IN THE SUPREME COURT OF FLORIDA

CASE NO. SC05-1890

IN RE: STANDARD JURY
INSTRUCTIONS IN CRIMINAL CASES
PENALTY PHASE OF CAPITAL CASES
_____/

COMMENTS ON FLORIDA STANDARD JURY INSTRUCTIONS (CRIMINAL) 7.11, PENALTY PROCEEDINGS—CAPITAL CASES

PRELIMINARY COMMENTS

Suggestions for improving the above-captioned proposed jury instructions, as published in the January 1, 2007, edition of The Florida Bar News, follow. Because I have no experience trying or handling appeals of capital cases, the comments and suggestions below are offered primarily from the standpoint of a copyeditor, a profession in which I had extensive experience before entering law school in 2002. There are several suggestions on comma usage, hyphenation, and other technicalities. However, the bulk of the suggestions are based on a critical reading of the instructions for their meaning in context — i.e., how the listener (juror) is likely going to hear and understand them. I was looking for such factors as vagueness and ambiguity, internal contradiction, repetition (whether effective or merely redundant), effective sequence of presentation, and a layperson's likely understanding of legal terminology.

Probably most of the suggestions noted below derive from the fact that new sentences and paragraphs were inserted into the existing instructions in a way that did not fully take into consideration the existing text. This is the primary

source of the problems just listed: redundancy, internal contradiction, confusing sequence of presentation, etc. Nevertheless, I also took the liberty of carefully analyzing—again, primarily from an editorial perspective—those parts of the instructions that the committee has not changed.

In a few cases, the terminology or phrasing did require a look at the case law to determine what the intended meaning of the phrase is (e.g., "pretense of moral or legal justification"). I trust that my comments and suggested rewordings reflect a correct, albeit (given the time constraints) elementary, understanding of the case law. I apologize in advance if there are any comments or suggestions that do not take the case law into sufficient account.

The basic structure of the comments is as follows. Major topics are usually identified by the italicized judge instruction preceding the bolded jury instruction and appear following a hyphen at the left margin. Each specific point under the topic is indented and headed by a small bullet point. The last bullet point under a topic is often a suggested rewording of the instruction under consideration, taking into account all the bullet points under that topic and reflecting additional changes in punctuation, wording, etc., that I did not specifically address in the bullet points. I use strike-throughs and underlines superimposed on the currently drafted proposed instructions. Double underlining indicates phrasing that I was not sure of (i.e., indicates a query to the committee).

If you are viewing this document on computer, you can navigate to the major topics conveniently by pointing to View menu > Outline.

DRAFT INSTRUCTIONS: SUGGESTED CORRECTIONS

- Initial instruction #1.a.:
  - In the paragraph immediately following "*Give after the taking of evidence and argument*", the committee has changed the phrasing "**Murder in the First Degree**" to **"First Degree Murder**". Presumably, this phrasing should be used throughout the instructions, including here. Also, it should probably be hyphenated: "**First-Degree Murder**".

- Initial instruction #1.b.:
  - Change "**Murder in the First Degree**" to "**First-Degree Murder**".

- Initial instruction #2.:
  - "**Ffinal**": correct to "**final**".
  - For ease in reading, separate into two sentences: "**. . . judge of this court. However, the law requires . . .**"
  - "**. . . advisory sentence as to ~~what~~ which punishment . . .**".

- Judge instruction beginning "*For murders in committed prior to May 25, 1994, . . .*":
  - What exactly does "*this instruction*" (in ". . . *this instruction should be modified . . .*") refer to? I.e., how far down in the instructions does this rubric govern? The scope of this judge instruction needs clarification.
  - For ease in reading, separate into two sentences: ". . . *were different. Therefore, for crimes committed . . .*"

- Instruction under "*Give in all cases before taking evidence in penalty proceedings.*"
  - Sentence beginning "**You are instructed that . . .**": The tone of the "**You are instructed that**" phrasing is not consistent with that of the instructions as a whole; suddenly the judge sounds pedantic. Also, the sentence as a whole is out of focus, due largely to this introductory phrase. The sentence appears to be saying something along the lines of, "The purpose of presenting this evidence to you is . . . ." The suggested rewording, below, reflects this understanding.
  - "**. . . exist that ~~which~~ would justify . . .**".
  - "**At the conclusion of the taking of evidence and after argument of counsel . . .**": This sounds as if the instructions will be given twice, i.e., after each of these stages. I don't think this is the intent.
  - "**. . . taking of the evidence . . .**": This phrasing strikes me as legalese.
  - ***Suggested rewording*:**

    Give in all cases before taking evidence in penalty proceedings.

    The State and the defendant may now present evidence ~~relative to~~ concerning the nature of the crime and the character of the defendant. ~~You are instructed that~~

    Give only to the jury that found the defendant guilty.

    ~~**this evidence when considered with the evidence you have already heard**~~ **There are two closely related purposes for presenting you with this evidence in addition to the evidence that you already heard when trying the defendant's guilt or innocence:**

    Give only to a new penalty phase jury.

There are two closely related purposes for presenting you with this evidence:

Give in all cases.

~~is presented in order that you might determine,~~ The first~~,~~ purpose is to enable you to determine whether sufficient aggravating circumstances exist ~~which~~ that would justify the imposition of the death penalty. ~~and,~~ The second~~,~~ purpose is to enable you to determine whether there are mitigating circumstances sufficient to outweigh the aggravating circumstances, if any.

~~At the conclusion of the taking of~~ After the evidence has been presented and ~~after argument of~~ counsel have made their arguments, ~~you~~ I will ~~be~~ instruct~~ed~~ you on the ~~factors in aggravation and mitigation~~ aggravating circumstances and mitigating circumstances that you may consider.

- Instruction after "*Give after the taking of evidence and argument.*"
  - Hyphenate "**First-Degree Murder**".
  - Sentence beginning "**You must follow the law . . .**": Isn't the second "whether" clause backwards, i.e., opposite the wording and meaning of the instruction immediately before "*Give after the taking of evidence and argument.*"? That is, shouldn't it read, "**whether sufficient mitigating circumstances exist that outweigh any aggravating circumstances found to exist.**"?
  - Overall, there is some unnecessary redundancy in this paragraph, thanks to the addition of new sentences and the failure to make them flow smoothly

with the existing sentences. For example, the sentence beginning "**You must follow the law . . .**" tells the jurors that they are to render an advisory sentence. The next sentence begins, "**As you have been told . . .**", and then proceeds to mention "an advisory sentence" again, without adjustment for the insertion of the "**You must follow the law . . .**" sentence. The "**You must follow the law . . .**" sentence is best put at the end of the paragraph, rewritten appropriately.

