



circumstances of the offense that militates for or mitigates against the imposition of the death penalty.

You are instructed that when you deliberate on the questions posed in the special issues, you are to consider all relevant mitigating circumstances, if any, supported by the evidence presented in both phases of the trial, whether presented by the State or the defendant. A mitigating circumstance may include, but is not limited to, any aspect of the defendant's character, background, record, emotional instability, intelligence or circumstances of the crime which you believe could make a death sentence inappropriate in this case. If you find that there is a mitigating circumstance or circumstances in this case, you must decide how much weight it/they deserve, if any, and thereafter, give effect and consideration to it/them in assessing the defendant's personal culpability at the time you answer the special issue.

You are instructed that mitigating evidence, if any, may be considered by you in answering the special issues under consideration. If you determine, when giving effect to the mitigating evidence, if any, that a life sentence rather than a death sentence is an appropriate response, let your answers to the special issues reflect that.

You are further instructed that you are not to be swayed by mere sentiment, conjecture, sympathy, passion, prejudice, public opinion or public feeling in considering all the evidence before you and in answering the special issues.

Should you return an affirmative finding on Special Issue No. 1 and Special Issue No. 2 and a negative finding on Special Issue No. 3, the Court will sentence the defendant to death. Should you return a negative finding on Special Issue No. 1 or Special Issue No. 2 or an affirmative finding on Special Issue No. 3 the Court will sentence the defendant to confinement in the Institutional Division of the Texas Department of Criminal Justice for life.

The State must prove Special Issue No. 1 submitted to you beyond a reasonable doubt, and you shall return a Special Verdict of "YES" or "NO" on Special Issue No. 1.

In deliberating on Special Issue No. 1 you shall consider all the evidence admitted at the guilt or innocence stage and the punishment stage of trial, including evidence of the defendant's background, character, record, emotional instability, intelligence, or the circumstances of the offense that militates for or mitigates against the imposition of the death penalty.

You may not answer Special Issue No. 1 "YES" unless you agree unanimously.

You may not answer Special Issue No. 1 "NO" unless ten (10) or more jurors agree.

Members of the jury need not agree on what particular evidence supports a negative answer to Special Issue No. 1.

You are further instructed that you are not to be swayed by mere sentiment, conjecture, sympathy, passion, prejudice, public opinion or public feeling in considering all of the evidence before you and in answering the Special Issue No. 1.

It is not required that the State prove Special Issue No. 1 beyond all possible doubt; it is required that the State's proof excludes all reasonable doubt concerning the defendant.

You are instructed that if you return an affirmative finding, that is a "YES" answer, to Special Issue No. 1, and only then, are you to answer Special Issue No. 2.

The State must prove Special Issue No. 2 submitted to you beyond a reasonable doubt, and you shall return a Special Verdict of "YES" or "NO" on Special Issue No. 2.

In deliberating on Special Issue No. 2 you shall consider all the evidence admitted at the guilt or innocence stage and the punishment stage of trial, including evidence of the defendant's background, character, record, emotional instability, intelligence, or the circumstances of the offense that militates for or mitigates against the imposition of the death penalty.

You may not answer Special Issue No. 2 "YES" unless you agree unanimously.

You may not answer Special Issue No. 2 "NO" unless ten (10) or more jurors agree.

Members of the jury need not agree on what particular evidence supports a negative answer to Special Issue No. 2.

You are further instructed that you are not to be swayed by mere sentiment, conjecture, sympathy, passion, prejudice, public opinion or public feeling in considering all of the evidence before you and in answering the Special Issue No. 2.

It is not required that the State prove Special Issue No. 2 beyond all possible doubt; it is required that the State's proof excludes all reasonable doubt concerning the defendant.

You are instructed that if you return an affirmative finding, that is a "YES" answer, to Special Issue No. 1 and Special Issue No. 2, and only then, are you to answer Special Issue No. 3.

You are instructed that in answering special Issue No. 3, you shall answer the issue "YES" or "NO."

You may not answer Special issue No. 3 "NO" unless you agree unanimously, and you may not answer Special Issue No. 3 "YES" unless ten (10) or more of you agree to do so.

You need not agree on what particular evidence supports an affirmative finding on Special Issue No. 3.

In answering Special Issue No. 3 you shall consider mitigating evidence to be evidence that a juror might regard as reducing the defendant's moral blameworthiness, including evidence of the defendant's background, character, record, emotional instability, intelligence, or the circumstances of the offense that mitigates against the imposition of the death penalty.

You are again instructed that you are not to be swayed by mere sentiment, conjecture, sympathy, passion, prejudice, public opinion or public feeling in considering all of the evidence before you in answering Special Issue No. 3.

Under the law applicable in this case, if the defendant is sentenced to imprisonment in the institutional division of the Texas Department of Criminal Justice for life, the defendant will become eligible for release on parole, but not until the actual time served by the defendant equals forty (40) calendar years, without consideration of any good conduct time. It cannot accurately be predicted how the parole laws might be applied to this defendant if the defendant is sentenced to a term of imprisonment for life because the application of those laws will depend on decisions made by prison and parole authorities, but eligibility for parole does not guarantee that parole will be granted.

You may consider the existence of the parole law. However, you are not to consider the manner in which the parole law may be applied to this particular defendant.

