

MB's copy

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

**Special Verdict Form for Penalty Phase
02 CR 778 (SJ)**

RONALD MALLAY,

Defendant.

I. The Defendant's Age

We, the jury, unanimously find that the Government has established beyond a reasonable doubt that the **Defendant Ronald Mallay** was at least 18 years of age on January 23, 1998.

YES ✓ NO _____

II. Preliminary Intent Factors

General Instructions for Section II: For each of the following preliminary intent factors, indicate the appropriate finding by the jury.

A. Basdeo Somaispersaud

i. First Preliminary Intent Factor

We, the jury, unanimously find that the Government has established beyond a reasonable doubt that the **Defendant Ronald Mallay** intentionally killed Basdeo Somaispersaud.

Count Eight YES ✓ NO _____

Count Ten YES ✓ NO _____

Count Eleven YES ✓ NO _____

ii. **Second Preliminary Intent Factor**

We, the jury, unanimously find that the Government has established beyond a reasonable doubt that the **Defendant Ronald Mally** intentionally inflicted serious bodily injury which resulted in the death of Basdeo Somaispersaud.

Count Eight	YES <input checked="" type="checkbox"/>	NO <input type="checkbox"/>
Count Ten	YES <input checked="" type="checkbox"/>	NO <input type="checkbox"/>
Count Eleven	YES <input checked="" type="checkbox"/>	NO <input type="checkbox"/>

iii. **Third Preliminary Intent Factor**

We, the jury, unanimously find that the Government has established beyond a reasonable doubt that the **Defendant Ronald Mally** intentionally participated in an act, contemplating that the life of a person would be taken and/or intending that lethal force would be used in connection with a person, other than one of the participants in the offense, and the victim Basdeo Somaispersaud died as a direct result of the act.

Count Eight	YES <input checked="" type="checkbox"/>	NO <input type="checkbox"/>
Count Ten	YES <input checked="" type="checkbox"/>	NO <input type="checkbox"/>
Count Eleven	YES <input checked="" type="checkbox"/>	NO <input type="checkbox"/>

B. **Hardeo Sewnanan**

i. **First Preliminary Intent Factor**

We, the jury, unanimously find that the government has established beyond a reasonable doubt that the **Defendant Ronald Mally** intentionally killed Hardeo Sewnanan.

Count Six	YES <input checked="" type="checkbox"/>	NO <input type="checkbox"/>
Count Seven	YES <input checked="" type="checkbox"/>	NO <input type="checkbox"/>

ii. Second Preliminary Intent Factor

We, the jury, unanimously find that the Government has established beyond a reasonable doubt that the **Defendant Ronald Mallay** intentionally inflicted serious bodily injury which resulted in the death of Hardeo Sewnanan.

Count Six	YES <u>✓</u>	NO _____
Count Seven	YES <u>✓</u>	NO _____

iii. Third Preliminary Intent Factor

We, the jury, unanimously find that the Government has established beyond a reasonable doubt that the **Defendant Ronald Mallay** intentionally participated in an act, contemplating that the life of a person would be taken and/or intending that lethal force would be used in connection with a person, other than one of the participants in the offense, and the victim Hardeo Sewnanan died as a direct result of the act.

Count Six	YES <u>✓</u>	NO _____
Count Seven	YES <u>✓</u>	NO _____

Further Instructions for Section II:

If you indicated that the Government has not established at least one of the preliminary intent factors set forth in this Section II, 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 his or her juror number 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 indicated that the Government has established at least one or more of the Preliminary Intent Factors in this Section II, proceed to Section III which follows.

III. Statutory Aggravating Factors

General Instructions for Section III: For each of the following, indicate the appropriate finding by the jury.

A. Cruel and Heinous Manner

We, the jury, unanimously find that the Government has established beyond a reasonable doubt that the **Defendant Ronald Mallay** committed the offenses in an especially heinous, cruel or depraved manner in that it involved torture or serious physical abuse to the victim.

