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IN THE SUPREME COURT OF FLORIDA

IN RE: STANDARD CRIMINAL JURY INSTRUCTIONS IN CAPITAL CASES **CASE NO.: SC17-583**

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STANDARD JURY INSTRUCTION COMMITTEE'S RESPONSE TO THE COURT'S DEATH PENALTY JURY INSTRUCTIONS AND TO COMMENTS

The Supreme Court Committee on Standard Jury Instructions in Criminal Cases ("Committee"), by and through its Chair, files the following response to the death penalty jury instruction proposals issued by the Court in SC17-583 and the comments filed in response to the May 1, 2017 publication of the Court's instructions.

As an initial matter, the Committee voted 8-2 against requesting oral argument. The issues facing the Court are clearly set forth in the comments and it is not clear to the majority of the Committee that oral argument is necessary or that it will benefit the Court. Of course, if the Court disagrees, the Committee will participate in oral argument, if allowed.

As a second matter, the Committee did not know the Court was creating its own death penalty jury instructions. As a result, the Committee published jury instruction proposals for death penalty cases in the April 15, 2017 issue of the *Bar News*. After reviewing the Court's instructions and the comments, the majority of the Committee (by a 7-3 vote) continues to request the Court consider the Committee's proposals, which take into account the Court's instructions and the thoughts of the commenters. Three members believe it would be ineffective for the Committee to file its own proposals. However, the majority of members thought the Court should have the option of reviewing the Committee's ideas and proposals.

The Committee's proposals are in Appendix A and will be explained in detail below. Before explaining its reasoning, the Committee notes that there were six commenters to the Court's instructions: 1) the faculty of the Handling Capital Cases course for circuit judges ("HCC Faculty"); 2) Public Defender Howard "Rex" Dimmig; 3) the Florida Public Defender's Association ("FPDA"); 4) the Florida Center for Capital Representation at FIU Law School and Florida

Association of Criminal Defense Lawyers ("FCCR/FACDL"); 5) Attorney Robert R. Berry; and 6) the Florida Prosecuting Attorneys Association ("FPAA").

Public Defender Rex Dimmig suggested a comprehensive re-evaluation of the death penalty instructions because changes to the structure of the instructions—not merely amendments—are required in a post-*Hurst* world. Somewhat similarly, Attorney Berry suggested that the jury finding pertaining to aggravating factor(s) should either be included as part of the guilt phase or as part of a newly-created middle phase of a capital case.

The Committee's response is that these suggestions are not only beyond the scope of the Committee's purview, they are also contrary to the existing death penalty statute. Pursuant to § 921.141(1), Florida Statutes: "Upon conviction or adjudication of guilt of a defendant of a capital felony, the court shall conduct a separate sentencing proceeding to determine whether the defendant should be sentenced to death or life imprisonment as authorized by s. 775.082 . . . . In the proceeding, evidence may be presented as to any matter that the court deems relevant to the nature of the crime and the character of the defendant and shall include matters relating to any of the aggravating factors enumerated in subsection (6) and for which notice has been provided pursuant to s. 782.04 (1)(b) or mitigating circumstances enumerated in subsection (7)."

The Committee concluded that as a practical matter, a comprehensive review and possible overhaul of Florida's death penalty jurisprudence could be accomplished by only the Court and the Legislature—not the jury instruction committee.

The remaining four commenters offered thoughts regarding the verbiage of the Court's proposals. Probably the most controversial issue for the Court is whether the jury should make a finding and provide a vote regarding individual mitigating circumstances. The Committee unanimously agreed with the HCC Faculty, the FPDA, and the FPAA that there should be no jury finding and no jury vote for each mitigating circumstance. The Committee thought it significant that both prosecutors and public defenders and the trial judges who teach death penalty law to other judges were against this idea. Additionally, the Committee's belief is that these findings are not legally necessary and that any benefit from including such a finding on the verdict form is outweighed by the costs of complexity, confusion, and the probability of increased litigation.

Committee Proposals

1) The Committee agrees with the Court that there should be separate instructions for the preliminary death penalty instruction and the final death penalty instruction. The Committee suggests the preliminary instruction be numbered 7.10 because there is no instruction numbered 7.10 currently in existence. (The Court's preliminary instruction is numbered 7.11.)

Near the beginning of the Court's preliminary instruction, there is an italicized note regarding a trial judge's answering of questions about credit for time served. That italicized note generated a comment from the FPDA, who argued that the note should also cover the issue of a waiver of the right to parole review. The FCCR/FACDL were opposed to that idea and instead suggested the italicized note be deleted because juror questions on the topics of timed served and parole should be answered on a case-by-case basis.

The Committee attempted to author a better italicized note but could not do so and eventually concluded the entire italicized note should be deleted.

Because there will need to be many modifications to the standard instructions for crimes committed before the Legislature abolished parole, the Committee thought the best thing to do is to craft a proposal solely for crimes committed after May 24, 1994, and to include a note that modifications will be necessary for crimes committed before that date. The Committee's proposal starts as follows:

7.10 PRELIMINARY INSTRUCTIONS IN PENALTY PROCEEDINGS — CAPITAL CASES

§ 921.141, Fla. Stat.

The instruction is designed for first degree murders committed after May 24, 1994, when the Legislature omitted the possibility of parole for anyone convicted of First Degree Murder. For first degree murders committed before May 25, 1994, this instruction will have to be modified.

This instruction is to be given immediately before the opening statements in the penalty phase of a death penalty case.

Give 1a at the beginning of penalty proceedings before a jury that did not try the issue of guilt.

1. a. Members of the jury, the defendant has been found guilty of [(insert number) **counts of] First Degree Murder in a previous proceeding. The only issue before you is to determine the appropriate sentence.**

Give 1b at the beginning of penalty proceedings before the jury that found the defendant guilty.

b. Members of the jury, you have found the defendant guilty of [(insert number) **counts of] First Degree Murder.**

2) The Committee thought the preliminary instruction should cover only the essentials so as to give only a brief introduction to the core concepts that the jury will be facing. Thus the next five paragraphs in the Committee's proposal a) cover the two possible punishments; b) introduce the jury to the four elements that need to be proven beyond a reasonable doubt; and c) provide an explanation of "beyond a reasonable doubt."

Notably, in the Court's instructions, the concept of "beyond a reasonable doubt" is explained to the jury only in terms of finding aggravating factors. The Committee's proposal explains the concept of "beyond a reasonable doubt" with regard to all four findings that are required for a death sentence. In contrast to the Court's instructions, the Committee thought it would be better to simply tell the jury in the preliminary instructions that the terms "aggravating factors" and "mitigating circumstances" would be explained at the end of the proceeding. The Committee's proposal for the next five paragraphs in the preliminary instruction are as follows:

Give in all cases.

