

DECLARATION OF MATTHEW RUBENSTEIN REGARDING LANGUAGE IN RECENT  
JUROR QUESTIONNAIRES THAT PROVIDE A COMPREHENSIVE INTRODUCTION  
AND OVERVIEW OF A PENALTY PHASE

1. I serve as the Director of the Capital Resource Counsel (CRC) project. The Capital Resource Counsel and the Federal Death Penalty Resource Counsel (FDPRC) projects comprise the Federal Capital Trial Project (or “Trial Project”).<sup>1</sup> Established in early 1992, a core function of the Trial Project is to provide consultation, training, and assistance to counsel and courts to improve the quality of representation and the cost-effectiveness of defense services in federal capital prosecution cases.<sup>2</sup> I joined the Trial Project in 2010 as a Capital Resource Counsel and became the Director of the Capital Resource Counsel (CRC) project in 2015. The Trial Project is funded and administered by the Defender Services Office of the Administrative Office of the United States Courts.

2. My responsibilities as the Director of the Capital Resource Counsel Project include the monitoring of all federal capital prosecutions throughout the United States to assist in the

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<sup>1</sup> The Trial Project assigns a CRC or FDPRC attorney to work with the defense team in every federal capital eligible case as a “resource counsel.” In their role as resource counsel, the CRC attorneys (full-time salaried federal defender staff) and FDPRC attorneys (part-time contractors) are not counsel of record; rather, they provide advice, assistance, and helpful information and resources to the defense team. In addition to their work as resource counsel, the CRC attorneys often serve as death-qualified “learned” counsel as part of their Project responsibilities; and the FDPRC attorneys are often appointed to serve as “learned” counsel as CJA counsel outside their role with the Project.

<sup>2</sup> The work of the Trial Project is described in a report prepared by the Subcommittee on Federal Death Penalty Cases, Committee on Defender Services, Judicial Conference of the United States, *Federal Death Penalty Cases: Recommendations Concerning the Cost and Quality of Defense Representation* (May 1998), at 28 – 30, [http://www.uscourts.gov/sites/default/files/original\\_spencer\\_report.pdf](http://www.uscourts.gov/sites/default/files/original_spencer_report.pdf) [Perma.cc archive: <https://perma.cc/SU25-GWMV>]. The Subcommittee report “urges the judiciary and counsel to maximize the benefits of the Federal Death Penalty Resource Counsel Project . . . , which has become essential to the delivery of high quality, cost-effective representation in death penalty cases . . . .” *Id.* at 50.

An update to the Report states: “Many judges and defense counsel spoke with appreciation and admiration about the work of Resource Counsel. Judges emphasized their assistance in recruiting and recommending counsel for appointments and their availability to consult on matters relating to the defense, including case budgeting. Defense counsel found their knowledge, national perspective, and case-specific assistance invaluable.” *Report to the Committee on Defender Services, Judicial Conference of the United States, Update on the Cost and Quality of Defense Representation in Federal Death Penalty Cases* (September 2010) at 63. <https://www.uscourts.gov/sites/default/files/fdpc2010.pdf> [Perma.cc archive: <https://perma.cc/LPH6-K8QB>].

delivery of adequate defense services to indigent capital defendants in such cases. This effort includes overseeing the collection of data on the initiation and prosecution of federal capital cases.<sup>3</sup>

3. I have attached as exhibits to this declaration samples of language in Juror Questionnaires from recent federal capital cases that provide a comprehensive introduction and overview of a penalty phase.

*United States v. Sayfullo Habibullaevic Saipov*  
No. 1:17-CR-00722-VSB (S.D.N.Y.)  
(Joint-proposed juror questionnaire ECF 476-1,  
filed August 9, 2022)  
Judge Presiding: The Hon. Vernon S. Broderick  
(Voir dire began October 11, 2022.)

*United States v. Jessie Con-Ui*  
No. 3:13-cr-00123-ARC (M.D. Pa.)  
Judge Presiding: The Hon. A. Richard Caputo  
(Voir dire began April 24, 2017.)