Count Six YES ✓ NO _____

Count Seven YES ✓ NO _____

B. Commission of the Offense By Payment

We, the jury, unanimously find that the Government has established beyond a reasonable doubt that the **Defendant Ronald Mallay** procured the commission of the offenses by payment or promise of payment of anything of pecuniary value, such as money.

Count Six YES ✓ NO _____

Count Seven YES ✓ NO _____

Count Eight YES ✓ NO _____

Count Ten YES ✓ NO _____

Count Eleven YES ✓ NO _____

C. Pecuniary Gain

We, the jury, unanimously find that the Government has established beyond a reasonable doubt that the **Defendant Ronald Mallay** committed the offense as consideration for the receipt, or in the expectation of the receipt, of anything of pecuniary value.

Count Six	YES <input checked="" type="checkbox"/>	NO <input type="checkbox"/>
Count Seven	YES <input checked="" type="checkbox"/>	NO <input type="checkbox"/>
Count Eight	YES <input checked="" type="checkbox"/>	NO <input type="checkbox"/>
Count Ten	YES <input checked="" type="checkbox"/>	NO <input type="checkbox"/>
Count Eleven	YES <input checked="" type="checkbox"/>	NO <input type="checkbox"/>

D. Substantial Planning and Premeditation

We, the jury, unanimously find that the Government has established beyond a reasonable doubt that the **Defendant Ronald Mallay** committed the capital offenses after substantial planning and premeditation.

Count Six	YES <input checked="" type="checkbox"/>	NO <input type="checkbox"/>
Count Seven	YES <input checked="" type="checkbox"/>	NO <input type="checkbox"/>
Count Eight	YES <input checked="" type="checkbox"/>	NO <input type="checkbox"/>
Count Ten	YES <input checked="" type="checkbox"/>	NO <input type="checkbox"/>
Count Eleven	YES <input checked="" type="checkbox"/>	NO <input type="checkbox"/>

E. Vulnerability of Victims

We, the jury, unanimously find that the Government has established beyond a reasonable doubt that the victims of the capital counts, Basdeo Somaipersaud and Hardeo Sewnanan, were particularly vulnerable due to infirmity.

a. Hardeo Sewnanan

YES NO

b. Basdeo Somaipersaud

YES NO

Further Instructions for Section III: If you indicated that the Government has not established at least one of the Statutory Aggravating Factors in this Section III, then stop your deliberations, cross out Sections IV, and 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 his or her juror number 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 indicated that the Government has established at least one or more of the Preliminary Intent Factors in Section II, and indicated that the Government has established at least one of the Statutory Aggravating Factors in this Section III, proceed to Section IV which follows.

IV. Non-Statutory Aggravating Factors

General Instructions for Section IV: For each of the following, indicate the appropriate finding by the jury.

A. Future Dangerousness of the Defendant

We, the jury, unanimously find that the Government has established beyond a reasonable doubt that **Defendant Ronald Mallay** represents a continuing danger to the lives and safety of other persons, and that **Defendant Ronald Mallay** is likely to commit criminal acts of violence in the future that would constitute a continuing and serious threat to the lives and safety of others.

Count Six	YES <u>✓</u>	NO _____
Count Seven	YES <u>✓</u>	NO _____
Count Eight	YES <u>✓</u>	NO _____
Count Ten	YES <u>✓</u>	NO _____
Count Eleven	YES <u>✓</u>	NO _____

Further instruction for Section IV: Regardless of whether you found that the Government has established one or more of the Non-Statutory Aggravating Factors in this Section IV, proceed to Section V, which follows.

V. Mitigating Factors

General Instructions for Section V: For each of the following mitigating factors, you should indicate, in the space provided, the number of jurors who have found the existence of that mitigating factor to be proven by a preponderance of the evidence.

Your vote with respect to a mitigating factor need not be unanimous. A finding with respect to a mitigating factor may be made by one or more of the members of the jury, and any member of the jury who finds the existence of a mitigating factor may consider such a factor established in considering whether or not a sentence of death shall be imposed, regardless of the number of other jurors who agree that the factor has been established.

