

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NORTH DAKOTA  
NORTHEASTERN DIVISION

United States of America,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Criminal Case No. 2:04-cr-55
	)	
Alfonso Rodriguez, Jr.,	)	
	)	
Defendant.	)	

INSTRUCTIONS TO THE JURY

FINAL SELECTION PHASE INSTRUCTIONS

The Honorable Ralph R. Erickson  
United States District Judge

September 20, 2006

## FINAL SELECTION PHASE INSTRUCTIONS

### Table of Contents

<u>Instruction No.</u>	<u>Description</u>
1.	Introduction
2.	Step One: “Non-statutory Aggravating Factor”
3.	Step Two: “Mitigating Factors”
4.	Step Three: Weighing Aggravation and Mitigation
5.	Consequences of Deliberations
6.	Defendant’s Right Not to Testify
7.	Conditions of Confinement
8.	Justice Without Discrimination
9.	Special Findings Form
10.	Duty to Deliberate
11.	Concluding Instruction

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NORTH DAKOTA  
NORTHEASTERN DIVISION

United States of America,	)	
	)	
Plaintiff,	)	
	)	
v.	)	
	)	Criminal Case No. 2:04-cr-55
Alfonso Rodriguez, Jr.,	)	
	)	
Defendant.	)	

INSTRUCTIONS TO THE JURY

FINAL SELECTION PHASE INSTRUCTIONS

Instruction No. 1

INTRODUCTION

Now that you have heard all of the evidence in this case and will soon hear the arguments of each side, it is my duty to give you instructions as to the law that you must follow.

The purpose of this phase of the trial is to determine the sentence in this case. Your determination of whether to impose a death sentence or a sentence of life imprisonment without the possibility of parole will proceed in three steps. I will explain each of these “steps” in detail in the following instructions.

## Instruction No. 2

### STEP ONE: “NON-STATUTORY AGGRAVATING FACTOR”

In Step One, you must determine whether or not the United States has proved beyond a reasonable doubt a “Non-statutory aggravating factor.” The United States contends that the following non-statutory aggravating factor has been established beyond a reasonable doubt in this case:

As reflected by the victim’s personal characteristics as an individual human being and the impact of the offense on the victim and the victim’s family, the defendant caused loss, injury, and harm to the victim and the victim’s family.

You must unanimously agree that this non-statutory aggravating factor has been proved beyond a reasonable doubt, or you cannot consider that aggravating factor further. You may only consider this non-statutory aggravating factor in Step Three if you unanimously find that the government has proved it beyond a reasonable doubt.

### Instruction No. 3

#### STEP TWO: MITIGATING FACTORS

In Step Two, you must consider whether the defendant has established the existence of any mitigating factors. Unlike aggravating factors, which you must unanimously find proved beyond a reasonable doubt in order to consider them in your deliberations, the law does not require unanimous agreement with regard to mitigating factors. Any juror persuaded of the existence of a mitigating factor must consider it in this case. Furthermore, any juror may consider a mitigating factor found by another juror, even if the first juror did not initially find that factor to be mitigating.

It is the defendant's burden to establish any mitigating factors, but only to the greater weight of the evidence. "Greater weight of the evidence" has been defined for you at Preliminary Instruction number 3. The factors which the defendant asserts he has proved by the greater weight of the evidence to mitigate against a sentence of death are:

1. If he is not put to death, Alfonso Rodriguez will live every day of the rest of his life incarcerated in a federal prison.
2. Alfonso Rodriguez was sexually abused as a child.
3. Alfonso Rodriguez suffers from the effects of his exposure to toxins.
4. Alfonso Rodriguez suffers from brain damage.
5. Alfonso Rodriguez suffers from a mental disorder or impairment.
6. Alfonso Rodriguez has neurological or psychological problems, which have impaired his ability to make good decisions.
7. Alfonso Rodriguez was introduced to addictive drugs and alcohol at a young age and has suffered from alcoholism and drug addiction during his life.
8. Alfonso Rodriguez had learning problems in school because he grew up in a migrant

family that moved from place to place during the school year.

9. Alfonso Rodriguez had learning problems in school because he was developmentally delayed as a child.

10. Alfonso Rodriguez has experienced racial prejudice during his lifetime.

11. Alfonso Rodriguez has shown love and kindness towards his mother Delores.

12. Alfonso Rodriguez is loved by his mother, Delores, and Delores will suffer emotional pain if Alfonso is executed.

13. Alfonso Rodriguez has shown love and kindness towards his sister, Sylvia D'Angelo.

14. Alfonso Rodriguez is loved by his sister, Sylvia D'Angelo, and Sylvia will suffer emotional pain if Alfonso is executed.

