michael Hall**  
10-03029-01/02-CR-S-GAF

JURY'S QUESTION OR REQUEST

The jury has the following question:

We would like a definition of 'obstruct justice' as used in  
regard to non-statutory aggravating factor #4 for Defendant  
Hall.

Date: 6/2/14  
Time: 9:05 AM

By: Kim Polheim

Response from the Court:

I can not define "obstruct justice"  
other than to refer you to the  
context in which it is used.

  
\_\_\_\_\_  
Gary A. Fenner  
Judge, U.S. District Court

**ECF**  
809

IN THE UNITED STATES DISTRICT COURT FOR THE  
WESTERN DISTRICT OF MISSOURI  
SOUTHERN DIVISION

**United States of America v. Wesley Paul Coonce, Jr.; Charles Michael Hall**  
10-03029-01/02-CR-S-GAF

JURY'S QUESTION OR REQUEST

The jury has the following question:


*Do the lawyers have the option to poll the jury if we can't reach a unanimous decision.*

Date: 6/2/14  
Time: 2:00 PM

By: Ken Boltey

Response from the Court:

*You will not be polled if a non unanimous verdict is accepted.*

  
Gary A. Fenner  
Judge, U.S. District Court

IN THE UNITED STATES DISTRICT COURT FOR THE  
WESTERN DISTRICT OF MISSOURI  
SOUTHERN DIVISION

United States of America v. Wesley Paul Counce, Jr.; Charles Michael Hall  
10-03029-01/02-CR-S-GAF

JURY'S QUESTION OR REQUEST

The jury has the following question:


We have reached a decision in regards to Defendant Counce.  
But I feel with 100% certainty that we are unable to reach  
a unanimous decision in regards to Defendant Hall.

Date: 6/2/14  
Time: 2:30 PM

By: Kim Polbrein

Response from the Court:

You should continue your  
deliberations and try to reach  
unanimous verdict.

  
Gary A. Fenner  
Judge, U.S. District Court

IN THE UNITED STATES DISTRICT COURT FOR THE  
WESTERN DISTRICT OF MISSOURI  
SOUTHERN DIVISION

**United States of America v. Wesley Paul Coonce, Jr.; Charles Michael Hall**  
10-03029-01/02-CR-S-GAF

JURY'S QUESTION OR REQUEST

The jury has the following question:

request exhibits 211, 214, & 215

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Date: 6/02/14  
Time: 1515

By: Ken Pollock

Response from the Court:

Attached.

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\_\_\_\_\_  
Gary A. Fenner  
Judge, U.S. District Court



***APPENDIX 14***

**IN THE UNITED STATES DISTRICT COURT FOR THE  
WESTERN DISTRICT OF MISSOURI  
SOUTHERN DIVISION**

<b>UNITED STATES OF AMERICA,</b>	)	<b>No. <u>10-03029-01/02-CR-S-GAF</u></b>
	)	
Plaintiff,	)	<b>COUNT ONE:</b>
	)	(COONCE AND HALL)
v.	)	18 U.S.C. § 1111
	)	NLT Life Imprisonment
<b>WESLEY PAUL COONCE, JR.,</b>	)	NMT Death
[DOB: 4-17-80]	)	NMT \$250,000 Fine
	)	Class A Felony
and	)	
	)	<b>COUNT TWO:</b>
<b>CHARLES MICHAEL HALL,</b>	)	(COONCE)
[DOB: 4-6-71]	)	18 U.S.C. § 1118
	)	NLT Life Imprisonment
Defendants.	)	NMT Death
	)	NMT \$250,000 Fine
	)	Class A Felony
	)	
	)	\$100 Mandatory Special Assessment
	)	Both Counts

**SUPERSEDING INDICTMENT**

**THE GRAND JURY CHARGES THAT:**

**COUNT ONE**

1. On or about January 26, 2010, in the Western District of Missouri, the defendants **WESLEY PAUL COONCE, JR.** and **CHARLES MICHAEL HALL**, aiding and abetting each other, on the premises of the United States Medical Center for Federal Prisoners in Springfield, Missouri, a place within the special maritime and territorial jurisdiction of the United States as defined in Title 18, United States Code, Section 7(3), did, with malice aforethought, willfully, deliberately, maliciously and with premeditation, unlawfully kill Victor Castro-Rodriguez, in violation of Title 18, United States Code, Sections 1111 and 2.