- ***Suggested rewording*:**

  Give after the taking of evidence and argument.

  It is now your duty to advise the court as to the punishment that should be imposed ~~up~~on the defendant for the crime of First-Degree Murder. ~~You must follow the law that will now be given to you and render an advisory sentence based upon your determination as to whether sufficient aggravating circumstances exist to justify the imposition of the death penalty or whether sufficient aggravating circumstances exist that outweigh any mitigating circumstances found to exist. The definition of aggravating and mitigating circumstances will be given to you in a few moments.~~ As ~~you have been told~~ I stated earlier, the final decision as to which punishment ~~shall~~ will be imposed is my responsibility. However, the law requires you to ~~render~~ provide me with an advisory sentence as to which punishment should be imposed~~—~~—either life imprisonment without the possibility of parole or the death penalty. I must give your recommendation great weight in determining which sentence to impose. It is only

under rare circumstances that I would impose a sentence other than the sentence you recommend.

In providing me with your advisory sentence, you must follow the law that I will be explaining to you in a few moments. Your advisory sentence must be based on your determination as to whether sufficient aggravating circumstances exist to justify the imposition of the death penalty, or whether any mitigating circumstances exist that outweigh any aggravating circumstances that you find exist.

- Instruction under "*Give only to the jury that found the defendant guilty.*" and "*Give only to a new penalty phrase jury.*" ("**Your advisory sentence . . .**")
  - The content of these instructions is going to be repeated in different words a couple of paragraphs down in the instructions that begin with the phrase "**It is to the evidence . . .**". Although it is helpful to repeat important points throughout a long presentation, the pairs of points here are too closely spaced to require repetition.

    Actually, the two sets of paragraphs are partially contradictory. The ones here couch the instruction with "**should**" ("**Your advisory sentence should be based . . .**"). The paragraphs below make it clear that the evidence at trial and the sentencing hearing are to be the only basis for the jury's recommendation ("**. . . and to it [the evidence] alone . . .**"). To eliminate both the redundancy and the partial contradiction, the two paragraphs here should simply be deleted. (Actually, in a suggested rewording below, I combine them with the respective "**It is to the evidence . . .**" paragraphs.)

- Instruction under "*Burden of proof. Reasonable doubt. Give to all penalty phase juries.*"
  - The first paragraph here ("**The State has the burden to prove . . .**") refers only to the aggravating circumstances, not the mitigating circumstances. To make this clear, this paragraph should be moved to the instructions given just before the list of aggravating circumstances. This will also eliminate some of the disjointedness in the presentation here, i.e., the fact that the judge is here talking in some detail about aggravating circumstances when these have not yet been defined. Also arguing for this rearrangement is the fact that the parallel instruction for mitigation evidence (namely, the paragraph beginning, "**A mitigating circumstance need not be proved beyond a reasonable doubt by the defendant. . . .**") is positioned within the instructions introducing the list of mitigators.
  - Likewise, the paragraph below beginning "**A reasonable doubt as to the existence . . .**" should be moved to the aggravating circumstances section. (It is also not clear why the judge should read the first "beyond a reasonable doubt" paragraph, then the "**It is to the evidence . . .**" paragraph, then jump back to another "beyond a reasonable doubt" point. Moving both the "beyond a reasonable doubt" paragraphs to where they belong in the context of the penalty phase instructions will help eliminate this disjointedness.)

    I realize that this suggested rearrangement breaks up what appears to be a subsection of the instructions devoted to the general rubric of "evidence" and results in a structure different from the corresponding instruction in the guilt phase of any criminal trial. Maybe so, but I believe the enhanced coherence given to the general rubric of "aggravating circumstances" and the sharper distinction drawn between the burdens of proof in aggravating vs. mitigating

circumstances resulting from the suggested rearrangement outweigh any break-up in the "evidence" subsection (which break-up lay listeners won't notice anyway).

(The suggested rewording of the "beyond a reasonable doubt" paragraphs is presented below under the topic headed "Instruction under '*Aggravating circumstances, § 921.141(5)*' ".

- Instruction under "*Give only to the jury that found the defendant guilty.*" and "*Give only to a new penalty phrase jury.*" ("**It is to the evidence . . .**")
  - As noted above, these paragraphs overlap with and partially contradict the analogous paragraphs above beginning "**Your advisory sentence should be based . . .**". The suggested rewording here combines the corresponding paragraphs, eliminating the contradiction.
  - As also noted above, I realize that in an ordinary criminal trial, the "**It is to the evidence . . .**" instruction comes immediately after the "beyond a reasonable doubt" instruction. This sequence of paragraphs is problematic in these draft instructions, however, because the two "**It is to the evidence . . .**" paragraphs come across as referring only to the evidence presented in aggravation when presumably they should also refer to the evidence presented in mitigation. That only the evidence presented at trial and in the penalty proceeding is to be used in considering mitigation is clearly implied in mitigating circumstance #9, which reads, "**All other <u>evidence</u> presented during the [trial] [penalty phase proceeding] you find to be mitigating.**" This is another good reason for moving the "beyond a reasonable doubt" paragraph elsewhere. Doing so leaves the "**It is to the**

evidence . . ." instruction to cover all the evidence, not only the evidence of aggravating circumstances.

- ***Suggested rewording*:**

  Give only to the jury that found the defendant guilty.

  Your advisory sentence ~~should~~ is to be based ~~up~~on the evidence that you ~~have~~ heard ~~while~~ when you were trying the guilt or innocence of the defendant and the evidence that has been presented to you in ~~these~~ this proceeding~~s~~. That is, ~~It~~ it is to the evidence introduced during the guilt phase of this trial and in this sentencing proceeding, and to ~~it~~ that evidence alone, that you are to ~~look for that proof~~ consider when you determine the advisory sentence that you will provide to the court.

  Give only to a new penalty phase jury.

  Your advisory sentence ~~should~~ is to be based ~~up~~on the evidence that has been presented to you in ~~these~~ this proceeding~~s~~. That is, ~~It~~ it is to the evidence introduced during this proceeding, and to ~~it~~ that evidence alone, that you are to ~~look for that proof~~ consider when you determine the advisory sentence that you will provide to the court.