15. Alfonso Rodriguez has shown love and kindness towards his sister, Rosa Rodriguez.

16. Alfonso Rodriguez is loved by his sister, Rosa Rodriguez, and Rosa will suffer emotional pain if Alfonso is executed.

17. Alfonso Rodriguez has shown love and kindness towards his sister, Illeana Noyes.

18. Alfonso Rodriguez is loved by his sister, Illeana Noyes, and Illeana will suffer emotional pain if Alfonso is executed.

19. Alfonso Rodriguez has shown love and kindness towards his nephew, Joshua Noyes.

20. Alfonso Rodriguez is loved by his nephew, Joshua Noyes, and Joshua will suffer emotional pain if Alfonso is executed.

21. Alfonso Rodriguez has shown love and kindness towards his niece, Alina Noyes.

22. Alfonso Rodriguez is loved by his niece, Alina Noyes, and Alina will suffer emotional pain if Alfonso is executed.

23. The existence of other factors in Alfonso Rodriguez's childhood, background, or

character.

24. Alfonso Rodriguez offered to plead guilty to causing Dru Sjodin's death, thereby accepting responsibility for his actions in this matter.

25. Alfonso Rodriguez has responded well to structured environments and would likely make a good adaptation to prison if he were sentenced to life imprisonment.

26. Since his arrest on this charge, Alfonso Rodriguez has been a well-behaved inmate.

27. Alfonso Rodriguez raised concerns to prison officials about being released from prison in 2003.

28. Minnesota Department of Corrections personnel failed to act on statements of concern from Alfonso Rodriguez and his family about Alfonso Rodriguez's release from prison in 2003.

29. Alfonso Rodriguez has the potential to grow spiritually.

30. Considerations of mercy support a sentence of life imprisonment without the possibility of parole.

You are also permitted to consider anything else about the commission of the crime or about the defendant's background or character that would mitigate against imposition of the death penalty. "Mitigating factor" has been defined for you at Preliminary Instruction number 2. If there are any such mitigating factors, whether or not specifically argued by defense counsel, which are established by the greater weight of the evidence, you are free to consider them in your deliberations.

On the Special Findings Form you will be asked to identify any mitigating factors that any one of you finds has been proved by the greater weight of the evidence.

## Instruction No. 4

### STEP THREE: WEIGHING AGGRAVATION AND MITIGATION

In Step Three, you must consider whether the aggravating factors that you unanimously found to exist, both statutory and non-statutory, sufficiently outweigh any mitigating factors that you found in Step Two so that a sentence of death is justified. In the absence of any mitigating factors, you must consider whether the aggravating factors that you unanimously found are themselves sufficient to justify a sentence of death. Again, whether or not the circumstances in this case justify a sentence of death is a decision that the law leaves entirely to you.

For purposes of weighing all of the pertinent factors, I will now remind you of the “Statutory Aggravating Factors” that you unanimously found beyond a reasonable doubt had been proved in this case. You found that the defendant caused Dru Sjodin’s death during the commission of the offense of kidnapping; that the defendant had previously been convicted of two or more federal or state offenses, each of which is punishable by a term of imprisonment of more than one year, committed on different occasions, involving the infliction of, or attempted infliction of, serious bodily injury upon another person; and that the defendant killed Dru Sjodin in an especially heinous, cruel, or depraved manner in that it involved torture.

The process of weighing aggravating and mitigating factors against each other, or weighing aggravating factors alone, if you do not find any mitigating factors, in order to determine the proper punishment is not a mechanical process. In other words, you should not simply count the number of aggravating and mitigating factors and reach a decision based on which number is greater; you should consider the weight and value of each factor.

The law contemplates that different factors may be given different weights or values by different jurors. Thus, you may find that one mitigating factor outweighs all aggravating factors

combined, or that the aggravating factors proved do not, standing alone, justify imposition of a sentence of death. If one or more of you so find, you must return a sentence of life in prison without the possibility of parole. Similarly, you may unanimously find that a particular aggravating factor sufficiently outweighs all mitigating factors combined to justify a sentence of death. You are to decide what weight or value is to be given to a particular aggravating or mitigating factor in your decision-making process.