Your deliberations in this penalty phase will determine the appropriate sentence for the crime of First Degree Murder. There are only two options: Life imprisonment without the possibility of parole, or death.

At the conclusion of this penalty phase trial, the jury will determine whether one or more aggravating factors is proven beyond a reasonable doubt; whether the aggravating factor(s) found to exist beyond a reasonable doubt are sufficient to justify the imposition of the death penalty; whether mitigating circumstance(s) are established by the greater weight of the evidence; whether the aggravating factor(s) outweigh the mitigating circumstance(s); and whether the defendant should be sentenced to life

imprisonment without the possibility of parole or death. At the conclusion of the evidence and after argument of counsel, you will be instructed on aggravating factors, mitigating circumstances, and the law that will guide your deliberations.

A reasonable doubt is not a mere possible doubt, a speculative, imaginary, or forced doubt. The jury must unanimously have an abiding conviction that one or more aggravating factors exist, that the aggravating factor(s) are sufficient to impose the death penalty, that the aggravating factor(s) outweigh the mitigating circumstance(s), and that the defendant should be sentenced to death before you may impose the death penalty. On the other hand, if, after carefully considering, comparing and weighing all the evidence, one or more jurors do not have an abiding conviction, or if having a conviction, it is one which is not stable but one which wavers and vacillates, then the defendant must be sentenced to life imprisonment without the possibility of parole.

It is to the evidence introduced in this trial, [and the evidence that you heard during the guilt phase of this trial,] and to it alone, that you are to look for that proof.

A reasonable doubt may arise from the evidence, conflict in the evidence, or the lack of evidence.

3) As mentioned previously, the Committee sought to avoid overloading the jury with too much information in the preliminary instruction. Accordingly, there is only one more paragraph proposed for the preliminary instruction. This paragraph instructs the jury that what the lawyers say is not evidence. Finally, the Committee added a Comment section that alerts everyone to the idea that the trial judge may instruct the jury—in the preliminary instructions—about victim impact evidence or other sections of the final instructions. That way, trial judges have the option of giving more information to jurors upfront if they disagree with the Committee's idea that brevity is best in the preliminary instruction. The proposed final paragraph and the Comment section for the preliminary instruction are as follows:

The attorneys will now have an opportunity, if they wish, to make an opening statement. The opening statement gives the attorneys a chance to tell you what evidence they believe will be presented during this penalty phase.

What the lawyers say is not evidence, and you are not to consider it as such. After the attorneys have had the opportunity to present their opening statements, the State and the defendant may present evidence relevant to the nature of the crime and the character, background, or life of the defendant.

Comment

The court may instruct jurors regarding victim impact evidence or other sections of the final instructions (#7.11) as part of the preliminary instruction.

4) If the Court numbers the preliminary instruction 7.10, the final instruction can be numbered 7.11. The beginning of the Committee's proposed final instruction has an italicized note that explains the instruction may be modified for those judges who like to give some of the final instructions before closing arguments. The italicized note also explains that the final instructions are designed for crimes committed after May 24, 1994. The beginning of the Committee's proposal for the final instruction reads as follows:

7.11 FINAL INSTRUCTIONS IN PENALTY PROCEEDINGS — CAPITAL CASES

§ 921.141, Fla. Stat.

This instruction is designed to be given after the closing arguments in the penalty phase of a death penalty case. It may be modified for those judges who will give part of it before closing arguments. Additionally, the instruction is designed for first degree murders committed after May 24, 1994, when the Legislature omitted the possibility of parole for anyone convicted of First Degree Murder. For first degree murders committed before May 25, 1994, this instruction will have to be modified.

5) The next three paragraphs provide a general introduction to death penalty law. In the first paragraph, jurors are instructed that there are only two possible punishments. In the second paragraph, jurors are instructed on the four elements that the State must prove beyond a reasonable doubt for each count of First Degree Murder. Because the phrases "aggravating factor(s)" and "mitigating circumstance(s)" are used in the second paragraph, the third paragraph informs the jury that those terms will be explained later. The first three paragraphs of the Committee's proposal that would be read to jurors are as follows:

Members of the jury, you have heard the evidence and the arguments of counsel. It is now your duty to determine the appropriate sentence that should be imposed upon (defendant)**. There are two possible punishments: Life imprisonment without the possibility of parole, or death.**

However, before a sentence of death may be imposed, the State must prove the following four elements beyond a reasonable doubt [as to each count of First Degree Murder]:

1. **One or more aggravating factors alleged by the State exist;**
2. **The aggravating factor(s) found to exist are sufficient to warrant a sentence of death;**
3. **The aggravating factor(s) found to exist outweigh the mitigating circumstance(s) found to exist.**
4. **The defendant should be sentenced to death instead of life imprisonment without the possibility of parole.**

The terms aggravating factor and mitigating circumstance will be explained to you.

6) Next, the jury is instructed that determining the appropriate sentence involves a multi-step process. The first step of that process informs the jury that they must make a finding about whether the State proved that an aggravating factor exists. The Committee then provided an explanation of "aggravating factor."

Notably, the Committee disagreed with the Court's definition of an "aggravating factor" as "a statutorily enumerated circumstance that increases the gravity of a crime of the harm to a victim." The Committee recognized that this explanation has been in the standard death penalty instructions for a long time, but the Committee was concerned that not all of the relevant aggravators in a particular case pertain to harm to the victim. Instead, the Committee suggests: **An aggravating factor is a fact specified by law, which, if the jury unanimously finds was proven by the State beyond a reasonable doubt, increases the seriousness of a First Degree Murder.**

The FCCR/FACDL commented that this part of the instruction should also inform the jury that the Legislature provided 16 statutory aggravating circumstances so that jurors would not think that the case on trial meets all of the aggravating factors created by the Legislature. The Committee did not agree with

that suggestion but did appreciate the underlying concern. Therefore, the Committee inserted the following: **The aggravating factor[s] alleged by the State that apply in this case [is] [are]:**

The list of statutory aggravators immediately follow, but the Committee added one italicized comment and made one alteration from the statute. Specifically, in aggravator #2, the Committee added an italicized note that states: *2b is applicable only when the previous crime is a crime of violence as a matter of law*. That note was based on the FPDA comment that pointed out there could be a factual dispute regarding whether the defendant's previous crime was a crime of violence. In cases where the prior crime is a crime of violence as a matter of law, the Committee thought it would then be appropriate to instruct on 2b.