- Instructions under *Credibility of witnesses* #5, #7.:
  - Add an *s* to "**witness'**": **witness's**. (Although "witness's" might look like it has too many *s*'s, this form better reflects how the word is pronounced.)

- Instruction under *Credibility of witnesses* #6.:
  - Add series comma: "**. . . preferred treatment, or other benefit . . .**" (The series comma seems to be used elsewhere in the instructions.)

- Instruction under "*Expert witnesses*":
  - Change to proper em-dash: "**. . . with one exception—the law permits . . .**"
  - Transpose words: "**. . . an expert's opinion is reliable only when given . . .**"

- Instruction under "*Give only if the defendant testified*":
  - The bolded instruction is cut off; the sentence needs to be finished. "**that you apply to the testimony _____ [??].**"

- Instruction under *Rules for deliberation* #1:
  - "**All of us are depending ~~up~~on you . . .**"

- Instruction under *Rules for deliberation* #2:
  - "Decided upon the evidence" is borderline legalese and not very idiomatic. Also, it isn't necessary to use the circumlocution "decide a recommendation".
  - The parallelism of the three-item list seems off. Also, the brackets seem wrong.
  - ***Suggested rewording*:**

    Your recommendation must be ~~decided only~~ based solely ~~up~~on the evidence that you have heard from the testimony of the witnesses [, ~~[~~the evidence that you have seen in the form of the exhibits in evidence,] and these instructions.

- Instruction under *Rules for deliberation* #3:
  - Delete the comma after the first "**anyone**". It's a simple two-item list.

- Instruction under *Rules for deliberation* #6:
  - Add series comma: "**. . . bias, or sympathy.**"
  - Delete the comma after "**evidence**". It's a simple two-item list.

- Instruction under "*Aggravating circumstances, § 921.141(5)*":
  - First paragraph: Given how aggravating circumstances are to be used by the jury in their deliberations, I don't think such a circumstance can be construed as a "standard". (Admittedly, the term derives from United States Supreme Court case law; see, e.g., Bullington v. Missouri, 451 U.S. 430, 433, 438 (1981); Poland v. Arizona, 476 U.S. 147, 156 (1986). However, this does not mean that the term needs to be used in instructions to a lay jury.) As a later part of the instruction indicates, if the jury finds that an aggravator exists beyond a reasonable doubt, then the jury may, but need not, recommend death. Calling an aggravator a "standard" might tend to imply that if an aggravator were found, a threshold has been reached and death should or must be recommended. See, e.g., Random House Webster's College Dictionary 1256 (1997) (defining "standard" as "something considered by an authority or by general consent as a basis of comparison" and "a rule or principle that is used as a basis for judgment"). Given that the jurors will ultimately be "weighing the aggravating and mitigating circumstances", the aggravators are better characterized as "factors" throughout these instructions. Indeed, the word "factors" is already being used in the first paragraph under the "*Recommended sentence*" portion of the instructions.
  - First paragraph: "**. . . making the choice between the alternative recommendations . . .**" is somewhat redundant and wordy.
  - Second paragraph: The passive voice (twice) in the first sentence makes the meaning less than perfectly clear.
  - As noted above, the two "beyond a reasonable doubt" paragraphs under "*Burden of proof*" should be moved here.

- ***Suggested rewording*:**

  An aggravating circumstance is a ~~standard to guide~~ factor to assist you, as a member of the jury, in making the choice between ~~the alternative recommendations of~~ recommending either life imprisonment without the possibility of parole or death. It is a circumstance ~~which~~ that increases the enormity of a crime or the injury to a victim.

  ~~An aggravating circumstance must be established~~ The State must prove a given aggravating circumstance beyond a reasonable doubt before you may consider that circumstance ~~it may be considered by you~~ in arriving at your recommendation. ~~In order to~~ Before you may consider recommending the death penalty as a possible penalty, you must determine that the State has proved at least one aggravating circumstance ~~has been proven~~ beyond a reasonable doubt.

  ~~The State has the burden to prove each aggravating circumstance beyond a reasonable doubt.~~ A reasonable doubt is not a mere possible doubt~~,~~ or a speculative, imaginary, or forced doubt. Such a doubt must not influence you to disregard an aggravating circumstance if you have an abiding conviction that it exists. On the other hand, if, after carefully considering, comparing, and weighing all the evidence, you do not have an abiding conviction that the aggravating circumstance exists, or if, having a conviction, it is one ~~which~~ that is not stable but one ~~which~~ that wavers and vacillates, then the aggravating circumstance has not been proved beyond every

reasonable doubt and you must not consider it in rendering an advisory sentence to the court.

A reasonable doubt as to the existence of an aggravating circumstance may arise from the evidence, from conflicts in the evidence, or from the lack of evidence. If you have a reasonable doubt as to the existence of an aggravating circumstance, you should find that it does not exist. However, if you have no reasonable doubt, you should find that the aggravating circumstance does exist and give it whatever weight you determine it should receive.

- Aggravator instructions in general:
  - The old phrasing, "the crime for which (defendant) is to be sentenced", while somewhat wordy, is much clearer than the new phrasing, "**the capital felony**". First of all, the latter phrase suddenly appears here for the first time, never having been defined for the jurors. Is it safe to assume that they will know that that the phrase "the capital felony" refers to "the crime for which (defendant) is to be sentenced"? Not necessarily.

    Besides being problematic in the abstract, the new phrasing will result in confusion when certain combinations of aggravators exist in a given case. Take a concrete example. Suppose that the instructions for Aggravators #2.a. and #4. are to be read. The judge will read:

    [2.] The defendant was previously convicted of another capital felony. [a.] The crime of first-degree murder is a capital felony.

    [4.] The capital felony was committed while the defendant was engaged in the commission of any arson.

At this point, the jury is going to be completely misled. "Capital felony" in item 2 refers to the previous felony. "The capital felony" in item 4. is supposed to refer to "the crime for which (defendant) is to be sentenced", but in the context, the jurors will almost certainly hear it as a reference to the "previously convicted" crime just recited in item 2. If the judge then continues reading items 5., 6., 7., 8., and so on, using the phrase "the capital felony", the jurors may begin thinking that maybe the judge does mean the instant crime, but they will then be focusing on sorting out the confusion rather than listening to the judge.

In short, make it clear. The phrase "the crime for which (defendant) is to be sentenced" (or, "the crime for which the defendant is to be sentenced") is perfectly clear. It should be restored. (I will take the liberty of making the change in the suggested rewrites below.)

