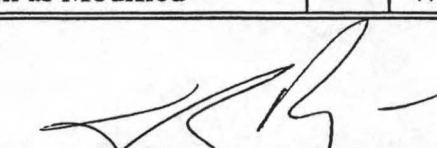


APPENDIX E:

Cited Excerpts of Clerk's Transcript

Requested by People	<input checked="" type="checkbox"/>	Given as Requested	<input checked="" type="checkbox"/>	Refused	
Requested by Def.		Given as Modified		Withdrawn	
Given on Court's Motion					



 John J. (Jack) Ryan, Judge

8.85m Page 1

In determining which penalty is to be imposed on defendant, you shall consider all of the evidence which has been received during any part of the trial of this case, ~~[except as you may be hereafter instructed]~~. You shall consider, take into account and be guided by the following factors, if applicable:

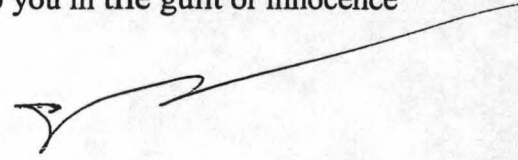
- (a) The circumstances of the crime of which the defendant was convicted in the present proceeding, including victim impact evidence, and the existence of any special circumstance found to be true.
- (b) The presence or absence of criminal activity by the defendant, other than the crime for which the defendant has been tried in the present proceedings, which involved the use or attempted use of force or violence or the express or implied threat to use force or violence.
- (c) The presence or absence of any prior felony conviction, other than the crimes for which the defendant has been tried in the present proceedings.
- (d) Whether or not the offense was committed while the defendant was under the influence of extreme mental or emotional disturbance.
- (e) Whether or not the victim was a participant in the defendant's homicidal conduct or consented to the homicidal act.
- (f) Whether or not the offense was committed under circumstances which the defendant reasonably believed to be a moral justification or extenuation for his conduct.
- (g) Whether or not the defendant acted under extreme duress or under the substantial domination of another person.
- (h) Whether or not at the time of the offense the capacity of the defendant to appreciate the criminality of his conduct or to conform his conduct to the requirements of law was impaired as a result of mental disease or defect or the effects of intoxication.

8.85m Page 2

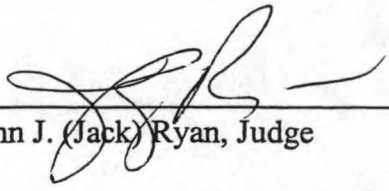
(i) The age of the defendant at the time of the crime.

(j) Whether or not the defendant was an accomplice to the offense and his participation in the commission of the offense was relatively minor.

(k) Any other circumstance which extenuates the gravity of the crime even though it is not a legal excuse for the crime and any sympathetic or other aspect of the defendant's character or record that the defendant offers as a basis for a sentence less than death, whether or not related to the offense for which he is on trial. You must disregard any jury instruction given to you in the guilt or innocence phase of this trial which conflicts with this principle.



Requested by People		Given as Requested	<input checked="" type="checkbox"/>	Refused	
Requested by Def.	<input checked="" type="checkbox"/>	Given as Modified		Withdrawn	
Given on Court's Motion					



 John J. (Jack) Ryan, Judge

8.85.01m

In the list of aggravating and mitigating circumstances listed in the previous instruction, factors (a), (b), and (i) are the only statutory factors than can possibly be considered as aggravating factors. They may also be considered as possible mitigating factors. It is for the jury to determine whether factors (a), (b), and (i) are either aggravating or mitigating. There has been no evidence introduced as to factor (c).

The absence of evidence as to factor (b) or (c) is mitigating. The weight to be given to such mitigation is for you to determine. The absence of evidence as to a possible mitigating factor shall not be considered as a factor in aggravation.

8.85.02m

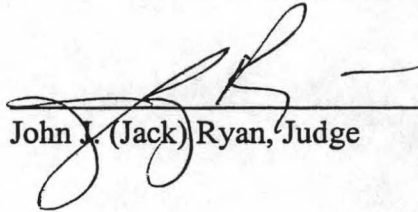
In deciding whether death or life imprisonment without the possibility of parole is the appropriate sentence, you may not consider for any reason whatsoever the existence or absence of any deterrent effect of the death penalty or the monetary cost of the trial or to the state for execution or for maintaining a prisoner for life.

The order in which the factors in mitigation and aggravation are listed has no significance as to their relative importance.

8.85.03m

A sentence of life imprisonment without the possibility of parole means that the defendant is not eligible for parole. A sentence of death means that the defendant will be executed.

Requested by People	<input checked="" type="checkbox"/>	Given as Requested	<input type="checkbox"/>	Refused	<input type="checkbox"/>
Requested by Def.	<input checked="" type="checkbox"/>	Given as Modified	<input checked="" type="checkbox"/>	Withdrawn	<input type="checkbox"/>
Given on Court's Motion	<input type="checkbox"/>				



 John L. (Jack) Ryan, Judge

8.88m (2000)

It is now your duty to determine which of the two penalties, death or imprisonment in the state prison for life without possibility of parole, shall be imposed on the defendant.

After having heard all of the evidence, and after having heard and considered the arguments of counsel, you shall consider, take into account and be guided by the applicable factors of aggravating and mitigating circumstances upon which you have been instructed.

An aggravating factor is any fact, condition or event attending the commission of a crime which increases its guilt or enormity, or adds to its injurious consequences which is above and beyond the elements of the crime itself. A mitigating circumstance is any fact, condition or event which does not constitute a justification or excuse for the crime in question, but may be considered as an extenuating circumstance in determining the appropriateness of the penalty.

The weighing of aggravating and mitigating circumstances does not mean a mere mechanical counting of factors on each side of an imaginary scale, or the arbitrary assignment of weights to any of them. You are free to assign whatever moral or sympathetic value you deem appropriate to each and all of the various factors you are permitted to consider. In weighing the various circumstances you determine under the relevant evidence which penalty is justified and appropriate by considering the totality of the aggravating circumstances with the totality of the mitigating circumstances. To return a judgment of death, each of you must be persuaded that the aggravating circumstances are so substantial in comparison with the mitigating circumstances that it warrants death instead of life without parole.


You shall now retire to deliberate on the penalty. The foreperson previously selected may preside over your deliberations or you may choose a new foreperson. In order to make a determination as to the penalty, all twelve jurors must agree.

Any verdict that you reach must be dated and signed by your foreperson on a form that will be provided and then you shall return with it to this courtroom.

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IN WITNESS WHEREOF, I have hereunto set my hand as Judge of the said Superior Court,
and have caused the seal of the said Court to be affixed hereto.

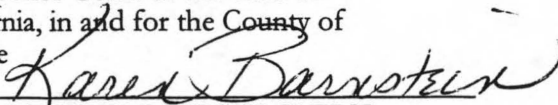
Done in open Court this 10th day of April, 2002.



JOHN J. RYAN
Judge of the Superior Court of the
State of California, In and For the
County of Orange



ATTEST:
ALAN SLATER, County Clerk of
the Superior Court of the State of
California, in and for the County of
Orange

BY: 

DEPUTY COUNTY CLERK