You are instructed that the defendant may testify in his own behalf if he chooses to do so, but if he elects not to do so, that fact cannot be taken by you as a circumstance against him nor prejudice him in any way. The defendant has elected not to testify in this punishment phase of trial, and you are instructed that you cannot and must not refer to or allude to that fact throughout your deliberations or take it into consideration for any purpose whatsoever.

During your deliberations upon the "Special Issues," you must not consider, discuss, nor relate any matters not in evidence before you. You should not consider nor mention any personal knowledge or information you may have about any fact or person connected with this case which is not shown by the evidence.

In arriving at the answers to the "Special Issues" submitted, it will not be proper for you to fix the same by lot, chance, or any other method than by a full, fair and free exchange of the opinion of each individual juror.

After the reading of this charge, you shall not be permitted to separate from each other, nor shall you talk with anyone not of your jury. After argument of counsel, you will retire and consider your answers to the "Special Issues" submitted to you. It is the duty of your foreman to preside in the jury room and vote with you on the answers to the "Special Issues" submitted.

You are the exclusive judges of the facts proved and the credibility of the witnesses and the weight to be given to their testimony, but you are bound to receive the law from the Court which has been given you and you are bound thereby.

Belinda Hill  
Belinda Hill, Judge  
230th District Court  
Harris County, TEXAS

**FILED**  
Loren Jackson  
District Clerk  
MAY 29 2009  
Time: 9:27 AM  
Harris County, Texas  
By: [Signature]  
Deputy

SPECIAL ISSUE NO. 1

Do you find from the evidence beyond a reasonable doubt that there is a probability that the defendant, Robert Alan Fratta, would commit criminal acts of violence that would constitute a continuing threat to society?

ANSWER

We, the jury, unanimously find and determine beyond a reasonable doubt that the answer to this Special Issue is "YES."

  
\_\_\_\_\_  
Foreman of the Jury

OR

We, the jury, because at least ten (10) jurors have a reasonable doubt as to the probability that the defendant, Robert Alan Fratta, would commit criminal acts of violence that would constitute a continuing threat to society, determine that the answer to this Special Issue is "NO."

\_\_\_\_\_  
Foreman of the Jury

In the event that the jury has answered Special Issue No. 1 in the affirmative, and only then, shall the jury answer Special Issue No. 2 to be found on the following page.

SPECIAL ISSUE NO. 2

Do you find from the evidence beyond a reasonable doubt that Robert Alan Fratta, the defendant himself, actually caused the death of Farah Fratta, the deceased, on the occasion in question, or if he did not actually cause the death of Farah Fratta, that he intended to kill Farah Fratta, or that he anticipated that a human life would be taken?

ANSWER

We, the jury, unanimously find and determine beyond a reasonable doubt that the answer to this Special Issue is "YES."

**FILED**  
Loren Jackson  
District Clerk  
MAY 30 2009

  
\_\_\_\_\_  
Foreman of the Jury

Time: \_\_\_\_\_  
Harris County, Texas  
By \_\_\_\_\_  
Deputy

OR

We, the jury, because at least ten (10) jurors have a reasonable doubt that Robert Alan Fratta, the defendant himself, actually caused the death of Farah Fratta, the deceased, on the occasion in question, or that he intended to kill Farah Fratta, or that he anticipated that a human life would be taken, determine that the answer to this Special Issue is "NO."

\_\_\_\_\_  
Foreman of the Jury

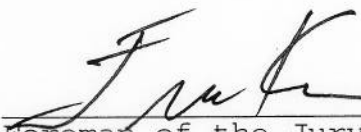
In the event that the jury has answered Special Issue No. 2 in the affirmative, and only then, shall the jury answer Special Issue No. 3 to be found on the following page.

SPECIAL ISSUE NO. 3

Do you find from the evidence, taking into consideration all of the evidence, including the circumstances of the offense, the defendant's character and background, and the personal moral culpability of the defendant, Robert Alan Fratta, that there is a sufficient mitigating circumstance or circumstances to warrant that a sentence of life imprisonment rather than a death sentence be imposed?

ANSWER

We, the jury, unanimously find that the answer to this Special Issue is "NO."

  
Foreman of the Jury **FILED**  
Loren Jackson  
District Clerk  
MAY 30 2009  
Time: \_\_\_\_\_ Harris County, Texas  
By \_\_\_\_\_ Deputy

OR

We, the jury, because at least ten (10) jurors find that there is a sufficient mitigating circumstance or circumstances to warrant that a sentence of life imprisonment rather than a death sentence be imposed, find that the answer to this Special Issue is "YES."

\_\_\_\_\_  
Foreman of the Jury

After the jury has answered each of the Special Issues under the conditions and instructions outlined above, the Foreman should sign the verdict form to be found on the last page of this charge.

VERDICT

We, the Jury, return in open court the above answers to the "Special Issues" submitted to us, and the same is our verdict in this case.

  
\_\_\_\_\_  
Foreman of the Jury

**FILED**

Loren Jackson  
District Clerk

MAY 30 2009

Time: \_\_\_\_\_  
Harris County, Texas

By \_\_\_\_\_  
Deputy



STATE OF TEXAS  
COUNTY OF HARRIS  
Loren Jackson, District Clerk  
MAY 30 2009  
Loren Jackson, District Clerk  
Harris County, Texas