- Aggravator instruction #1:
  - The instruction accurately reflects the legalese of the statute, but that doesn't mean the average person will understand it immediately. The passive voice is awkward. More significantly, the instructions thus far have established that the focus of the proceeding is a known person—namely, the defendant who has been already found guilty of the crime for which he or she is to be sentenced. Now, suddenly, the designation "**a person**", with the indefinite article, is used to identify the defendant ("**. . . the capital felony was committed by a person . . .**"). At first hearing, it sounds as if some third party is being brought into the picture.

- There is something wrong with the brackets and possibly the arrangement of the words within them. Perhaps the word "**was**" needs to be deleted. In any case, the bracketed part of the sentence is garbled.
- The verb tenses sound wrong.
- The phrase "**placed on community control**" is not clear as to whether the defendant was still on community control at the time of the instant offense or not. I assume it means he/she was. If so, the simpler phrasing "was on community control" would be preferable.
- ***Suggested rewording*:**

Statute (for reference)	Instruction
(a) The capital felony was committed by a person previously convicted of a felony and under sentence of imprison-ment or placed on community control or on felony probation.	**1. ~~The capital felony was committed by a person~~ The defendant had previously been convicted of a felony and [was ~~[~~under sentence of imprisonment] [was ~~placed~~ on community control] [was on felony probation] for that felony when [he] [she] committed the offense[s] for which [he] [she] is to be sentenced now.**

- Aggravator instruction #2:
  - 2.: Right bracket in the first sentence is missing after "**person.**".
  - 2.: The use of the term "**the person**", with the definite article, sounds awkward (notwithstanding that this is the wording in the statute). What person? Does it mean "the victim" (i.e., a particular human being) or "the

body of the victim" (as in, "Drugs were found on the suspect's person.")? I will assume the former. The term "another person", as in instruction 2.b., works well.

- ***Suggested rewording*:**

Statute (for reference)	Instruction
(b) The defendant was previously convicted of another capital felony or of a felony involving the use or threat of violence to the person.	**2. The defendant was previously convicted of [another capital felony] [a felony involving the [use] [threat] of violence to ~~the~~ another person].** **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~~;~~.**

- Aggravator instruction #3:
  - The use in the instructions of the precise wording of the statute will result in ambiguity, or perhaps a complete misunderstanding, on the part of the jurors. The problem is that the modifying clause "**, in committing the crime for which [he] [she] is to be sentenced,**" has been deleted from the existing instructions. So, we are left with a timeless, amorphous sentence that will take on the meaning of whatever is in its context. As an example, assume that only Aggravators #2 and #3 are to be read. The judge will read:

    [2.] The defendant was previously convicted of a felony involving the use of violence to another person. [b.] The crime of aircraft piracy [§

860.16; defined as a forcible felony in § 776.08] **is a felony involving the use of violence to another person.**

[3.] The defendant knowingly created a great risk of death to many persons.

The jurors will hear #3 as a reference to the previous crime of aircraft piracy, not to the instant crime.

- ***Suggested rewording*:** Retain the phrasing of the existing instruction.

- Aggravator instruction #4:
  - Retain the existing language to identify the crime ("**crime for which the defendant is to be sentenced**").
  - As long as the various permutations are being separated by brackets, why not separate "**[flight after committing or attempting to commit]**" into two prongs:

    [flight after committing]
    [flight after attempting to commit]

  - Delete "**the**" at the beginning of the last prong; otherwise, the sentence in context will read (e.g.), "**. . . was engaged in the commission of any the unlawful . . .**".

- Aggravator instruction #5:
  - "**capital felony**" is crossed out. But presumably, this is the committee's desired phrasing.
  - Nevertheless, I would suggest retaining the existing language to identify the crime ("**crime for which the defendant is to be sentenced**").

- Consider using brackets for the "or" prongs.
- ***Suggested rewording*:**

Statute (for reference)	Instruction
(e) The capital felony was committed for the purpose of avoiding or preventing a lawful arrest or effecting an escape from custody.	**5. The ~~capital felony~~ crime for which the defendant is to be sentenced was committed for the purpose of [avoiding a lawful arrest] ~~or~~ [preventing a lawful arrest] ~~or~~ [effecting an escape from custody].**

- Aggravator instruction #6:
  - Retain the existing language to identify the crime ("**crime for which the defendant is to be sentenced**").

- Aggravator instruction #7:
  - Retain the existing language to identify the crime ("**crime for which the defendant is to be sentenced**").
  - Consider using brackets for some of the "or" prongs.
  - ***Suggested rewording*:**

Statute (for reference)	Instruction
(g) The capital felony was committed to disrupt or hinder the lawful exercise of any governmental function or the enforcement of laws.	**7. The ~~capital felony~~ crime for which the defendant is to be sentenced was committed to disrupt or hinder [the lawful exercise of any governmental function] ~~or~~ [the enforcement of laws].**

- Aggravator instruction #8:
  - Retain the existing language to identify the crime ("**crime for which the defendant is to be sentenced**").
  - Add series comma after "**atrocious**".

- Aggravator instruction #9:
  - Miscellaneous point:
    - Retain the existing language to identify the crime ("**crime for which the defendant is to be sentenced**").

  - Definition of "**premeditated**":
    - The definition comes across as somewhat internally contradictory and thus unfocused. The problem is that the definition includes two overlapping sub-definitions of "premeditated" without delineating them clearly. These sub-definitions are the one used in the guilt phase ("**The period of time must be long enough to allow reflection . . .**") and the one to be used in the penalty proceeding ("**However, in order for this aggravating circumstance to apply a heightened level of premeditation. . .**").

      Besides being overlapping, the two sub-definitions are partially contradictory. The sentence "**The period of time must be long enough to allow reflection by the defendant.**" specifies that the time must be "long enough [for] reflection" but does not mean that the defendant must actually engage in reflection. (I'm not sure offhand if this is correct premeditated-murder law, but that's what the sentence means.) The second sub-definition, however ("**. . . demonstrated by a substantial period of reflection, . . .**"), does indicate that the defendant has to have

actually engaged in reflection. The point of all this is simply that, in order to avoid any confusion that might result from the overlap and the contradiction, the instruction here should exclude the guilt-phase definition of "premeditated" and state only the penalty-phase definition.

