

1 UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
2 -----x

3 UNITED STATES OF AMERICA

4 v. S(7) 98 Cr. 1023

5 USAMA BIN LADEN, et al.,
6 Defendants.

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New York, N.Y.
June 5, 2001
9:30 a.m.

al-'Owhali Death Phase Closing Arguments

11
12 Before:

13 HON. LEONARD B. SAND,

District Judge

14
15 APPEARANCES

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17 Southern District of New York
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12 MR. GARCIA: Thank you, Judge. Good morning.

13 In his opening here before you last weeks Pat
14 Fitzgerald told you that up to that point before we began this
15 penalty phase you had heard little about what the embassy
16 bombing did to human beings, and he told you that over the
17 next day or so you would learn about that, you would hear from
18 victims, and you would have a better understanding of what
19 al-'Owhali's crimes did to those victims. After hearing from
20 just 26 of those victims sadly, sadly the impact of his crimes
21 are much more real.

22 If we could call up Government Exhibit 2140. This is
23 Joyce Manguriu. You heard her father testify here in this
24 courtroom. And what do you know about her now? You know that
25 this photograph was a photo she had taken for her passport

1 because she was planning on coming to the United States to
2 attend college, but you know that Joyce will never attend
3 college because this defendant murdered her. She'll never
4 attend college. She'll never get married. She'll never have
5 children.

6 If we could have Government Exhibit 2035. You know
7 after hearing Deborah Hobson testify that this is a photograph
8 of her husband, Kenneth Ray Hobson, and that's his daughter,
9 Megan. You know from Deborah Hobson that Ken liked to bake
10 bread with his daughter on the counter of their home in
11 Nairobi. And you know from when she testified that eight
12 months after the bombing, eight months after this defendant
13 killed her husband, she had another child and she named that
14 child Abigail whose name means my father rejoices.

15 Those are two of the victims you heard from. Those
16 are two of the 26 victims that took the stand, and after their
17 testimony the suffering and the pain caused by this defendant
18 can now be associated with real family, with real lives lost,
19 lives that were stolen by this defendant. And it can also be
20 associated this crime with courageous survivors who live with
21 blindness and with paralysis and the emotional scars that
22 never heal.

23 You heard not only about the bombing, but the hours
24 and the days after the bombing when wives learned they had
25 lost their husbands, when parents were told they had lost

1 children, and where children had to be told that a mother or a
2 father would never be coming home.

3 You heard it, and you have seen the devastating pain,
4 you felt it, you felt it when those witnesses came in here,
5 they took the stand, and they told you their story. Those
6 witnesses were brought into the room by this defendant, by the
7 crimes he committed, and that death and the pain and the
8 suffering that he caused when he detonated, when he caused
9 that bomb to be detonated on August 7, 1998.

10 For each of the victims that the government called in
11 here, for each of the victims that testified here there are
12 dozens more that you didn't hear from. For each of the
13 injured and the maimed, remember there are hundreds more you
14 didn't hear from. Because this defendant he killed 213
15 people, injured 4,000 people, and these are only the direct,
16 the physical injuries. There are thousands more, relatives,
17 and friends of those who were killed and those who were maimed
18 who had to live through that horror, who had to see it, who
19 had to experience it and who still live with it. Those are
20 also victims. And now al-'Owahli must be held accountable for
21 his crimes. He must face the full measure of justice.

22 On August 7, 1998, Al-'Owahli jumped from the cab of
23 that truck. He threw his grenades, and he ran. He ran fast
24 and he ran hard across that parking lot and he saved himself.
25 He ran past windows where people had come to look at the

1 commotion, and he made it to safety.

2 And after he had killed those 213 people and blinded
3 Ellen Bomer and blinded Sandi Patel he went to the hospital
4 and he got treated for his injuries. The largest injury he
5 had was on his back, because his back was facing the embassy
6 as he ran from it. Yes, he ran away.

7 And now it's time for Al-'Owahli to face justice.
8 He's had his trial, a thorough and a fair trial that began in
9 this courtroom in February of 2001. He was found guilty,
10 found guilty of 213 murders, unanimously, and the past week
11 he's had his penalty phase, and now it's time for Al-'Owahli
12 to be sentenced, time to be sentenced to the punishment he
13 deserves, punishment that does justice to the victims of his
14 crimes. It's time for Al-'Owahli to receive the only
15 sentence, we submit, that fits his crime, the death sentence.

16 We'll walk through the factors, the factors you must
17 weigh in your decision, and although this can never be an easy
18 decision, it's one of the hardest decisions one can make, it
19 is the right decision in this case.