If you unanimously conclude that the aggravating factors found to exist sufficiently outweigh any mitigating factor or factors that any of you found to exist to justify a sentence of death, or in the absence of any mitigating factors, that the aggravating factors alone are sufficient to justify a sentence of death, and that therefore death is the appropriate sentence in this case, you must record your determination that a sentence of death shall be imposed on the Special Findings Form. If you determine that death is not justified, you must record your determination that defendant be sentenced to life imprisonment without the possibility of parole.

Instruction No. 5

CONSEQUENCES OF DELIBERATIONS

At the end of your deliberations, if you unanimously determine that the defendant should be sentenced to death, or to life imprisonment without the possibility of parole, the Court is required to impose that sentence. If you cannot unanimously agree whether the defendant should be sentenced to death or life imprisonment without the possibility of parole, the Court will sentence the defendant to life imprisonment without the possibility of parole.

Instruction No. 6

DEFENDANT'S RIGHT NOT TO TESTIFY

Alfonso Rodriguez, Jr. did not testify. The defendant has a constitutional right to remain silent. Furthermore, there is no burden upon a defendant to prove that he should not be sentenced to death. The burden is entirely on the government to prove that a sentence of death is justified. Accordingly, the fact that the defendant did not testify must not be considered by you in any way, or even discussed, in arriving at your decision.

Instruction No. 7

CONDITIONS OF CONFINEMENT

You have heard testimony regarding the conditions of confinement in Minnesota prisons and in the local jails. You should not assume that the conditions of confinement for someone serving a term of life imprisonment without the possibility of parole in a federal penitentiary would be the same. The exact nature of the conditions of confinement is not a matter for your consideration as that responsibility is left to another branch of government.

Instruction No. 8

JUSTICE WITHOUT DISCRIMINATION

In your consideration of whether the death sentence is justified, you must not consider the race, color, religious beliefs, national origin, or sex of either the defendant or the victim. You are not to return a sentence of death unless you would return a sentence of death for the crime in question without regard to the race, color, religious beliefs, national origin, or sex of either the defendant or the victim.

To emphasize the importance of this consideration, the findings form contains a certification statement. Each of you should carefully read the statement and then sign your name on a signature line if the statement accurately reflects the manner in which each of you reached your decision.

Instruction No. 9

SPECIAL FINDINGS FORM

I have prepared a form entitled “Special Findings Form” to assist you during your deliberations. You are required to record your decisions on this form.

Section I of the Special Findings Form contains space to record your finding on the non-statutory aggravating factor. Section II contains space to record your findings on the mitigating factors. Section III contains space to record your finding as to the sentence. You are each required to sign the Special Findings Form.

Instruction No. 10

DUTY TO DELIBERATE

I remind you that you have the same duty to deliberate as we discussed at the eligibility phase of the trial. Whatever decision you make must not do violence to your individual judgment. Of course, you must not surrender your honest convictions as to the weight or effect of the evidence solely because of the opinions of other jurors or for the mere purpose of returning a decision. Each of you must decide the case for yourself; but you should do so only after consideration of the evidence with your fellow jurors.

In the course of your deliberations you should not hesitate to re-examine your own views, and to change your opinion if you are convinced it is wrong. In reaching your conclusions, you must examine the questions submitted to you openly and frankly, with a proper regard for the opinions of others and with a willingness to re-examine your own views.

Instruction No. 11

CONCLUDING INSTRUCTION

You have heard emotional testimony presented by both sides in the selection phase. Such testimony may have caused emotional responses from persons present in the courtroom including spectators, participants in the trial, witnesses, or other court personnel. However, you must not be swayed by the emotional responses of others to the evidence. Let me remind you again that nothing that I have said in these instructions -- and nothing that I have said or done during the trial -- has been said or done to suggest to you what I think your decision should be. The decision is your exclusive responsibility.

If you want to communicate with me at any time during your deliberations, please write down your message or question and pass the note to the marshal or bailiff who will bring it to my attention. I will respond as promptly as possible, either in writing or by having you return to the courtroom so that I can address you orally.

I caution you, however, with any message or question you might send, that you should not tell me any details of your deliberations or how many of you are voting in a particular way on any issue.

Dated this 20th day of September, 2006.

---

Ralph R. Erickson, District Judge  
United States District Court