**NOTICE OF SPECIAL FINDINGS - WESLEY PAUL COONCE, JR.**

2. The Grand Jury incorporates by reference and re-alleges the allegations described in paragraph 1 above and makes the following special findings.

**A. Statutory Factors Enumerated under Title 18, U.S.C., Section 3591**

- i. Defendant Coonce was 18 years of age or older at the time of the offense [18 U.S.C. § 3591(a)];
- ii. Defendant Coonce intentionally killed Victor Castro-Rodriguez [18 U.S.C. § 3591(a)(2)(A)];
- iii. Defendant Coonce intentionally inflicted serious bodily injury that resulted in the death of Victor Castro-Rodriguez [18 U.S.C. § 3591(a)(2)(B)];
- iv. Defendant Coonce 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 a participant in the offense, and Victor Castro-Rodriguez died as a direct result of the act [18 U.S.C. § 3591(a)(2)(C)];
- v. Defendant Coonce 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 Victor Castro-Rodriguez died as a direct result of the act [18 U.S.C. § 3591(a)(2)(D)].

**B. Statutory Factors Enumerated under Title 18, U.S.C., Section 3592(c)**

- i. The death or injuries resulting in death, occurred during the commission or attempted commission, of an offense under 18 U.S.C., § 1118 (murder by prisoner serving life term) [18 U.S.C. § 3592(c)(1)];

ii. Defendant Coonce has previously been convicted of 2 or more Federal or State offenses punishable by a term of imprisonment of more than 1 year, committed on different occasions, involving the infliction of, or attempted infliction of, serious bodily injury or death upon another person [18 U.S.C. § 3592(c)(4)];

iii. Defendant Coonce committed the offense in an especially heinous, cruel, or depraved manner in that it involved torture or serious physical abuse to Victor Castro-Rodriguez [18 U.S.C. § 3592(c)(6)];

iv. Defendant Coonce committed the offense after substantial planning and premeditation to cause the death of Victor Castro-Rodriguez [18 U.S.C. § 3592(c)(9)];

v. The victim, Victor Castro-Rodriguez, was particularly vulnerable due to infirmity, in this case, mental illness [18 U.S.C. § 3592(c)(11)].

**NOTICE OF SPECIAL FINDINGS - CHARLES MICHAEL HALL**

3. The Grand Jury incorporates by reference and re-alleges the allegations described in paragraph 1 above and makes the following special findings.

**A. Statutory Factors Enumerated under Title 18, U.S.C., Section 3591**

i. Defendant Hall was 18 years of age or older at the time of the offense [18 U.S.C. § 3591(a)];

ii. Defendant Hall intentionally killed Victor Castro-Rodriguez [18 U.S.C. § 3591(a)(2)(A)];

iii. Defendant Hall intentionally inflicted serious bodily injury that resulted in the death of Victor Castro-Rodriguez [18 U.S.C. § 3591(a)(2)(B)];

iv. Defendant Hall 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 a participant in the offense, and Victor Castro-Rodriguez died as a direct result of the act [18 U.S.C. § 3591(a)(2)(C)];

v. Defendant Hall 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 Victor Castro-Rodriguez died as a direct result of the act [18 U.S.C. § 3591(a)(2)(D)].

**B. Statutory Factors Enumerated under Title 18 U.S.C., Section 3592(c)**

i. The death or injury resulting in death, occurred during the commission or attempted commission, of an offense under 18 U.S.C., § 1118 (murder by prisoner serving life term) [18 U.S.C. § 3592(c)(1)];

ii. Defendant Hall committed the offense in an especially heinous, cruel, or depraved manner in that it involved torture or serious physical abuse to Victor Castro-Rodriguez [18 U.S.C. § 3592(c)(6)];

iii. Defendant Hall committed the offense after substantial planning and premeditation to cause the death of Victor Castro-Rodriguez [18 U.S.C. § 3592(c)(9)];

iv. The victim, Victor Castro-Rodriguez, was particularly vulnerable due to infirmity, in this case, mental illness [18 U.S.C. § 3592(c)(11)].