Separately, for aggravator #9, for the definition of "calculated," the Committee added "**before the fatal incident**" based on *Wood v. State*, 209 So. 3d 1217, 1228 (Fla. 2017).

The Committee also points out that for aggravator #16, the plain language of the statute does not require the state to prove the defendant knew the deceased was a relative of the person who obtained the injunction against the defendant. Although knowledge of the status of the victim as a relative of the petitioner (for the injunction) is not in the statute, the Committee believes the Court will end up adding a knowledge requirement and may want to do so in these instructions. The aggravating factors portion of the Committee's proposed instruction would read as follows:

Determining the appropriate sentence involves a multi-step process.

The first step is for you to determine whether the aggravating factor[s] alleged by the State [has] [have] been proven beyond a reasonable doubt. An aggravating factor is a fact specified by law, which, if the jury unanimously finds was proven by the State beyond a reasonable doubt, increases the seriousness of a First Degree Murder.

Aggravating factors. § 921.141(6), Fla. Stat.
The aggravating factor[s] alleged by the State that apply in this case [is] [are]:

Give only those aggravating factors noticed by the State which are supported by the evidence. Additionally, there may be different aggravating factors

alleged for separate counts. If so, the instruction will need to be modified for that circumstance.

1. (Defendant) **was previously convicted of a felony and [under sentence of imprisonment] [on community control] [on felony probation].**

2. (Defendant) **was previously convicted of [another capital felony] [a felony involving the [use] [threat] of violence to another person].**

Give 2a or 2b as applicable. 2b is applicable only when the previous crime is a crime of violence as a matter of law.

a. The crime of (previous crime) **is a capital felony.**

b. The crime of (previous crime) **is a felony involving the [use] [threat] of violence to another person.**

3. (Defendant) **knowingly created a great risk of death to many persons.**

4. The First Degree Murder was committed while (defendant) **was [engaged] [an accomplice] in [the commission of] [an attempt to commit] [flight after committing or attempting to commit]**

any

Check § 921.141(6)(d), Fla. Stat., for any change in list of offenses.

[robbery].
[sexual battery].
[aggravated child abuse].
[abuse of an elderly person or disabled adult resulting in great bodily harm, permanent disability, or permanent disfigurement].
[arson].
[burglary].
[kidnapping].
[aircraft piracy].
[unlawful throwing, placing or discharging of a destructive device or bomb].

5. The First Degree Murder was committed for the purpose of avoiding or preventing a lawful arrest or effecting an escape from custody.

6. The First Degree Murder was committed for financial gain.

7. The First Degree Murder was committed to disrupt or hinder the lawful exercise of any governmental function or the enforcement of laws.

8. The First Degree Murder was especially heinous, atrocious or cruel.

"Heinous" means extremely wicked or shockingly evil.

"Atrocious" means outrageously wicked and vile.

"Cruel" means designed to inflict a high degree of pain with utter indifference to, or even enjoyment of, the suffering of others.

The kind of crime intended to be included as especially heinous, atrocious, or cruel is one accompanied by additional acts that show that the crime was conscienceless or pitiless and was unnecessarily torturous to (decedent).

9. The First Degree Murder was committed in a cold, calculated, and premeditated manner, without any pretense of moral or legal justification.

"Cold" means the murder was the product of calm and cool reflection.

"Calculated" means having a careful plan or prearranged design to commit murder before the fatal incident.

A killing is "premeditated" if it occurs after the defendant consciously decides to kill. The decision must be present in the mind at the time of the killing. The law does not fix the exact period of time that must pass between the formation of the premeditated intent to kill and the killing. The period of time

must be long enough to allow reflection by the defendant. The premeditated intent to kill must be formed before the killing.

However, in order for this aggravating factor to apply, a heightened level of premeditation, demonstrated by a substantial period of reflection, is required.

A "pretense of moral or legal justification" is any claim of justification or excuse that, though insufficient to reduce the degree of murder, nevertheless rebuts the otherwise cold, calculated, or premeditated nature of the murder.

10. (Decedent) **was a law enforcement officer engaged in the performance of [his] [her] official duties.**

11. (Decedent) **was an elected or appointed public official engaged in the performance of [his] [her] official duties, if the motive for the First Degree Murder was related, in whole or in part, to** (decedent's) **official capacity.**

12. (Decedent) **was a person less than 12 years of age.**

13. (Decedent) **was particularly vulnerable due to advanced age or disability, or because** (defendant) **stood in a position of familial or custodial authority over** (decedent)**.**

With the following aggravating factor, definitions as appropriate from § 874.03, Fla. Stat., must be given.

14. The First Degree Murder was committed by a criminal street gang member.

15. The First Degree Murder was committed by a person designated as a sexual predator or a person previously designated as a sexual predator who had the sexual predator designation removed.

16. The First Degree Murder was committed by a person subject to

[a domestic violence injunction issued by a Florida judge], [a [repeat] [sexual] [dating] violence injunction issued by a Florida judge],

[a protection order issued from [another state] [the District of Columbia] [an Indian tribe] [a commonwealth, territory, or possession of the United States]],

and

the victim of the First Degree Murder was [the person] [a [spouse] [child] [sibling] [parent] of the person] who obtained the [injunction] [protective order].

7) The Court placed the "victim impact" portion of the instruction very near the end of the final instructions. The Committee suggests the victim impact section be relocated immediately after the aggravating factors section so that jurors are quickly told that victim impact evidence may not be considered as an aggravating factor. The Committee also added an italicized note that states the Court may instruct on victim impact evidence at the time the evidence is admitted. (This idea was in the FPDA comments.) The Committee's victim impact paragraph is suggested to read as follows:

Victim impact evidence. Give if applicable. Also, give at the time victim impact evidence is admitted, if requested.

You have heard evidence about the impact of this murder on the [family] [friends] [community] of (decedent)**. This evidence was presented to show the victim's uniqueness as an individual and the resultant loss by** (decedent's) **death. However, you must not consider this evidence as an aggravating factor.**

8) The Committee's proposal then calls for two paragraphs that explain that the jury finding on the existence of aggravators must be unanimous. These two paragraphs read as follows:

Give in all cases.

In order to find that an aggravating factor exists, the jury must be unanimous, that is, each of you must agree. If the jury does not unanimously find that the State has proven beyond a reasonable doubt that one or more aggravating factors exists, then your verdict must be for a sentence of life imprisonment without the possibility of parole and your deliberations are complete. To reflect this verdict, sign and date the Sentencing Verdict Form.