Finally, the second sub-definition ("**. . . heightened level of premeditation . . .**") is written in the abstract, requiring that the listener or reader expend extra effort to home in on the meaning. Presumably, the sentence means that the defendant actually did engage in reflection for a substantial period of time and that the reflection concerned his or her decision to kill, such that premeditation existed. The instruction really should be written in concrete terms such as this.

- Although I realize that the first paragraph of the definition has existed in its present form in both the guilt and penalty phase definitions of "premeditated" for some time, the last sentence of the first paragraph ("**The premeditated intent to kill must be formed before the killing.**") strikes me as largely overlapping with the first sentence. As a result, the structure of the two paragraphs comes across as:

  (1) State of mind prior to the killing ("**A killing is premeditated . . .**")
  (2) State of mind at the killing ("**The decision must be present . . .**")
  (3) Time period required for premeditation ("**The law does not fix . . . . The period of time must be long enough . . .**")
  (4) Afterthought re point (1) ("**The premeditated intent . . .**")
  (5) More on point (3) ("**However, in order . . .**")

Points (1) and (4) can be brought together, thus allowing points (3) and (5) to come together more smoothly.

- Definition of "**pretense of moral or legal justification**":
  - As a preliminary comment, I found this to be the most confusing, obscure sentence in the entire penalty phase jury instructions. The statement of Aggravator #9 itself (i.e., the first sentence), including the phrase "**without any pretense of moral or legal justification**", seems perfectly clear on its own on first reading. I took the phrase "**without any pretense of moral or legal justification**" in its ordinary idiomatic sense — that the defendant was so cold and calculated that he/she didn't even bother to put on a show of moral or legal justification. This interpretation is consistent with the common meaning of the word "pretense":

    > 1. a false show of something; semblance: *a pretense of friendship*. 2. a pretending or feigning; make-believe: *My sleepiness was all pretense.* 3. the act of pretending or alleging falsely. 4. a ostensible claim or justification; pretext: *He excused himself on a pretense of urgent business; to obtain money under false pretenses*. 5. insincere or false profession: *pious words that were mere pretense*. 6. an unwarranted or false claim. 7. pretension (usu. fol. by *to*). 8. pretentiousness.

    Random House Webster's College Dictionary 1032 (1997).

    (As a linguistic aside, I disagree with the Florida Supreme Court's characterization of the legal, penalty-phase usage of "pretense" as consistent with the "generally accepted American usage of the word

'pretense.' " Banda v. State, 536 So. 2d 221, 225 n.2 (Fla. 1988). The court cites one of the definitions of the word "pretense" found in Webster's Third New International Dictionary (1981): "something alleged or believed on slight grounds: an unwarranted assumption." Id. at 1797. In reality, it is difficult to discern from this dictionary whether a given definition represents "generally accepted American usage" in light of the fact that that the definitions of a given word are given in chronological order of their appearance in the English language. Id. at 17a. In the Random House dictionary cited above, on the other hand, the most common meanings are listed first. Random House Webster's College Dictionary xiv. The definition "an unwarranted or false claim," the closest definition to the Webster's Third definition cited by the court, appears sixth. Similarly, The American Heritage Dictionary of the English Language (4th ed. 2000), in which the definitions "are arranged for the convenience of contemporary dictionary users with the central and often the most commonly sought meaning first," id. at xxxiv, lists "false appearance" and similar senses first and "a claim" sixth, id. at 1390.)

As such, a touch of cognitive dissonance arises when "pretense" ("a false show," etc.) is suddenly defined as something having affirmative value—the ability to "**rebut[] the otherwise cold, calculated, or premeditated nature of the murder**".

Nevertheless, the penalty-phase usage of "pretense" is with us. I think it would help quell the cognitive dissonance by prefacing the definition in the draft instructions with some caveat-like language.

- The first three elements of this aggravator are defined affirmatively in terms of the element itself. In contrast, the last element is defined in terms of the opposite of the actual element. That is, the element that the jury must find is "**without pretense . . .**", but the definition is couched in terms of "**pretense . . .**". Some language to clarify what the actual element is, is probably in order.
- Turning to the content of the definition: The definition is hard to follow and does not seem to accurately reflect the case law. (Caveat: Given the deadline, I did not have time to do a thorough analysis of all the instances in which this definition has been discussed by the court in its review of death penalty appeals. The comments here are intended as a springboard for further consideration.)

  As a basic premise, if a "pretense" as defined here is found to exist, the element fails, thus the aggravator fails, thus the jury must not consider the defendant as eligible for the death penalty on the basis of this aggravator. In short, the defendant wants there to be evidence that a pretense exists.

  The definition reads, in pertinent part, "**A 'pretense of moral or legal justification' is any claim of justification or excuse that, though insufficient to reduce the degree of murder, . . .**" Without referring to the case law yet, I don't know what to make of the phrase "**though insufficient to reduce the degree of murder**". It sounds as if the definition of "pretense" can apply, strictly speaking, only in those factual scenarios in which first-degree murder could potentially be reduced to second-degree murder, but cannot apply in those scenarios in which first-

degree murder could potentially be reduced to heat-of-passion manslaughter, or be found not to exist thanks to a justification, excuse, or other defense. In short, the definition of "pretense of moral or legal justification" here does not appear to reflect the definition found in, e.g., Walls v. State, 641 So. 2d 381 (Fla. 1994): "any colorable claim based at least partly on uncontroverted and believable factual evidence or testimony that, but for its incompleteness, would constitute an excuse, justification, or defense as to the homicide." Id. at 388 (footnote and citations omitted). As such, should the phrasing of the instruction be something like, "though insufficient to reduce the murder to a lesser crime or to fully justify or excuse the killing . . ."? (I will assume so in my suggested rewording below.)

- "**Rebuts**": This is legalese. Furthermore, which meaning of "rebut" is intended? See, e.g., Black's Law Dictionary 1274 (7th ed. 1999): "To refute, oppose, or counteract (something) by evidence, argument, or contrary proof . . . ." "Refute" in turn means "[t]o prove (a statement) to be false." Id. at 1286. Does any "pretense" evidence adduced by the defendant need to prove that at least one of the other three elements is false? Or does it merely need to "oppose" or "counteract" at least one of the other elements?

- Suggested rewrite:

The ~~capital felony~~ crime for which the defendant is to sentenced was a homicide and was committed in a cold, calculated, and premeditated manner, without any pretense of moral or legal justification. In order of for this aggravating circumstance to apply,

you must find that the State has proved beyond a reasonable doubt that all four of the criteria I just stated exist. I will now define each of these criteria:

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

"Calculated" means having a careful plan or prearranged design to commit murder.