*United States v. Alexis Candelario-Santana*  
No. 3:09-cr-00427-JAF-1 (D.P.R.)  
Judge Presiding: The Hon. José A. Fusté (former Chief Judge)  
(Voir dire began January 28, 2013.)

*United States v. Ritz Williams*  
No. 4:08-cr-00070-YK (M.D. Pa.)  
Judge Presiding: The Hon. Yvette Kane (Chief Judge)  
(The juror questionnaire was approved by the Court and filled out  
by prospective jurors in anticipation of voir dire which was  
scheduled to commence on April 16, 2013. However, the case was  
resolved by a negotiated life settlement on April 15, 2013. Note  
that this questionnaire had been stipulated to by the parties and  
was filed as ECF No. 712 on January 9, 2013.)

*United States v. Kaboni Savage, et al.*  
No. 2:07-cr-00550-RBS (E.D. Pa.)  
Judge: The Hon. R. Barclay Surrick  
(Voir dire began November 6, 2012.)

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<sup>3</sup> In order to carry out the duties entrusted to me, I rely on the data gathered by Kevin McNally who served as Resource Counsel with FDPRC since the inception of the Trial Project in January 1992, served as the Director of FDPRC between 2007 and 2018, and continued overseeing the collection of data on the initiation and prosecution of federal capital cases until 2024 when I took over this responsibility.

*United States v. Vincent Basciano*  
No. 1:05-cr-00060-NGG (E.D.N.Y.)  
Judge: The Hon. Judge Nicholas Garaufis  
(Voir dire began March 1, 2011.)

4. As a Resource Counsel conferring with the defense team in *United States v. Sayfullo Habibullaevic Saipov*, No. 1:17-CR-00722-VSB (S.D.N.Y.), I confirm that the Juror Questionnaire distributed to prospective jurors is excerpted in this declaration; as a Resource Counsel conferring with the defense team in *United States v. Jesse Con-Ui*, No. 3:13-cr-00123-ARC (M.D. Pa.), I confirm that the Juror Questionnaire distributed to prospective jurors is excerpted in this declaration; as a Resource Counsel conferring with the defense team in *United States v. Alexis Candelario-Santana*, No. 3:09-cr-00427-JAF-1 (D.P.R.), I confirm that the Juror Questionnaire distributed to prospective jurors is excerpted in this declaration; as a Resource Counsel conferring with the defense team in *United States v. Ritz Williams*, No. 4:08-cr-00070-YK (M.D. Pa.), I confirm that the Juror Questionnaire distributed to prospective jurors is excerpted in this declaration (the case settled prior to voir dire); as a Resource Counsel conferring with the defense team in *United States v. Kaboni Savage, et al.*, 2:07-cr-00550-RBS (E.D. Pa.), I confirm that the Juror Questionnaire distributed to prospective jurors is excerpted in this declaration; defense counsel Richard Jasper provided me the Juror Questionnaire distributed to prospective jurors in *United States v. United States v. Vincent Basciano*, No. 1:05-cr-00060-NGG (E.D.N.Y.) that is excerpted in this declaration.

I declare under penalty of perjury under the laws of the United States of America, 28 U.S.C. §1746, that the foregoing is true and correct. Executed this 1<sup>st</sup> day of August 2024.

/s/ Matthew Rubenstein  
Matthew Rubenstein

## **Juror Questionnaires Providing a Comprehensive Introduction and Overview of a Penalty Phase**

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*United States v. Sayfullo Habibullaevic Saipov*  
No. 1:17-CR-00722-VSB (S.D.N.Y.)  
(Joint-proposed juror questionnaire ECF 476-1,  
filed August 9, 2022)  
Judge Presiding: The Hon. Vernon S. Broderick  
(*Voir dire* began October 11, 2022.)

## **SECTION 10: QUESTIONS CONCERNING PUNISHMENT**

### **INTRODUCTION**

In a case where jurors may have to decide between lifetime incarceration or death as possible punishments, it is important that we know your opinions and feelings regarding punishment.

If there is a punishment phase of the trial, it will be the jurors' responsibility to determine whether Sayfullo Saipov will be sentenced to life imprisonment without the possibility of release or sentenced to the death penalty. In the federal system there is no parole; therefore, if Defendant Saipov is sentenced to life imprisonment he will spend the rest of his life in prison and never be released.