If, however, the jury unanimously finds that one or more aggravating factors have been proven beyond a reasonable doubt, you should sign Verdict Form 1 for aggravating factor(s) found proven and then proceed to step two.

9) The Committee also suggests that the Court revise its verdict form based on the Committee's belief that the findings within the Court's verdict form could be worded more neutrally. The initial finding in the Committee's proposal reads as follows:

Verdict Form 1 (Existence of Aggravating Factor(s) [as to Count insert number**)])**

We, the jury, find as follows, as to the aggravating factor of (*repeat for each aggravating factor disclosed in the Notice to Seek Death Penalty filed pursuant to Fla. R. Crim. P. 3.181*)**:**

_____ The State proved beyond a reasonable doubt that this aggravating factor exists.

_____ The State did not prove beyond a reasonable doubt that this aggravating factor exists.

10) The Committee then inserted the following paragraph to highlight that only those aggravating factors that were unanimously found could be considered during the remaining steps in the process. The Committee's explanation for this concept is:

If you proceed to step two, then during the rest of your deliberations you must disregard any aggravating factor[s] that [was] [were] alleged by the State, but not unanimously found to be proven beyond a reasonable doubt. No individual juror is permitted to consider any aggravating factors other than those the jury unanimously found to exist.

11) In the Court's final instructions, the section on merging aggravating factors is located immediately after the section on mitigating circumstances. The Committee suggests that the merging aggravating factors section be relocated immediately before step two. This suggestion is based on the fact that, if merger of

aggravators is applicable, then it applies before step two (sufficiency) and applies to all the remaining steps.

The FCCR/FACDL commented that the State should be forced to pick one of the merging aggravating factors. The Committee chose not to follow that suggestion, however, because case law does not require the State to do so. The merging aggravating factor paragraph is suggested by the Committee to read as follows:

Merging aggravating factors. Give the following paragraph if applicable. For example, the aggravating circumstances that 1) the murder was committed during the course of a robbery and 2) the murder was committed for financial gain, relate to the same aspect of the offense and may be considered as only a single aggravating factor. Castro v. State, 597 So. 2d 259 (Fla. 1992).

Pursuant to Florida law, the aggravating factors of (*insert aggravating factor*) and (*insert aggravating factor*) **are considered to merge because they are considered to be a single aspect of the offense. If you determine that the aggravating factors of** (*insert aggravating factor*) and (*insert aggravating factor*) **have both been proven beyond a reasonable doubt, your findings should indicate that both aggravating factors exist, but you must consider them as only one aggravating factor for the rest of your deliberations.**

12) Both the HCC Faculty and the FCCR/FACDL commented that the Court's final instruction did not elaborate about the jury finding that the aggravating factors are sufficient to impose the death penalty. The Committee agreed with those commenters and suggests the following three paragraphs, along with a more neutrally-worded verdict form for a sufficiency finding:

The second step in the process is for the jury to determine whether the State has proven beyond a reasonable doubt that the aggravating factor or factors that you found to exist is or are sufficient to impose a sentence of death. The jury must unanimously find that the aggravating factor or factors found to exist is or are sufficient to impose a sentence of death.

If the jury does not unanimously find that the State has proven beyond a reasonable doubt that the aggravating factor or factors are sufficient to impose a sentence of death, then your verdict must be for a sentence of life imprisonment without the possibility of parole and your deliberations are complete. To reflect this verdict, sign and date the Sentencing Verdict Form.

If, however, the jury unanimously finds that the State proved beyond a reasonable doubt that the aggravating factor or factors are sufficient to impose a sentence of death, you should sign Verdict Form 2 and then proceed to step three.

Verdict Form 2 reads as follows:

Verdict Form 2 (Sufficiency of Aggravator(s) [as to Count (insert number**)])**

We, the jury, find as follows, as to the sufficiency of aggravator(s):

_____ The State proved beyond a reasonable doubt that the aggravating factor or factors is or are sufficient to warrant a sentence of death.

_____ The State did not prove beyond a reasonable doubt that the aggravating factor or factors is or are sufficient to warrant a sentence of death.

13) Both the FPDA and the FCCR/FACDL do not think the State may place a burden of persuasion on the defendant to prove mitigating circumstances. To buttress that argument, the commenters noted that such a burden does not appear in the Florida statutes. Nonetheless, a burden of persuasion on the defendant to prove mitigation is provided for in Florida case law. Therefore, the Committee based its proposal on cases holding that the defendant has to prove mitigating circumstances by the greater weight of the evidence.

The Committee disagreed with the HCC Faculty's suggestion to use the word "proved" or "proven" instead of "established." According to the Committee, use of the word "established" helps differentiate the burden of persuasion for the defendant from that of the state.

Additionally, the Committee did not want to give the jury the impression that evidence of mitigation could be provided only in the defendant's case because evidence elicited by the State in its case could also establish mitigating circumstances. As a result, the Committee added the following sentence: **This mitigating circumstance may be established from any evidence in the case.**

Separately, the Committee did not agree with the Court's usage of the phrase "anything in the life of the defendant" in the mitigating circumstances section because mitigation may be established by a fact *outside* the life of the defendant, such as fetal alcohol syndrome. The Committee also agreed with FCCR/FACDL's comments that the Court's usage of "reasonably may indicate that the death penalty is not appropriate" is unnecessarily restrictive. The Committee also agreed with FCCR/FACDL that the Court's instruction could be made clearer on the point that there does not have to be juror unanimity on findings of mitigation. Similarly, the Committee agreed with the HCC Faculty and the FPDA that the following sentence in the Court's instruction was too confusing: **Further, any juror may consider a mitigating circumstance found by another juror, even if he or she did not find that factor to be mitigating.**

Taking all of these considerations into account, the Committee suggests the following for the mitigating circumstances section:

Mitigating circumstances. § 921.141(7), Fla. Stat.

The third step in the process is for each juror individually to decide whether mitigating circumstances exist. A mitigating circumstance is anything that tends to support a sentence of life imprisonment without the possibility of parole rather than a death sentence. Mitigating circumstances are not limited to the facts surrounding the crime.

It is the defendant's burden to persuade the jury that one or more mitigating circumstances exist. Mitigating circumstances do not need to be proven beyond a reasonable doubt. The defendant need only establish that a mitigating circumstance exists by the greater weight of the evidence, which means evidence that more likely than not tends to establish the existence of a mitigating circumstance. This mitigating circumstance may be established from any evidence in the case. If you determine by the greater weight of the evidence that a mitigating circumstance exists, you must consider it established and give that evidence such weight as you determine it should receive in reaching your verdict about the appropriate sentence to be imposed. Any juror persuaded as to the existence of a mitigating circumstance must consider it in this case. In other words, each juror should make his or her own decision about whether a mitigating circumstance exists.