~~A killing is~~ The definition of "premeditated" ~~if it~~ has three components. First, the killing must occur~~s~~ after the defendant has consciously ~~decides~~ decided to kill. That is, the premeditated intent to kill must be formed before the killing. ~~The~~ Second, the decision to kill must be present in the defendant's mind at the time of the killing. Third, although ~~The~~ the law does not ~~fix~~ specify 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.~~ in order for this aggravating circumstance to apply, the law does require you to find that the defendant engaged in a substantial period of reflection directed toward the killing.

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

The phrase "without any pretense or moral or legal justification" has a specific legal meaning in these proceedings. A "pretense of moral or legal justification" is any claim of justification or excuse that, though insufficient to reduce ~~the degree of~~ murder to a lesser crime or to fully justify or fully excuse the killing, nevertheless ~~rebuts~~ serves to counter[??] the otherwise cold, calculated, or premeditated nature of the murder. To satisfy this element, the State must prove beyond a reasonable doubt that the defendant committed the murder without any pretense of moral or legal justification as I have just defined this term.

- Aggravator instruction #10:
  - Retain the existing language to identify the crime ("**crime for which the defendant is to be sentenced**").

- Aggravator instruction #11:
  - Retain the existing language to identify the crime ("**crime for which the defendant is to be sentenced**").
  - Likewise, change "**motive for the capital felony**" to "**motive for the crime**".
  - The change from "**and**" to "**, if**", evidently undertaken to reflect the language of the statute, results in an awkward sentence. It sounds as if the victim's status as a public official was somehow conditioned on the fact that the motive for the crime was related to the victim's official capacity. The "**and**" phrasing reflects the meaning of the statute and makes it clear that two elements must be met for this aggravator to apply.

- Consider using brackets for "**elected**" vs. "**appointed**".
- ***Suggested rewording*:**

Statute (for reference)	Instruction
(k) The victim of the capital felony was an elected or appointed public official engaged in the performance of his or her official duties if the motive for the capital felony was related, in whole or in part, to the victim's official capacity.	**11. The victim of the ~~capital felony~~ crime for which the defendant is to be sentenced was an [elected] ~~or~~ [appointed] public official engaged in the performance of [his] [her] official duties, ~~if~~ and the motive for the capital felony was related, in whole or in part, to the victim's official capacity.**

- Aggravator instruction #12:
  - Retain the existing language to identify the crime ("**crime for which the defendant is to be sentenced**"):

- Aggravator instruction #13:
  - Retain the existing language to identify the crime ("**crime for which the defendant is to be sentenced**").
  - Consider using the bracket method for the options.

- ***Suggested rewording*:**

Statute (for reference)	Instruction
(m) The victim of the capital felony was particularly vulnerable due to advanced age or disability, or because the defendant stood in a position of familial or custodial authority over the victim.	**13. The victim of the ~~capital felony~~ crime for which the defendant is to be sentenced was particularly vulnerable [due to advanced age] ~~or~~ [due to disability]~~, or~~ [because the defendant stood in a position of [familial] ~~or~~ [custodial] authority over the victim].**

- Aggravator instruction #14:
  - Retain the existing language to identify the crime ("**crime for which the defendant is to be sentenced**").
  - Section 921.141(5)(n) has apparently not been construed by the supreme court. I suspect this aggravator will be problematic if a gang member kills someone in a circumstance completely unrelated to gang activity. Unfortunately, the instruction probably cannot be "corrected" in anticipation of this eventuality.

- Aggravator instruction #15:
  - The underlined phrase "§ 921.141 Fla. Stat." immediately before this instruction should be deleted.
  - Retain the existing language to identify the crime ("**crime for which the defendant is to be sentenced**").
  - As noted under Aggravator instruction #1, the use of "**a person**" (here, twice), with the indefinite article, to identify the defendant sounds awkward.

The defendant is already clearly the focus of the instructions. The phrasing makes it sound as if some third party is being brought into the discussion.

- Consider using the bracket method for the options. As the draft instruction is worded, the timeframes of the options is rather confusing.
- ***Suggested rewording*:**

Statute (for reference)	Instruction
(o) The capital felony was committed by a person designated as a sexual predator pursuant to s. 775.21 or a person previously designated as a sexual predator who had the sexual predator designation removed.	**15. ~~The capital felony was committed by a person designated as~~ The defendant [was designated as a sexual predator as of the time when [he] [she] committed the crime for which [he] [she] is to be sentenced] ~~or a person~~ [had previously been designated as a sexual predator but had ~~who~~ had the sexual predator designation removed prior to committing the crime for which [he] [she] is to be sentenced].**

- Italicized judge instruction immediately following "*Merging aggravating factors*":
  - Although the word "duplicitous" is used in a few legal expressions to mean "double," as in "double pleading," see Black's Law Dictionary (7th ed.) 519, its primary meaning is "deceitful; double-dealing." Black's Law Dictionary at 519; see also Random House Webster's College Dictionary at 405 ("marked or characterized by duplicity" ["1. deceitfulness in speech or conduct; double-dealing. 2. a twofold or double state or quality."]). A better term here would be "duplicative."

- Instruction beginning "**The State may not rely upon . . .**":
  - ***Suggested rewording*:**

    The State may not rely ~~upon~~ on a single aspect of the offense to establish more than one aggravating circumstance. Therefore, if you find that two or more of the aggravating circumstances are ~~proven~~ proved beyond a reasonable doubt by a single aspect of the offense, you are to consider that aspect as supporting only one aggravating circumstance.

- Instruction under "*Mitigating circumstances, § 921.141(6)*"
  - Paragraph beginning "Should you find sufficient . . .":
    - The phrase "**outweigh the mitigating circumstances**" should probably be "**outweigh any mitigating circumstances**", given that the jury may not find any mitigators in the first place
    - ***Suggested rewording*:**

      Should you find that sufficient aggravating circumstances ~~do~~ exist to justify recommending the imposition of the death penalty, it will then be your duty to determine whether the aggravating circumstances outweigh ~~the~~ any mitigating circumstances that you find to exist.

  - Paragraph beginning "**A mitigating circumstance is a standard . . .**":
    - As noted above under "*Aggravating circumstances, § 921.141(5)*", "standard" does not seem to be the best word to describe aggravators and mitigators. "Factor" seems to be a better description.