The decision whether to impose a sentence of life imprisonment without the possibility of release or death is one the law leaves entirely up to the jurors. Each juror must ultimately make a unique individual judgment about whether to sentence a defendant to life imprisonment without the possibility of release or to death.

If, and only if, all twelve jurors unanimously find that death is the only appropriate sentence for Sayfullo Saipov, will a death sentence be imposed. On the other hand, if one or more jurors find that a sentence of life imprisonment without the possibility of release is the appropriate sentence for Defendant Saipov, the judge will impose a sentence of life imprisonment without the possibility of release.

During a punishment phase, jurors consider certain evidence referred to in the law as "aggravating factors," and "mitigating circumstances." Aggravating factors are factors that could support a sentence of death. In order for an aggravating factor to be considered, all twelve jurors must agree that the factor has been proved by the government beyond a reasonable doubt. Jurors may not consider anything else as an aggravating factor.

Mitigating factors pertain to the circumstances of the offense, or the personal traits, character, or background of the Defendant, or anything else relevant to the sentencing decision that would suggest, for any individual juror, that life imprisonment without the possibility of release rather than death is the appropriate punishment. Mitigating circumstances do not excuse or justify the crime and the law does not require that there be a connection between the mitigating circumstances and the crime committed.

The sentence imposed by the jury, whether a unanimous vote for life, a non-unanimous vote for life or a unanimous vote for death, is final. The judge must follow the jury's sentencing determination.

This is only an overview of the law about jurors' consideration of life imprisonment without the possibility of release and the death penalty. If this case requires a punishment phase, the judge will instruct jurors in greater detail about their duties.

By asking these questions about punishment, the Court is not suggesting in any way that the defendant is guilty, or that you will in fact be called upon to decide a penalty in this case. The Court must know, however, whether you could be fair to both the prosecution and the defense on the issue of punishment if you reach that issue.

With the above overview in mind, please answer the following questions completely and honestly, always remembering that there are no right or wrong answers.

**SENTENCING QUESTIONS**

113. In general, what are your views on the death penalty?

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114. Please CIRCLE below the number from 1 - 10 that best reflects your overall opinion regarding the death penalty, with “1” being strongly opposed and “10” being strongly in favor:

<u>Strongly Opposed</u>										<u>Strongly in favor</u>	
1	2	3	4	5	6	7	8	9	10		

115. Which of the following best describes your view (please check only one):

- If a person is convicted of a crime for which the death penalty is authorized, I will always vote to impose it, regardless of the facts and law in the case, and could not vote for a life sentence under those circumstances.
- I am strongly in favor of the death penalty and would have a difficult time voting against it if a person is convicted of a capital crime, regardless of the facts and law in the case.
- I generally favor the death penalty, but I would base a decision to impose it on the facts and the law in the case.
- I do not have strong opinions either for or against the death penalty, and I would consider both alternatives and base a decision to impose it on the facts and law in the case.
- I am generally opposed to the death penalty, but I believe I can put aside my feelings against the death penalty and impose it if it is called for by the facts and the law in the case.

*United States v. Jessie Con-Ui*  
No. 3:13-cr-00123-ARC (M.D. Pa.)  
Judge Presiding: The Hon. A. Richard Caputo  
(*Voir dire* began April 24, 2017.)



#### PART IV: QUESTIONS CONCERNING PUNISHMENT

If the jury determines that Jessie Con-Ui is guilty beyond a reasonable doubt of the first degree murder of Eric Williams, your jury service will not be over. The same jury must also decide, at a second sentencing trial, whether or not Mr. Con-Ui will be sentenced to life imprisonment without the possibility of release or death. In the federal system there is no parole and if a defendant is sentenced to life imprisonment he will spend the rest of his life in prison and never be released.

The questions in this section are not meant to imply that Mr. Con-Ui is guilty or that you will, in fact, be called upon to decide punishment in this case. In a case where jurors may have to consider lifetime incarceration and death as possible punishments, it is important that we know your opinions and feelings regarding punishment.