Among the mitigating circumstances you may consider are:

Give only those mitigating circumstances for which evidence has been presented.

1. (Defendant) **has no significant history of prior criminal activity.**

If the defendant offers evidence on this circumstance and the State, in rebuttal, offers evidence of other crimes, also give the following:

Conviction of (previous crime) **is not an aggravating circumstance to be considered in determining the penalty to be imposed on the defendant, but a conviction of that crime may be considered by the jury in determining whether the defendant has a significant history of prior criminal activity.**

2. The First Degree Murder was committed while (defendant) **was under the influence of extreme mental or emotional disturbance.**

3. (Decedent) **was a participant in (**defendant's**) conduct or consented to the act.**

4. (Defendant) **was an accomplice in the First Degree Murder committed by another person and [his] [her] participation was relatively minor.**

5. (Defendant) **acted under extreme duress or under the substantial domination of another person.**

6. The capacity of (defendant) **to appreciate the criminality of [his] [her] conduct or to conform [his] [her] conduct to the requirements of law was substantially impaired.**

7. (Defendant's) **age at the time of the crime.**

The judge should also instruct on any additional mitigating circumstances as requested.

8. The existence of any other factors in (defendant's) **character, background or life, or the circumstances of the offense that would mitigate against the imposition of the death penalty.**

14) As noted previously, the Committee agrees with the FPDA and the FPAA and thinks the costs of jury findings on individual mitigating circumstances will outweigh the benefits. Thus the Committee proposes the following paragraph:

Give in all cases.

Unlike the other steps in this process, there is no verdict form to complete regarding the existence of mitigating circumstance(s). Instead, each of you must consider the mitigating circumstance(s) that you have individually found to exist in the next two steps of the process.

15) The Committee's proposal for the weighing section incorporates the idea that each juror must find that the State proved the aggravator(s) outweigh the mitigator(s). This "weighing" section, along with a more neutrally-worded verdict section within the final instructions, is as follows:

The fourth step in the process is for each of you to determine whether the aggravating factor or factors that you have unanimously found to exist outweigh(s) the mitigating circumstance(s) that you have individually found to exist. The process of weighing aggravating factors and mitigating circumstances is not a mechanical or mathematical process. In other words, you should not merely total the number of aggravating factors and compare that number to the total number of mitigating circumstances.

The State has the burden to prove to each of you, beyond a reasonable doubt, that the aggravating factor or factors that the jury has unanimously found to exist outweigh(s) the mitigating circumstance(s) that each of you have individually found to exist.

If the jury does not unanimously find that the State has proven beyond a reasonable doubt that the aggravating factor or factors outweigh(s) the mitigating circumstance(s), then your verdict must be for a sentence of life imprisonment without the possibility of parole and your deliberations are complete. To reflect this verdict, sign and date the Sentencing Verdict Form.

If, however, the jury unanimously finds that the State has proven beyond a reasonable doubt that the aggravating factor or factors outweigh(s) the mitigating circumstance(s), you should sign Verdict Form 3 and then proceed to the final step.

Verdict Form 3 reads as follows:

Verdict Form 3 (Weighing Aggravating Factor(s) and Mitigating Circumstance(s) [as to Count (insert number**)])**

We, the jury, find as follows, as to the weighing of aggravating factor(s) and mitigating circumstance(s):

_____ The State proved beyond a reasonable doubt that the aggravating factor(s) outweigh(s) the mitigating circumstance(s).

_____ The State did not prove beyond a reasonable doubt that the aggravating factor(s) outweigh(s) the mitigating circumstance(s).

16) The Committee explored a number of different options to capture the idea that the State has to prove beyond a reasonable doubt that death is the appropriate sentence and that any juror can vote for life based on mercy. The Committee's proposed last four paragraphs are set forth below along with the final sentencing verdict form:

Give bracketed language if the penalty phase jury was also the guilt phase jury.

The final step in this phase of the trial is for each of you to determine whether the State proved beyond a reasonable doubt that the defendant should be sentenced to death instead of life imprisonment without the possibility of parole. The Court may not impose a sentence of death unless each juror individually finds the defendant should be sentenced to death.

Even when death is a possible sentence, each juror must decide based on his or her own moral assessment whether life imprisonment without the possibility of parole, or death, should be imposed. Regardless of your prior findings, the law never compels nor requires any juror to determine the defendant should be sentenced to death. Every juror has the right to vote for a sentence of life imprisonment without the possibility of parole.

If, after deliberating, the jury unanimously agrees that the appropriate sentence is death, then your verdict should be for a sentence of death. If the jury does not unanimously agree that the appropriate sentence is death, then

your verdict must be for a sentence of life imprisonment without the possibility of parole.

The fact that a jury can determine a sentence of life imprisonment without the possibility of parole, or death, on a single ballot should not influence you to act hastily or without due regard to the gravity of these proceedings. Before you ballot you should carefully weigh, sift, and consider the evidence, realizing that human life is at stake, and bring your best judgment to bear in reaching your verdict.

The Sentencing Verdict Form reads as follows:

Sentencing Verdict Form [as to Count (insert number**)]**

_____ One or more jurors find the appropriate sentence is life imprisonment without the possibility of parole.

_____ We the jury unanimously find the State proved beyond a reasonable doubt that the appropriate sentence is death.

17) The Court's final instruction mirrors several others used in non-capital cases. The Committee decided not to follow that format because any time those non-capital standard instructions would change, then the death penalty instruction would also have to change. Instead, the Committee suggests two paragraphs in italics be added to the final instruction. The first paragraph explains that the judge shall then insert pertinent standard instructions. The second paragraph explains that these standard instructions must be modified for the penalty phase of a capital trial.

As for modification, the Committee highlighted that the standard reasonable doubt instruction had to be modified to fit the four findings necessary to impose a death sentence. Also, the Committee agreed with the comments of the FPDA and FCCR/FACDL, that sympathy should be deleted from the standard Rules for Deliberation instruction. The Committee's proposal for the two italicized paragraphs are as follows:

The Court shall then insert and read pertinent instructions, including but not limited to, 3.7 – Reasonable Doubt; 3.9 – Weighing the Evidence; 3.9(a) – Defendant not Testifying; 3.9(b) – Defendant's Statements; 3.9(c) – Eyewitness Identification; 3.10 – Rules for Deliberation; 3.11- Cautionary Instruction; and

3.13- Submitting Case to Jury. The court might also want to repeat parts of the Introduction (1.1) and Preliminary Instructions (2.1) to emphasize that the jurors may not do any of their own research.