**COUNT TWO**

4. On or about January 26, 2010, in the Western District of Missouri, the defendant WESLEY PAUL COONCE, JR., who was, at the time of this offense, a person confined to a Federal corrections institution, namely the United States Medical Center for Federal Prisoners in

Springfield, Missouri, while serving under a sentence for a term of life imprisonment, did, with malice aforethought, willfully, deliberately, maliciously and with premeditation, unlawfully kill Victor Castro-Rodriguez, in violation of Title 18, United States Code, Sections 1118 and 2.

**NOTICE OF SPECIAL FINDINGS - WESLEY PAUL COONCE, JR.**

5. The Grand Jury incorporates by reference and re-alleges the allegations described in paragraph 4 above and makes the following special findings.

**A. Statutory Factors Enumerated under Title 18, U.S.C., Section 3591**

- i. Defendant Coonce was 18 years of age or older at the time of the offense [18 U.S.C. § 3591(a)];
- ii. Defendant Coonce intentionally killed Victor Castro-Rodriguez [18 U.S.C. § 3591(a)(2)(A)];
- iii. Defendant Coonce intentionally inflicted serious bodily injury that resulted in the death of Victor Castro-Rodriguez [18 U.S.C. § 3591(a)(2)(B)];
- iv. Defendant Coonce 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 a participant in the offense, and Victor Castro-Rodriguez died as a direct result of the act [18 U.S.C. § 3591(a)(2)(C)];
- v. Defendant Coonce 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 Victor Castro-Rodriguez died as a direct result of the act [18 U.S.C. § 3591(a)(2)(D)].

**B. Statutory Factors Enumerated under Title 18, U.S.C., Section 3592(c)**

i. The death or injuries resulting in death, occurred during the commission or attempted commission, of an offense under 18 U.S.C., § 1118 (murder by prisoner serving life term) [18 U.S.C. § 3592(c)(1)];

ii. Defendant Coonce has previously been convicted of 2 or more Federal or State offenses punishable by a term of imprisonment of more than 1 year, committed on different occasions, involving the infliction of, or attempted infliction of, serious bodily injury or death upon another person [18 U.S.C. § 3592(c)(4)];

iii. Defendant Coonce committed the offense in an especially heinous, cruel, or depraved manner in that it involved torture or serious physical abuse to Victor Castro-Rodriguez [18 U.S.C. § 3592(c)(6)];

iv. Defendant Coonce committed the offense after substantial planning and premeditation to cause the death of Victor Castro-Rodriguez [18 U.S.C. § 3592(c)(9)];

v. The victim, Victor Castro-Rodriguez, was particularly vulnerable due to infirmity, in this case, mental illness [18 U.S.C. § 3592(c)(11)].

**A TRUE BILL**

/s/  
**FOREPERSON OF THE GRAND JURY**

/s/ Randall D. Eggert  
**RANDALL D. EGGERT**, Bar #39404  
Assistant United States Attorney

**CERTIFICATE OF SERVICE**

It is hereby certified that paper and electronic copies of this Appendix were dispatched to the following on this 10<sup>th</sup> day of August, 2020

Francesco Valentini  
United States Department of Justice  
Criminal Division, Appellate Section  
950 Pennsylvania Ave. NW, Room 1264  
Washington, DC 20530  
202-598-1227  
Email: [francesco.valentini@usdoj.gov](mailto:francesco.valentini@usdoj.gov)

Solicitor General of the United States  
Department of Justice, Room 5614  
950 Pennsylvania Ave., N.W.  
Washington D.C. 20530-0001

/s/Frederick A. Duchardt, Jr.  
FREDERICK A. DUCHARDT, JR.