The decision whether to impose a sentence of life imprisonment without the possibility of release or to impose a sentence of death is one the law leaves entirely up to the jurors. Each juror must ultimately make a unique individual moral judgment about whether to sentence a defendant to life imprisonment without the possibility of release or death. The law never requires any member of the jury to vote for a sentence of death.

During a sentencing trial, if one is required, jurors consider certain evidence referred to in the law as “aggravating factors” and “mitigating circumstances.” Aggravating factors are factors that could support a sentence of death. In order for an aggravating factor to be considered, all twelve jurors must agree that the factor has been proved by the government beyond a reasonable doubt. Jurors may not consider anything else as an aggravating factor.

Mitigating circumstances are circumstances about the crime, the defendant, or anything else relevant to the sentencing decision that would suggest, for any individual juror, that life imprisonment without the possibility of release, rather than death, is the appropriate punishment. Mitigating circumstances do not excuse or justify the crime and the law does not require that there be a connection between the mitigating circumstances and the crime committed.

Unlike aggravating factors, the law does not require mitigating circumstances to be proved beyond a reasonable doubt or be found unanimously by all twelve jurors. Any single juror may find, and consider, any mitigating circumstance proved by a preponderance of the evidence. This is a lower standard of proof than required for aggravating factors. Furthermore, unlike aggravating factors, the jurors may also consider mitigating circumstances that have not been specifically presented to them by the court or parties.

After considering the aggravating factors unanimously found proven beyond a reasonable doubt and the mitigating circumstances found proven by a preponderance of the evidence by one or more jurors, the jurors then assign the significance each feels is appropriate to the aggravating factors and mitigating circumstances. Jurors then determine whether the aggravating factors so sufficiently outweigh the mitigating circumstances to justify the sentence of death, or, in the absence of any mitigating circumstance, whether the aggravating factors alone are sufficient to justify a sentence of death.

If, and only if, all twelve jurors unanimously find that death is the appropriate sentence for Mr. Con-Ui, will a death sentence be imposed. On the other hand, if one or more jurors find that a sentence of life imprisonment without the possibility of release is the appropriate sentence for Mr. Con-Ui, the judge will impose a sentence of life imprisonment without the possibility of release.

Please bear in mind that life imprisonment without the possibility of release is always a possible sentence in a capital case and the law never requires that a juror vote for a sentence of death. If even one juror concludes that life imprisonment without the possibility of release is appropriate for Mr. Con-Ui, then the judge will impose a sentence of life imprisonment without the possibility of release. In other words, a decision to agree to disagree will result in the Court imposing a sentence of life imprisonment without the possibility of release.

The sentence imposed by the jury, whether a unanimous vote for life imprisonment without the possibility of release, a non-unanimous vote that results in a life imprisonment without release sentence, or a unanimous vote for death, is final. The judge must follow the jury's sentencing determination.

This is only an overview of the law about a juror's consideration of life imprisonment without the possibility of release and the death penalty. If this case requires a sentencing trial, the judge will instruct the jurors in greater detail about their duties.

With the above overview in mind, please answer the following questions completely and honestly, always remembering that there are no right or wrong answers.

62. In general, what are your views on the death penalty?

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63. In general what are your views on the death penalty for a prisoner who intentionally kills a corrections officer with premeditation and malice and without any legal excuse or justification (e.g., not insane, not acting under the heat of passion, etc.)?

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Please explain why you hold those beliefs: \_\_\_\_\_

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64. How long have you held your views on the death penalty? \_\_\_\_\_

*United States v. Alexis Candelario-Santana*  
No. 3:09-cr-00427-JAF-1 (D.P.R.)  
Judge Presiding: The Hon. José A. Fusté (former Chief Judge)  
(*Voir dire* began January 28, 2013.)

**Juror No.** \_\_\_\_\_

**PART III: QUESTIONS CONCERNING POTENTIAL PUNISHMENT**

In this case, [1] Alexis Candelario Santana faces a potential sentence of life imprisonment without the possibility of release or the death penalty if convicted of capital murder. Procedurally, this trial may proceed in two stages: a trial phase, during which the jury will consider the defendant's guilt or non-guilt, and a penalty phase. During the trial phase, the only question for the jury is whether the government has proven a defendant guilty beyond a reasonable doubt. The question of possible punishments must not enter into your deliberations during this phase of the trial. If the jury unanimously finds a defendant guilty on a count for which death is a possible penalty, the case will then, and only then, proceed to the penalty phase.