These standard instructions must, however, be modified for the penalty phase of a capital trial. For example, the standard Reasonable Doubt instruction (3.7) cannot be read because it refers to the presumption of innocence and having "an abiding conviction of guilt." Instead, trial judges can copy the explanation of reasonable doubt in the preliminary death penalty instructions (7.10). Additionally, the word "sympathy" should be deleted from the sentence in the standard Rules for Deliberation instruction (3.10) that states: "Your verdict should not be influenced by feelings of prejudice, bias, or sympathy" because sympathy is not an aggravating factor but may be used by jurors to reject the death penalty.

18) As mentioned above, the Committee asks the Court to revisit its verdict form because the Committee believes the verdict form can be worded more neutrally. The Committee's proposed verdict form is numbered 7.11(a). It would include a "*Read if applicable*" section that repeats the merging aggravating factor section in the final instructions because the Committee thought it important to remind jurors that merger applies to every step after the initial finding on the existence of aggravators. The Committee's verdict form includes the FPDA's idea to put "juror #" at the bottom for the foreperson. The Committee's proposed verdict form – which does not include a section for finding individual mitigating circumstances - would look like the following (without underlining for what is new):

3.12(e) JURY VERDICT FORM—DEATH PENALTY

Verdict Form 1 (Existence of Aggravating Factor(s) [as to Count (insert number)**])**

We, the jury, find as follows, as to the aggravating factor of (*repeat for each aggravating factor disclosed in the Notice to Seek Death Penalty filed pursuant to Fla. R. Crim. P. 3.181*)**:**

_____ The State proved beyond a reasonable doubt that this aggravating factor exists.

_____The State did not prove beyond a reasonable doubt that this

aggravating factor exists.

Read if applicable.

Pursuant to Florida law, the aggravating factors of (*insert aggravating factor*) and (*insert aggravating factor*) **are considered to merge because they are considered to be a single aspect of the offense. If you determine that the aggravating factors of** (*insert aggravating factor*) and (*insert aggravating factor*) **have both been proven beyond a reasonable doubt, your findings should indicate that both aggravating factors exist, but you must consider them as only one aggravating factor for the rest of your deliberations.**

Verdict Form 2 (Sufficiency of Aggravator(s) [as to Count (insert number)**])**

We, the jury, find as follows, as to the sufficiency of aggravator(s):

_____ The State proved beyond a reasonable doubt that the aggravating factor or factors is or are sufficient to warrant a sentence of death.

_____The State did not prove beyond a reasonable doubt that the aggravating factor or factors is or are sufficient to warrant a sentence of death.

Verdict Form 3 (Weighing Aggravating Factor(s) and Mitigating Circumstance(s) [as to Count (insert number)**])**

We, the jury, find as follows, as to the weighing of aggravating factor(s) and mitigating circumstance(s):

_____ The State proved beyond a reasonable doubt that the aggravating factor(s) outweigh(s) the mitigating circumstance(s).

_____The State did not prove beyond a reasonable doubt that the aggravating factor(s) outweigh(s) the mitigating circumstance(s).

Sentencing Verdict Form [as to Count (insert number)**]**

_____ One or more jurors find the appropriate sentence is life imprisonment without the possibility of parole.

_____ We the jury unanimously find the State proved beyond a reasonable doubt that the appropriate sentence is death.

Dated this _____ day of _____, 20__, in _____ County, Florida.

_____
(Signature of foreperson)/ Juror #_____

19) The Committee had no changes to the Court's instruction numbered 7.12 (Dialogue for Polling the Jury).

20) The Committee recognizes that the Court may reject the Committee's proposals and retain its instructions. If so, the Committee offers the following responses to the comments that were filed.

FPAA[1] **-** The FPAA argues: 1) there is no legal requirement for a finding/vote on mitigating circumstances; 2) to do so would create practical difficulties; and 3) to do so would also create unnecessary legal issues. As mentioned earlier, the Committee unanimously agreed with the FPAA on this issue.

Separately, the FPAA argues that although the jury must be satisfied beyond a reasonable doubt that the aggravating factor(s) are sufficient to warrant the death penalty and that the aggravating factor(s) outweigh the mitigating circumstance(s), there should not be a finding on the verdict form for those individual determinations. Instead, according to the FPAA, those findings would inhere in a verdict that the death penalty is appropriate. The Committee unanimously disagreed with the FPAA on this point and thought that specific findings for those two facts would help provide a road map for jurors.

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[1] The FPAA incorrectly stated that the Court published its proposals in the *Bar News* on April 15, 2017. It was the Committee's proposals that were published on April 15, 2017. The Court's proposals were published on May 1, 2017. The FPAA also stated that the Court's proposals were based on Committee proposals published on April 15, 2017. That is also not accurate. The Court's proposals were based on the Committee proposals that had been published a year earlier – April 15, 2016. Those proposals were not filed with the Court because of *Hurst* and the subsequent change in the death penalty statute.

Finally, the FPAA suggests deletion of the following sentence in the Court's Mitigating Circumstances section: **Further, any juror may consider a mitigating circumstance found by another juror, even if he or she did not find that factor to be mitigating.** According to the FPAA, the sentence is too confusing. The Committee unanimously agreed.

HCC Faculty – The HCC faculty had a number of suggestions in its amended comments, but most important, the faculty recommended there be no jury finding regarding individual mitigation circumstances on the verdict form. The Committee unanimously agreed with the HCC faculty for the reasons mentioned previously.

Additionally, the HCC Faculty informed the Court that if it decides to retain a section in the verdict form on the finding of individual mitigating circumstances, the Court should delete the word "Statutory" in four places. The Committee unanimously agrees with the HCC Faculty on that point also.

The HCC faculty would add bracketed language to a sentence in the Court's Instruction 7.11 as follows: **You are instructed that this evidence <u>[, along with the evidence that you heard during the guilt phase of this trial,]</u> is presented in order for you to determine, as you will be instructed, ……** The reason for the underlined language is to make it clear to the jury that found the defendant guilty that they can consider the guilt phase evidence during the penalty phase. The Committee unanimously agreed with the HCC faculty on that issue.

In that same section of the Court's instruction, the HCC Faculty believes that steps (1) and (2) are repetitive. Step (1) is: **whether each aggravating factor is proven beyond a reasonable doubt.** Step (2) is: **whether one or more aggravating factors exist beyond a reasonable doubt.** The Committee unanimously agreed with the HCC Faculty on that issue also.