Ronald Mallay has proffered to following mitigating factors:

1. If not sentenced to death, Mr. Mallay will be imprisoned for the remainder of his life with no possibility of release. (This mitigating factor is deemed proven by operation of law.)

Number of jurors who so find: 12

2. Mr. Mallay's activities in prison will be controlled by the conditions of confinement imposed upon him by the Federal Bureau of Prisons.

Number of jurors who so find: 5

3. Mr. Mallay has engaged in no violence since his arrest.

Number of jurors who so find: 5

4. Mr. Mallay has been respectful and well-behaved throughout this trial.

Number of jurors who so find: 12

5. Mr. Mallay has made and will continue to make a good adjustment to prison.

Number of jurors who so find: 6

6. Mr. Mallay is 61 years old and in poor health.

Number of jurors who so find: 4

7. If sentenced to lifetime imprisonment with no possibility of release, it is likely that Mr. Mallay's health will not improve.

Number of jurors who so find: 3

8. If sentenced to lifetime imprisonment with no possibility of release, Mr. Mallay will pose no danger to others.

Number of jurors who so find: 0

9. If Mr. Mallay is executed, his family will suffer grief and loss including his wife and children.

Number of jurors who so find: 10

10. If sentenced to life imprisonment with no possibility of release, Mr. Mallay can continue a parental relationship with his children.

Number of jurors who so find: 8

11. If sentenced to life imprisonment with no possibility of release, Mr. Mallay will be able to maintain a relationship with his family.

Number of jurors who so find: 11

12. The evidence does not establish Mr. Mallay's guilt of the capital offenses with sufficient certainty to justify the imposition of a sentence of death.

Number of jurors who so find: 0

13. Mr. Mallay has proven himself to be capable of acts of generosity and kindness.

Number of jurors who so find: 0

14. Other relevant circumstances weigh against imposition of a sentence of death.

The following extra spaces are provided to write in additional mitigating factors, if any, found by any one or more jurors pursuant to factor 14. If none are found, write "NONE" and cross out the extra spaces with a large "X."

None.

Number of jurors who so find _____

Number of jurors who so find _____

Number of jurors who so find _____.

General Instructions for Section V: Proceed to Section VI and Section VII which follow.

VI. Determination of Sentence

General Instructions for Section VI: Based upon consideration of whether the aggravating factors found to exist sufficiently outweigh any mitigating factor or factors found to exist, or in the absence of any mitigating factors, whether the aggravating factors are themselves sufficient to justify a sentence of death:

A. Count Six: Murder for Hire (Hardeo Sewnanan)

1. Death Sentence

We the jury determine, by unanimous vote, that a sentence of death shall be imposed upon **Ronald Mallay**.

YES _____ NO

If you indicate "YES," sign your names here and proceed to Section VI(B). If you do not indicate "YES," the foreperson alone should sign, and you should proceed to Section VI(A)(2).

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

FOREPERSON

Date: _____, 2007

2. Sentence of Life in Prison Without Possibility of Release

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

YES _____ NO _____

If you answer "YES," sign your names here, and then proceed to Section VI(B).
If you answer "NO," only the foreperson should sign and you should move on Section VI(A)(3).

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

FOREPERSON
Date: _____, 2007

3. **Unable to Reach Unanimous Sentence**

We the jury are unable to reach a unanimous vote as to the sentence to be imposed.

YES NO

If you answer "YES," sign your names here, and then proceed to Section VI(B).

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

FOREPERSON

Date: _____, 2007

B. Count Seven: Conspiracy to Commit Murder for Hire (Hardeo Sewnanan)

1. Death Sentence

We the jury determine, by unanimous vote, that a sentence of death shall be imposed upon **Ronald Mallay**.

YES _____ NO

If you indicate "YES," sign your names here and proceed to Section VI(C). If you do not indicate "YES," the foreperson alone should sign, and you should proceed to Section VI(B)(2).