Should a penalty phase be necessary, the question for the jury to decide is whether the defendant should be sentenced to death or to life imprisonment without the possibility of release. The jury makes this decision by weighing a variety of factors. The government will present information as to matters referred to as "aggravating factors," meaning circumstances that under the law may justify the imposition of the death penalty. The defendant would then present information as to matters referred to as "mitigating factors," which are facts about a defendant or any other relevant evidence under the law that may cause you to believe that the death penalty is not warranted. In order to impose a sentence of death, all jurors must agree that is the correct sentence. Even if a single juror disagrees that death is the correct sentence, the death penalty cannot be imposed and the judge will impose a sentence of life. Each juror must come to his or her own decision as to whether to impose a sentence of death or a sentence of life imprisonment without the possibility of release. In the federal prison system, there is no parole, so a person sentenced to life imprisonment must spend his or her life in prison. There is never a requirement that the death penalty must be imposed. The sentence imposed by the jury is final and cannot be changed by the Judge.

The questions in this section are not meant to imply that the defendant is guilty or that you will, in fact, be called upon to decide a penalty in this case. Moreover, in asking questions about your feelings on the possible sentences, you are not being asked to determine now or to state what you would decide in this particular case. Rather, you are only being asked about this type of case



*United States v. Ritz Williams*

No. 4:08-cr-00070-YK (M.D. Pa.)

Judge Presiding: The Hon. Yvette Kane (Chief Judge)  
(The juror questionnaire was approved by the Court and filled out by prospective jurors in anticipation of voir dire which was scheduled to commence on April 16, 2013.

However, the case was resolved by a negotiated life settlement on April 15, 2013. Note that this questionnaire had been stipulated to by the parties and was filed as ECF No. 712 on January 9, 2013.)

## PART V: QUESTIONS CONCERNING PUNISHMENT

If the jury determines that Ritz Williams is guilty beyond a reasonable doubt of the first degree murder of Alvin Allery, your jury service will not be over. The same jury must also decide, at a second sentencing trial, whether or not Mr. Williams will be sentenced to life imprisonment without the possibility of release or death. In the federal system there is no parole and if a defendant is sentenced to life imprisonment he will spend the rest of his life in prison and never be released.

The questions in this section are not meant to imply that Mr. Williams is guilty or that you will, in fact, be called upon to decide punishment in this case. In a case where jurors may have to consider lifetime incarceration and death as possible punishments, it is important that we know your opinions and feelings regarding punishment.

The decision whether to impose a sentence of life imprisonment without the possibility of release or to impose a sentence of death is one the law leaves entirely up to the jurors. Each juror must ultimately make a unique individual moral judgment about whether to sentence a defendant to life imprisonment without the possibility of release or death. The law never requires any member of the jury to vote for a sentence of death.

During a sentencing trial, if one is required, jurors consider certain evidence referred to in the law as “aggravating factors” and “mitigating circumstances.” Aggravating factors are factors that could support a sentence of death. In order for an aggravating factor to be considered, all twelve jurors must agree that the factor has been proved by the government beyond a reasonable doubt. Jurors may not consider anything else as an aggravating factor.

Mitigating circumstances are circumstances about the crime, the defendant or anything else that would suggest, for any individual juror, that life imprisonment without the possibility of release, rather than the death, is the appropriate punishment. Mitigating circumstances do not excuse or justify the crime and the law does not require that there be a connection between the mitigating circumstances and the crime committed.

Unlike aggravating factors, the law does not require mitigating circumstances to be proved beyond a reasonable doubt or be found unanimously by all twelve jurors. Any single juror may find, and consider, any mitigating circumstance proved by a preponderance of the evidence. This is a lower standard of proof than required for aggravating factors. Furthermore, unlike aggravating factors, the jurors may also consider mitigating circumstances that have not been specifically presented to them by the court or parties.