The HCC Faculty's next suggestion is to make various changes throughout the instructions and the verdict form, such as deleting the word "each," adding the word "an," and adding "(s)" after "aggravating factor" and "mitigating circumstance," because there may be cases with only one aggravating factor and only one mitigating circumstance. Also, these changes would help ensure the jury will not be confused that it needs to find all the aggravators alleged in order to impose death. The Committee unanimously agreed with the HCC Faculty on this point.

The HCC Faculty next suggested using the word "proven" in both the aggravating circumstances and the mitigating factors sections because it is easier to "establish" a fact than it is to "prove" a fact. The HCC Faculty thought use of the same word—proven—would make the instruction more neutral. As mentioned above, the Committee disagreed with the HCC Faculty on this point. The Committee thought it was acceptable to use "establish" to help highlight the lower burden of persuasion for the defendant.

The next HCC Faculty suggestion is to make the Court's instruction clearer so that the jury does not need to find every aggravator alleged by the State in order to find death to be the appropriate sentence and to remind the jury that there must be unanimity as to at least one aggravating factor. The Committee agrees with the HCC Faculty's point.

The HCC Faculty then suggested additional language so that the trial judge and jury would not gloss over the finding regarding sufficiency of aggravators. As mentioned above, the Committee agreed that a better transition was needed as the trial judge moved from the topic of existence of aggravators to the topic of existence of mitigating circumstances.

Another suggestion pertains to the same sentence that the FPAA found confusing: **Further, any juror may consider a mitigating circumstance found by another juror, even if he or she did not find that factor to be mitigating.** The HCC Faculty thinks it knows what the Court meant and therefore suggests: **It is the defendant's burden to prove that mitigating circumstance(s) exist. As explained before these proceedings, the defendant need only ~~establish~~ prove that a mitigating circumstance exists by the greater weight of the evidence, which means evidence that more likely than not tends to establish the existence of a mitigating circumstance. If you determine by the greater weight of the evidence that a mitigating circumstance exists, you must consider it ~~established~~ proven and give that evidence such weight as you determine it should receive in reaching your verdict about the appropriate sentence to be imposed. Any juror persuaded as to the existence of a mitigating circumstance must consider it in this case. ~~Further, any juror may consider a mitigating circumstance found by another juror, even if he or she did not find that factor to be mitigating.~~ In other words, the jury is entitled to consider any mitigating circumstance, and the consideration of a mitigating circumstance does not require unanimity by the jury.** The Committee unanimously agreed the sentence was too confusing and should be reworded.

FPDA - The FPDA's first suggestion is to add a final sentence to the italicized note in the middle of the first page of the preliminary instruction (#7.11). The addition to the italicized note would be: *If the defendant knowingly and intelligently waives the right to parole and/or credit for all time served, the jury shall be instructed as such, if requested.* The Committee addressed this issue by unanimously concluding it would be best to delete the entire italicized note because answers to jury questions should be dealt with on a case-by-case basis.

The FPDA also expressed concerns that in the preliminary instruction, the Court's proposal fails to inform the jury about the requirement of unanimity in steps 1, 2, 3, 5, and 6 and fails to inform the jury about the burden of persuasion (beyond a reasonable doubt) in steps 5 and 6. (The HCC Faculty also thought steps 1 and 2 were repetitive.) As mentioned previously, the Committee agreed that steps 1 and 2 were repetitive but the Committee did not agree (by a 5-4 vote) with the FPDA comment. The majority of the Committee disagreed because the preliminary instruction should not overload the jury with too much information, especially since the trial judge can modify the standard preliminary instruction upon request.

As set forth above, the FPDA (and the FCCR/FACDL) does not believe there can be a burden of persuasion on the defense to prove mitigating circumstances. The Committee disagreed via an 8-2 vote because of Florida case law.

In the preliminary instruction, the FPDA recommended deleting certain phrases in the mitigating circumstances section, such as "in the life of the defendant which" and "of the offense." The Committee agreed that "in the life" should be deleted because of the possibility of something like fetal alcohol syndrome. However, the Committee did not agree to delete "of the offense."

The FPDA's next suggestion pertains to the use of the word "recommendation" in two places. The FPDA suggests that the word reduces the jury's sense of responsibility and, thus, should be deleted. The Committee unanimously agreed with the FPDA on this point.

The FPDA's next suggestion is that the "prior violent felony" aggravating factor jury instruction violates the U.S. Constitution and the Florida Constitution because it eliminates jury fact finding, effectively directs the jury to automatically find the existence of an aggravator, and deprives defendants of safeguards preventing the arbitrary taking of life. The Committee partially agreed with the

FPDA. As mentioned above, the Committee's proposal added an italicized note about the judge reading the instruction about the prior felony involving violence only in those cases where the prior crime is one of violence by law.

The FPDA next provided more detail about why there should be no burden of persuasion on finding mitigating circumstances. The Committee's response has been covered elsewhere in this response.

The FPDA's next suggestion pertains to the sentence that states: **Whether the aggravating factor[s] outweigh[s] *any* mitigating circumstance[s] found to exist…**(emphasis supplied). The FPDA argues the language is misleading because a juror might reasonably conclude that consideration could be for any one mitigating circumstance rather than all of those found to exist. The Committee unanimously agreed and suggested: "…**outweigh[s] ~~any~~ all mitigating circumstance(s) found to exist**…"

The FPDA also thinks the use of the word "statutory" in the verdict form in the mitigating circumstances section is confusing and the Committee unanimously agreed.

The FPDA's next suggestion is to remove the word "sympathy" from the death penalty instructions that are based on Instruction 3.10 – Rules for Deliberation. The Committee unanimously agreed.

The FPDA's next suggestion is to add an italicized note that would instruct the judge to give the victim impact evidence at the time it is admitted. The Committee unanimously agreed.

The FPDA's next suggestion is that the jurors should be reinstructed about not doing any of their own research. The Committee unanimously agreed.

The FPDA's last suggestion is that the Foreperson's signature block should also include the Foreperson's juror identification number to aid in clarity. The Committee unanimously agreed.

FCCR/FACDL - The FCCR/FACDL expressed concerns that the Court's verdict form does not include the burden of proof of "beyond a reasonable doubt" in the various findings. As mentioned before, the Committee's proposed verdict form includes the State's burden of proof throughout.