- ***Suggested rewording*:**

  A mitigating circumstance is a ~~standard~~ factor that, in fairness or in the totality of the defendant's life or character, may be considered as extenuation or as reducing the degree of criminal responsibility for the ~~crime(s)~~ crime[s] committed.

- Paragraph beginning "**A mitigating circumstance may include . . .**":
  - What exactly does "**the defendant's . . . record**" mean? Out of context, at first hearing, a person's (especially a murder defendant's) "record" sounds like it would mean "criminal record," which of course is not intended. Although the phrasing used here has a long history in the case law, see, e.g., Woodson v. North Carolina, 428 U.S. 280 (1976); Lockett v. Ohio, 438 U.S. 586 (1978); Booker v. State, 773 So. 2d 1079, 1090-91 (Fla. 2000), that does not necessarily mean that the phrasing has to be used in an instruction to a lay jury if a clearer alternative exists. I suspect the term means something like "life history"; if so, I would suggest using this phrase.
  - The phrase "**any other circumstance of the offense**" is very unclear. "Other" than what? The problem derives from the repositioning of this sentence in the draft instructions. In the existing version of the instructions, this phrase appears at mitigator #8.b., after several other mitigators describing various aspects of the instant crime are mentioned (e.g., #4, "**the defendant was an accomplice**"; #7, "**age . . . at the time of the crime**"). Thus, a context exists under which "**any other circumstance of the offense**" makes sense. Under the proposed revision, however, this sentence appears before the listed mitigators, rendering "**other circumstance of the offense**" virtually meaningless.

- This sentence is partially redundant with the previous sentence, concerning "life of a defendant."
- Suggestion: Delete this sentence and ensure that mitigator #8 covers its meaning fully. (If the sentence has to appear here, the committee will need to address the "**other**" in "**any other circumstance of the offense**". "Any circumstance of the offense" doesn't sound right. "Any relevant circumstance of the offense"? Also, "circumstances" should be plural.)

- Paragraph beginning "**Among the mitigating circumstances you may consider . . .**"
  - ***Suggested rewording*:**

    ~~Among the~~ The mitigating circumstances that you may consider, if you are reasonably convinced that they are established by the evidence, ~~are~~ include but are not limited to the following:

- Mitigator instruction #1, italicized judge instruction:
  - "*If the defendant offers evidence ~~on~~ of this . . .*"

- Mitigator instruction #1:
  - Written in the passive voice ("**. . . considered by the jury . . .**"), this instruction sounds like an explanation to a third party, not an instruction from one person (judge) to another (jury). Why is "**the jury**" being referred to in the third person?

- ***Suggested rewording*:**

Statute (for reference)	Instruction
(a) The defendant has no significant history of prior criminal activity.	**1. In determining the penalty to be imposed on the defendant, you may not consider ~~C~~conviction of** (previous crime) **~~is not~~ as an aggravating circumstance. ~~to be considered in determining the penalty to be imposed on the defendant, but~~ However, you may consider a conviction of that crime ~~may be considered by the jury~~ in determining whether the defendant has a significant history of prior criminal activity for purposes of this mitigating circumstance.**

- Mitigator instruction #2:
  - Retain the existing language to identify the crime ("**crime for which the defendant is to be sentenced**").

- Mitigator instruction #4:
  - Even if the "**the capital felony**" language is to be used, the bracketed "**[his] [her]**" should be restored to "**the defendant's**" to ensure clarity, given the intervening "**another person**".

  - Aside from my general criticism of the new phrase "**the capital felony**", the use of the phrase in the context here is that much more awkward. The sentence begins: "**The defendant was an accomplice in the capital felony committed by another person . . .**" The restrictive clause "**committed by**

another person" makes it sound as if the felony under discussion here is a felony other than the one for which the defendant is to be sentenced. At the very least (if the committee insists on retaining the "**the capital felony**" language), the restrictive clause needs to be changed to an unrestrictive clause, with commas and "which": "**The defendant was an accomplice in the capital felony, which was committed by another person, and the defendant's participation was relatively minor.**"

- ***Suggested rewording*:**

Statute (for reference)	Instruction
(d) The defendant was an accomplice in the capital felony committed by another person and his or her participation was relatively minor.	**4. The defendant was an accomplice in the ~~capital felony~~ offense for which [he] [she] is to be sentenced, but the offense was committed by another person and ~~[his] [her]~~ the defendant's participation was relatively minor.**

- Mitigator instruction #8:
  - Please refer to the criticism of the term "defendant's record," above. This term should be changed to something (a) with meaning (b) that doesn't carry any connotation of "criminal record." As above, I would suggest "life history," assuming that that is what is meant.
  - Why was "**background**", formerly in instruction #8.a., deleted? Unlike "record," it evokes something meaningful to people. Admittedly, it is probably somewhat redundant with "life history," but this is probably a worthwhile redundancy.
  - Shouldn't "**circumstances of the offense**" be plural?

- The use of commas and the word "**or**" in the instruction is incorrect.
- ***Suggested rewording*:**

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

- Mitigator instruction #9:
  - The use of the brackets here is not fully clear. Presumably, both "**trial**" and "**penalty phase proceeding**" would have to be read in (virtually?) all cases to the jury carried over from the penalty phase, and "**penalty phase proceeding**" would have to be read in (virtually?) all cases in which a special penalty phase jury is used.
  - ***Suggested rewording*:**

    ~~**9. All other evidence presented during the [trial] [penalty phase proceeding] you find to be mitigating.**~~

    9.

    Give 9.a. only to the jury that found the defendant guilty.

    a. All other evidence presented during the trial and this penalty phase proceeding that you find to be mitigating.

    Give 9.b. only to a new penalty phase jury.

    b. All other evidence presented during this penalty phase proceeding that you find to be mitigating.

- Instruction under "*Victim impact evidence*":
  - The word "**(decedent's)**" should be un-bolded.

