**ICJI 1721 Mitigation**

A mitigating factor is any fact or circumstance, relating to the crime or to the defendant’s state of mind or condition at the time of the crime, or to [his] [her] character, background, or record, that tends to suggest that a sentence other than death should be imposed.

A mitigating factor does not have to constitute a defense, excuse, or justification for the crime, nor does it even have to reduce the degree of the defendant’s blame for the crime.

My instructions given at the end of the trial phase that you were not to allow sympathy for the defendant to enter your deliberations do not apply at this sentencing phase. Mitigating factors may include any fact or circumstance that inspires sympathy, compassion, or mercy for the defendant.

Evidence supporting the existence of a mitigating factor may come from the trial phase or this sentencing phase, whether produced by the defendant or the State.

Comment

*Skipper v. South Carolina*, 476 U.S. 1 (1986). Use the applicable bracketed language.