After considering the aggravating factors unanimously found proven beyond a reasonable doubt and the mitigating circumstances found proven by a preponderance of the evidence by one or more jurors, the jurors then assign the significance each feels is appropriate to the aggravating factors and mitigating circumstances. Jurors then determine whether the aggravating factors so sufficiently outweigh the mitigating circumstances to justify the sentence of death, or, in the absence of any mitigating circumstance, whether the aggravating factors alone are sufficient to justify a sentence of death.

If, and only if, all twelve jurors unanimously find that death is the appropriate sentence for Mr. Williams, will a death sentence be imposed. On the other hand, if one or more jurors find that a sentence of life imprisonment without the possibility of release is the appropriate sentence for Mr. Williams, the judge will impose a sentence of life imprisonment without the possibility of release.

Please bear in mind that life imprisonment without the possibility of release is always an possible sentence in a capital case and the law never requires that a juror vote for a sentence of death. If even one juror concludes that life imprisonment without the possibility of release is appropriate for Mr. Williams, then the judge will impose a sentence of life imprisonment without the possibility of release. In other words, a decision to agree to disagree will result in the Court imposing a sentence of life imprisonment without the possibility of release.

The sentence imposed by the jury, whether a unanimous vote for life imprisonment without the possibility of release, a non-unanimous vote that results in a life imprisonment without release sentence, or a unanimous vote for death, is final. The judge must follow the jury's sentencing determination.

This is only an overview of the law about a juror's consideration of life imprisonment without the possibility of release and the death penalty. If this case requires a sentencing trial, the judge will instruct the jurors in greater detail about their duties.

With the above overview in mind, please answer the following questions completely and honestly, always remembering that there are no right or wrong answers.

77. In general, what are your views on the death penalty?

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78. In general what are your views on the death penalty for a prisoner who intentionally kills another prisoner with premeditation and malice and without any legal excuse or justification (e.g., not insane, not acting under the heat of passion, etc.)?

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Please explain why you hold those beliefs: \_\_\_\_\_

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*United States v. Kaboni Savage, et al.*  
No. 2:04-cr-00269-MAK (E.D. Pa.)  
Judge Presiding: The Hon. R. Barclay Surrick  
(*Voir dire* began November 5, 2012.)

## PART V: QUESTIONS CONCERNING PUNISHMENT

If the jury determines that Kaboni Savage, Robert Merritt or Steven Northington is guilty beyond a reasonable doubt of premeditated intentional murder, the jury's service will not be over. The same jury must also decide, at a punishment phase of the trial, whether or not each of the defendants found guilty of premeditated intentional murder is eligible for the death penalty, and if so, whether he will be sentenced to life imprisonment without the possibility of release or death. In the federal system there is no parole and if a defendant is sentenced to life imprisonment he will spend the rest of his life in prison and never be released.

The questions in this section are not meant to imply that any defendant is guilty or that you will, in fact, be called upon to decide punishment in this case. In a case where jurors may have to consider lifetime incarceration and death as possible punishments, it is important that we know your opinions and feelings regarding punishment.

The decision whether to impose a sentence of life imprisonment without the possibility of release or death is one the law leaves entirely up to the jurors. Each juror must ultimately make a unique individual moral judgment about whether to sentence a defendant to life imprisonment without the possibility of release or to death. The law never requires any member of the jury to vote for a sentence of death.

During a punishment phase, if one is required, jurors may consider certain evidence referred to in the law as "aggravating factors," and "mitigating circumstances." Aggravating factors are factors that could support a sentence of death. In order for an aggravating factor to be considered, all twelve jurors must agree that the factor has been proved by the government beyond a reasonable doubt. Jurors may not consider anything else as an aggravating factor.

Mitigating circumstances are circumstances about the crime, the defendant or anything else that would suggest, for any individual juror, that life imprisonment without the possibility of release rather than death is the appropriate punishment.

Unlike aggravating factors, the law does not require mitigating circumstances to be proved beyond a reasonable doubt or be found unanimously by all twelve jurors. Any single juror may find, and consider, any mitigating factor proved by a preponderance of the evidence. This is a lower standard of proof than required for aggravating factors. Furthermore, unlike aggravating factors, jurors should also consider and evaluate mitigating circumstances they identify that may not have been specifically presented to them.