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

FOREPERSON

Date: _____, 2007

2. **Sentence of Life in Prison Without Possibility of Release**

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

YES _____ NO ✓ _____

If you answer "YES," sign your names here, and then proceed to Section VI(C).
If you answer "NO," only the foreperson should sign and you should move on Section VI(B)(3).

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

FOREPERSON
Date: _____, 2007

3. **Unable to Reach Unanimous Sentence**

We the jury are unable to reach a unanimous vote as to the sentence to be imposed.

YES NO

If you answer "YES," sign your names here, and then proceed to Section VI(C).

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

FOREPERSON
Date: _____, 2007

C. Count Eight: Murder in Aid of Racketeering (Basdeo Somaipersaud)

1. Death Sentence

We the jury determine, by unanimous vote, that a sentence of death shall be imposed upon **Ronald Mallay**.

YES _____ NO

If you indicate "YES," sign your names here and proceed to Section VI(D). If you do not indicate "YES," the foreperson alone should sign, and you should proceed to Section VI(C)(2).

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

FOREPERSON

Date: _____, 2007

2. **Sentence of Life in Prison Without Possibility of Release**

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

YES _____ NO _____

If you answer "YES," sign your names here, and then proceed to Section VI(D).
If you answer "NO," only the foreperson should sign and you should move on Section VI(C)(3).

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

FOREPERSON

Date: _____, 2007

3. Unable to Reach Unanimous Sentence

We the jury are unable to reach a unanimous vote as to the sentence to be imposed.

YES ✓ NO _____

If you answer "YES," sign your names here, and then proceed to Section VI(D).

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

FOREPERSON
Date: _____, 2007

D. Count Ten: Murder for Hire (Basdeo Somaipersaud)

1. Death Sentence

We the jury determine, by unanimous vote, that a sentence of death shall be imposed upon Ronald Mallay.

YES _____ NO

If you indicate "YES," sign your juror numbers here and proceed to Section VI(E). If you do not indicate "YES," the foreperson alone should sign, and you should proceed to Section VI(D)(2).

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

FOREPERSON

Date: _____, 2007

2. Sentence of Life in Prison Without Possibility of Release

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

YES _____ NO ✓

If you answer "YES," sign your names here, and then proceed to Section VI(E).
If you answer "NO," only the foreperson should sign and you should move on Section VI(D)(3).

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

FOREPERSON
Date: _____, 2007

3. **Unable to Reach Unanimous Sentence**

We the jury are unable to reach a unanimous vote as to the sentence to be imposed.

YES NO

If you answer "YES," sign your names here, and then proceed to Section VI(E).

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

FOREPERSON
Date: _____, 2007

E. Count Eleven: Conspiracy to Commit Murder for Hire (Basdeo Somaipersaud)

1. Death Sentence

We the jury determine, by unanimous vote, that a sentence of death shall be imposed upon **Ronald Mallay**.

YES _____ NO

If you indicate "YES," sign your juror numbers here and proceed to Section VII. If you do not indicate "YES," the foreperson alone should sign, and you should proceed to Section VI(E)(2).

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

FOREPERSON

Date: _____, 2007

2. Sentence of Life in Prison Without Possibility of Release

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

YES _____ NO ✓ _____

If you answer "YES," sign your names here, and then proceed to Section VII. If you answer "NO," only the foreperson should sign and you should move on Section VI(E)(3).

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

FOREPERSON

Date: _____, 2007

3. Unable to Reach Unanimous Sentence

We the jury are unable to reach a unanimous vote as to the sentence to be imposed.

YES NO

If you answer "YES," sign your names here, and then proceed to Section VII.

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

FOREPERSON
Date: _____, 2007

VII. Certification

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

Juror #1 _____

Juror #2 _____

Juror #3 _____

Juror #4 _____

Juror #5 _____

Juror #6 _____

Juror #7 _____

Juror #8 _____

Juror #9 _____

Juror #10 _____

Juror #11 _____

Juror #12 _____

Date: _____, 2007