Next, unlike the public defenders and the prosecutors, the FCCR/FACDL would retain the section on the verdict form for finding individual mitigating circumstances. However, the FCCR/FACDL believes the word "statutory" should be deleted from the verdict form. The Committee unanimously agrees that if Section C on the Court's verdict form is retained, the word "statutory" should be deleted.

The FCCR/FACDL does not think there can be a burden of persuasion on a finding of mitigating circumstances. The Committee disagreed by a vote of 8-2 for the reasons previously stated.

The FCCR/FACDL recommends that in the mitigating circumstances section of the Court's verdict form, "We the jury…" should be replaced with "One or more individual jurors find …" because a finding on mitigating circumstances does not have to be unanimous. The Committee agrees with the logic of that argument.

For the Court's preliminary instruction, the FCCR/FACDL recommends deleting the italicized note about the judge answering questions about time served. As mentioned before, the Committee unanimously agrees because such questions are best answered on a case-by-case basis.

The FCCR/FACDL also suggested adding a sentence in the preliminary instructions that would say: "A sentence of life without parole means the defendant will never be released from prison." The Committee voted 5-4 against this suggestion. The majority thought such a sentence would be redundant and untrue because the defendant may be pardoned. The four members in the minority think the sentence should be added because jurors don't understand the law or they don't necessarily believe that fact.

As mentioned previously, the FCCR/FACDL does not think there can be a burden of persuasion on the defense for mitigation and therefore would not use the word "proven" in the preliminary instructions but would instead say: "(4) whether mitigating circumstances ~~are proven~~ exist." The Committee voted 8-2 against the FCCR/FACDL on that point.

The FCCR/FACDL agrees with the FPDA that the word "recommend" should not be used because it diminishes the jury's sense of responsibility. The Committee unanimously agreed.

The FCCR/FACDL would add the word "unanimously" to the sentence in the aggravating factors section of the preliminary instruction: "In order to consider the death penalty as a possible penalty, you must **unanimously** determine that at least one aggravating factor has been proven beyond a reasonable doubt." The Committee agreed.

In that same aggravating factors section, the FCCR/FACDL suggested adding "and give it whatever weight you determine it should receive." The Committee unanimously disagreed because members thought the concept of weighing should be covered separately.

In the mitigating circumstances section of the preliminary instructions, the FCCR/FACDL again suggests deleting the word "recommending" and the Committee unanimously agreed.

The FCCR/FACDL also would add: "Rather, whether a mitigating circumstance exists is an individual judgment by each juror." The Committee's preference would be to use: "Rather, whether a mitigating circumstance has been established is an individual judgment by each juror."

The FCCR/FACDL would delete the word "reasonably" in the second paragraph in the mitigating circumstances section and the Committee unanimously agreed.

Of course, the FCCR/FACDL suggests additional language in the mitigating circumstances section needs to be altered based on the belief there can be no burden of persuasion on mitigating circumstances. The Committee's response has already been explained.

In the Court's final instruction (#7.11(a)), this Committee response has already addressed the FCCR/FACDL suggestion to add the following sentence: "The Legislature has provided 16 statutory aggravating circumstances."

The FCCR/FACDL also suggests that additional language regarding sufficiency of aggravators is necessary in the final instruction. This has also been addressed in the comments of the HCC Faculty. The Committee agrees with all commenters that the Court's instructions should contain a more detailed explanation of the finding of sufficiency.

In the Court's final instruction, the FCCR/FACDL suggests deleting "may reasonably indicate" in the mitigating circumstances section as being unnecessarily restrictive, and the Committee unanimously agreed.

The FCCR/FACDL would also highlight in the mitigating circumstances section that mitigation does not need to be found unanimously. The Committee agrees with the FCCR/FACDL's concept.

The FCCR/FACDL suggested words such as "extreme," "substantial," and "substantially" should be deleted from the mitigating circumstances section because they are remnants from a pre-*Lockett* world. The Committee understands the logic of the FCCR/FACDL position—why should the defense have to show *extreme* emotional disturbance or *extreme* duress when simple emotional disturbance or duress can be a mitigating circumstance? Nonetheless, the Committee voted unanimously to disagree with the FCCR/FACDL because those words are in the statute and defense lawyers can always ask for the jury to be instructed on non-statutory/catch-all statutory mitigating circumstances.

The FCCR/FACDL's comments regarding the burden of persuasion on mitigating circumstances and forcing the State to choose one of the merging aggravating factors have already been addressed in this response.

The FCCR/FACDL asserted that the Court's paragraph on the process of weighing aggravators and mitigators and the concept of mercy could use some clarification. The Committee agrees and recommends the "mercy" paragraph in the Committee's proposal.

The FCCR/FACDL also thought the second paragraph on page 33 should be augmented with the burden of persuasion (beyond a reasonable doubt) for each finding. The Committee agreed.

In the Rules for Deliberation section of the Court's instruction, the FCCR/FACDL suggests that the language about the jurors must follow the law is unnecessary. The Committee disagreed because the law allows mercy for the defendant to govern the jury's final vote.

The FCCR/FACDL did not think the language about disregarding sympathy in the rules for deliberations instruction was appropriate because sympathy may be used to avoid a death sentence. The Committee unanimously agreed with that point.

Finally, with regard to the victim impact evidence instruction, the FCCR/FACDL suggested adding "The jury many not consider this evidence in the weighing process." The Committee unanimously disagreed and thinks the victim impact evidence instruction is clear.

Conclusion

In summary, the Committee respectfully requests the Court give the Committee proposals in Appendix A serious consideration even though the Court published its own death penalty instructions, especially since the Committee's proposals were created after the Committee had the opportunity to review the Court's instructions and all of the comments filed in response to the Court's instructions.

Respectfully submitted this 21st day of June, 2017.

s/ Judge F. Rand Wallis_____
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Chair, Supreme Court Committee on
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CERTIFICATE OF SERVICE AND FONT

I HEREBY CERTIFY that a copy of this Response to Comments and Appendix A has been typed using Times New Roman 14 and has been sent by email through the portal to Judge Debra Riva at DRiva@jud12.flcourts.org; Rex Dimmig at rdimmig@pd10.org; Peter Mills at pmills@pd10.org; Karen Gottlieb at kgottlie@fiu.edu; Sonya Rudenstine at srudenstine@yahoo.com; Luke Newman at luke@lukenewmanlaw.com; William Ponall at bponall@PonallLaw.com; Robert Berry at attyrobertberry@aol.com; Arthur Jacobs at aijacobs@comcast.net; Penny Brill at pennybrill@miamisao.com; this 21st day of June, 2017.

s/ Judge F. Rand Wallis_____

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