If, and only if, all twelve jurors unanimously find that death is the only appropriate sentence for any individual defendant, will a death sentence be imposed on that defendant. On the other hand, if one or more jurors find that a sentence of life imprisonment without the possibility of release is the appropriate sentence for an individual defendant, the judge will impose a sentence of life imprisonment without the possibility of release for that defendant.

The sentence imposed by the jury, whether a unanimous vote for life, a non-unanimous vote for life or a unanimous vote for death, is final. The jury's decision is binding on the judge. The judge must follow the jury's sentencing determination.

This is only an overview of the law about jurors' consideration of life imprisonment without the possibility of release and the death penalty. If this case requires a punishment phase, the judge will instruct jurors in greater detail about their duties.

With the above overview in mind, please answer the following questions completely and honestly, always remembering that there are no right or wrong answers.

96. Which of the following best describes your views of the death penalty (please check one):

\_\_\_\_\_ I strongly believe in the death penalty and view it as the correct punishment for a person who has been found guilty of a capital offense, and could not vote for a life sentence under those circumstances.

\_\_\_\_\_ Although I support the death penalty, I believe there are some cases where the death penalty is not the correct punishment, even where a person has been convicted of a capital offense.

\_\_\_\_\_ I do not have strong opinions, one way or the other, regarding the death penalty and could consider both alternatives.

\_\_\_\_\_ Although I do not support the death penalty, in a capital case, if I were convinced the law and the facts of the case justified it, I could vote for the death penalty.

\_\_\_\_\_ I am strongly opposed to the death penalty and could never vote to sentence someone to death.

97. In general, what are your views on the death penalty?

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98. What are your views on the death penalty for individuals who intentionally kill another with premeditation and malice without any legal excuse or justification (e.g., not insane, not defending himself, and not acting under the heat of passion)?

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*United States v. Vincent Basciano*  
No. 1:05-cr-00060-NGG (E.D. N.Y.)  
Judge Presiding: The Hon. Nicholas Garaufis  
(*Voir dire* began March 1, 2011.)

**PART V: QUESTIONS CONCERNING PUNISHMENT**  
**(Questions 85 through 118)**

**Part V: The questions in this section are not meant to imply that the defendant is guilty or that you will, in fact, be called upon to decide a penalty in this case. The Judge must know, however, whether you could be fair to both the prosecution and the defense on the issue of punishment if you reach that issue.**

In this case, only if found guilty of murder in aid of racketeering, the defendant Vincent Basciano faces a potential sentence of death. In a case in which jurors may have to consider death as a possible punishment, it is important that we know your thoughts and opinions regarding the death penalty.

The decision to impose a sentence of death or not is one the law leaves entirely up to the jury. The jury's decision is binding on the Judge. The law never requires any member of the jury to vote for a sentence of death. The alternative to a sentence of death is life imprisonment without the possibility of release.

If the jury determines at the conclusion of the trial stage of the case that the defendant, Vincent Basciano, is guilty beyond a reasonable doubt of murder, the jury's service will not be over. The same jury must also decide, at a subsequent sentencing hearing, whether or not the defendant will be sentenced to death or to life imprisonment without the possibility of release.

During that sentencing hearing, the government would have the opportunity to present evidence of aggravating factors, or the circumstances that could justify the imposition of the death penalty. The defendant would have the opportunity at the sentencing hearing to present evidence of mitigating factors, such as circumstances about the crime or himself that would suggest that the death penalty is not appropriate in this case. Mitigating circumstances are not matters that would excuse or justify the crimes,

but are facts and circumstances about the defendant or the crime that could cause you to believe that a sentence of death is not called for. If even a **single juror** concludes that death is not the appropriate sentence, the Judge must impose a life sentence. The alternative to a sentence of death is life imprisonment without the possibility of release.

In order to impose a sentence of death, all 12 jurors must agree that death is the only appropriate sentence. The sentence imposed by the jury is final. The law **never** requires any member of the jury to vote for a sentence of death.

This is only an overview of the law applicable to a jury's consideration of the death penalty. If this case requires a sentencing hearing, the Court will instruct the jury in much greater detail about its duties.