- Instruction under "*Recommended sentence*":
  - Paragraph beginning "**The sentence that you recommend . . .**":
    - "**The sentence that you recommend to the court . . .**": What does "**the law**" at the end go with? (a) "**. . . <u>based upon</u> the facts . . . and** [upon] **the law.**"? or (b) "**. . . <u>the facts as you find them from</u> the evidence and** [from] **the law**"? Presumably, the former. Grammatically, it's unclear. Reword: "**. . . must be based ~~up~~on the law and on the facts as you find them from the evidence.**"
    - **<u>Substantive query</u>:** The following is what I take from the paragraphs here in conjunction with the remainder of the draft instructions, in terms of what sentence(s) may be imposed based on each permutation of the evidence:
      - ? *A juror finds no aggravating circumstances beyond a reasonable doubt (irrespective of whether mitigating circumstances are found)* ? The juror <u>must</u> vote to recommend life imprisonment.
      - ? *A juror finds one or more aggravating circumstances beyond a reasonable doubt, and finds no mitigating circumstances* ? The juror <u>may</u> vote to recommend death, but may also vote to recommend life imprisonment.
      - ? *A juror finds one or more aggravating circumstances beyond a reasonable doubt and finds one or more mitigating circumstances; he/she finds that the aggravating circumstances outweigh the mitigating circumstances* ? The juror <u>may</u> vote to recommend death, but may also vote to recommend life imprisonment.
      - ? **<u>KEY POINT</u>:** *A juror finds one or more aggravating circumstances beyond a reasonable doubt and finds that one or more mitigating*

circumstances exist; further, he/she finds that the mitigating circumstances outweigh the aggravating circumstances ? **??? The instructions are not explicit as to what the result should be.** I assume the intention is that the juror must vote for life imprisonment. This seems to be the logical implication. But isn't some variation on the following line of thinking possible? — "Yes, the mitigating circumstances outweigh the aggravating circumstances in my mind. Nevertheless, I do believe the aggravating circumstances were proved beyond a reasonable doubt. And after all, the defendant did commit first-degree murder. Therefore, I think I should vote for the death penalty." Maybe the draft instructions are intended to allow for this line of thinking; that is one possible interpretation from that fact that the draft instructions explicitly tell the jurors their options for each of the three other permutations but not this one. I can't tell. Furthermore, the instruction above (under "*Mitigating circumstances, § 921.141(6), Fla. Stat.*") beginning "**A mitigating circumstance need not be proved beyond a reasonable doubt by the defendant . . .**" doesn't help. Section 921.141(2), Florida Statutes, is not clear either. In any event, if the intention is that the juror must vote for life imprisonment, surely this needs to be made explicit in the instructions, probably in the paragraph here. (Note: I will not attempt a suggested rewording for this point.)

- Paragraph beginning "**The process of weighing . . .**":
  - Hyphenate: "**decision-making process**".
  - In the sentence "**In your decision-making process, you and you alone, are to decide . . .**", is the pronoun "you" intended to be singular? I.e., is

this sentence being addressed to each juror as an individual? I assume so, given that immediately below the jury is told that the advisory sentence need not be unanimous and that a few paragraphs down there is an instruction that a vote is to be taken. However, even the use of the phrase "**you alone**" does not make it clear that each juror is being addressed as an individual. (If the intention is that "**you and you alone**" does not refer to each juror as an individual but to the jury as a whole, it is not clear what the sentence is supposed to mean. "You (the jury) and you alone" — as opposed to whom?)

- ***Suggested rewording*:**

  The process of weighing aggravating and mitigating factors to determine the proper punishment is not a mechanical process. The law contemplates that different factors may be given different weight or values by different jurors. In your decision making process, each of you, ~~and you alone~~ as an individual, ~~are~~ is to decide what weight is to be given to a particular factor.

- Related to this, I think it would be helpful psychologically to inform the jury at the beginning of the instructions that, unlike at the guilt phase (for those juries who tried the case), the advisory sentence will be based on a vote of the jurors and need not be unanimous. Knowing at the outset that the recommendation will be based on a vote rather than a unanimous decision will likely lessen worries that individual jurors may have about how they're going to persuade their co-jurors of the "right" position or how they're going to keep themselves from caving in. An appropriate point at which to say this would be at the end of paragraph **2.** (beginning

"**The punishment for this crime . . .**") at the beginning of the instructions. (I have not provided a suggested rewording for this.)

- Paragraph beginning "**A majority of the jury by a vote . . .**" (i.e., the ballot language):
  - Delete the comma after the first blank underscore.
  - Both "**majority**" and "**jury**" are singular, so the verbs should be "**advise<u>s</u>**" and "**recommend<u>s</u>**".
  - Elsewhere, "**the defendant**" is used, not "(defendant)". Make the change here as well, unless the defendant's name has to be used on the ballot.

- Paragraph beginning "**On the other hand . . .**":
  - Change "(defendant)" to "**the defendant**" if necessary.

- Paragraph beginning "**The jury advises and recommends . . .**":
  - Change "(defendant)" to "**the defendant**" if necessary.

- Paragraph beginning "**There is no set time . . .**":
  - It sounds very bad, perhaps even suggestive or flippant, to say outright, "**Sometimes it only takes <u>a few minutes</u>.**" (If the committee insists on this sentence, put the "**only**" in the correct position: "it takes only a few minutes.")
  - "**individual**" is superfluous here: "**. . . makeup of the ~~individual~~ jury.**"
  - Move the adverb: "**. . . sufficient time to ~~fairly~~ discuss the evidence <u>fairly</u> . . .**". (I'm not concerned about the split infinitive. The adverb just sounds better at the end of the clause. Compare "The judge fairly treated the defendant" with "The judge treated the defendant fairly". The latter sounds more natural.)

- Suggested rewrite:

  When you have reached an advisory sentence in conformity with these instructions, that form of recommendation should be signed by your foreperson, dated with today's date, and returned to the court.

  There is no set time for a jury to reach a verdict. Sometimes it ~~only~~ takes ~~a few minutes~~ only a relatively brief period of time. Other times it takes hours or even days. It all depends ~~up~~on the complexity of the case, the issues involved, and the makeup of the ~~individual~~ jury. You should take sufficient time to ~~fairly~~ discuss the evidence fairly and arrive at a well-reasoned recommendation.

DRAFT VERDICT FORM: SUGGESTED CORRECTIONS

- Hyphenate "first-degree murder" and "second-degree murder throughout.
- Every time "the defendant" appears, it is followed by "(Name)". Should this be the case in the first paragraph as well?
- Sub-options under option A.: "___ of our number find that the killing . . .".
- Change the year "2005" to something generic, like "20xx" or "YYYY".
- Change "FOREPERSON" to "SIGNATURE OF FOREPERSON".
- Change "(PRINT NAME)" to "(PRINTED NAME OF FOREPERSON)".

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the forgoing has been served on the Honorable O. H. Eaton, Jr., Committee Chair, 101 Bush Blvd., Sanford, Florida, 32773 on this the ___ day of January 2007 by U.S. Mail.

By:

_____

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