20 Let's talk a little bit about the law. Now, Judge
21 Sand gave you some preliminary instructions on the law. He'll
22 talk to you again about the law. His are the instructions
23 that you must follow. He'll talk to you about aggravating and
24 about mitigating factors, and the statute provides a framework
25 for you to follow in making your decision.

1 What I'd like to do now is look at these factors,
2 these preliminary factors. I think Judge Sand referred to
3 them as gateway factors. And he said that you must find at
4 least one of them as to each count. You must find unanimously
5 and agree on at least one that the government has proved one
6 beyond a reasonable doubt. And these deals with al-'Owhali's
7 intention and his conduct. And the government submits that it
8 has proven all four beyond a reasonable doubt.

9 Looking at them quickly. 1. That the defendant
10 intentionally killed the victim or victims. 2. That the
11 defendant intentionally inflicted serious bodily injury that
12 resulted in death. 3. Defendant intentionally participated
13 in an act contemplating that the life of a person would be
14 taken or that lethal force would be used, and the victim or
15 victims of a particular count died as a result of the act, or
16 the defendant engaged in violent conduct, knowing that the
17 acts created grave risks of death to a person such that the
18 act constituted a reckless disregard for human life, and the
19 victims died as a result of the act.

20 Defendant's conduct satisfies all four of these
21 elements. You've already found him guilty that he himself
22 killed 213 people, the people that died in the bombing. He
23 took a truck full of explosives, he drove it into a downtown
24 area, and he inflicted death and destruction. He knowingly
25 and intentionally participated in this crime, a plot to bomb,

1 a plan to kill. He created a grave risk of death to all these
2 in the vicinity of the embassy that day. He wanted to kill.
3 He intended to kill and he did kill.

4 The government submits that the proof overwhelmingly
5 establishes each and every one of those four gateway factors,
6 and, again, you need find only one in order to continue with
7 the process.

8 Once that is done for each count that it is done, you
9 can move on to what are call the statutory aggravating
10 factors, and, again, as to each capital count you must all
11 agree unanimously that the government has proved at least one
12 statutory aggravating factor beyond a reasonable doubt. Then
13 you can go on to the nonstatutory aggravating factors and the
14 weighing process. Before we get to that, I'd like to just say
15 a word about the process, the weighing process.

16 In the beginning of this case you took an oath as
17 jurors that if you found Al-'Owahli guilty of the murder
18 charge, the capital counts, you could fairly and carefully
19 deliberate in a penalty phase. You were told that the law
20 provides in certain circumstances that murders can be punished
21 by death, that in some cases that is the appropriate
22 punishment. This is one of those rare cases.

23 These aggravating factors narrow the pool of those
24 eligible for the death penalty. They narrow the scope of
25 those who have already been found guilty of the worst crime of

1 murder. They narrow that group so you get to the worst of
2 that group and in this case as we go through the aggravating
3 factors and we look at any mitigating factors you will see
4 that Al-'Owahli is the rare exception, the criminal, the
5 murderer, who deserves the ultimate penalty that is authorized
6 by our law.

7 Now, let's look at the first aggravating factor.
8 That the deaths and injuries resulting in death of the victim
9 or victims of the particular count you are considering,
10 occurred during the commission or attempted commission of
11 another offense, namely, the list of offenses under Title 18,
12 bombing of property leased to the United States government,
13 killing or attempted killing of internationally protected
14 persons, terrorists acts abroad against US nationals and use
15 of a weapon of mass destruction.

16 Judge Sand will explain as to each count you must
17 determine if the victims were killed during the commission of
18 certain other crimes, depending on the count you are
19 considering. The government has proved these crimes beyond a
20 reasonable doubt. It's proved this factor beyond a reasonable
21 doubt, and you can give it as much weight as you see fit.

22 The second factor involves substantial planning, and
23 premeditation, that the defendant committed the offense listed
24 in the particular count you are considering after substantial
25 planning and premeditation to cause the death of one or more

1 persons or to commit an act of terrorism.

2 Well, you know from the evidence at the guilt phase
3 that Al-'Owahli engaged in long-term substantial planning for
4 the embassy bombing. First, when he gets a call from Azzam
5 and he's told that he's going to go on a mission and he agrees
6 and he accepts that mission, he gets more training. He's
7 already been trained, but he gets more training now for this
8 mission, training in how to operate and manage the terrorist
9 cell.

10 And when he's finished with that training, he gets a
11 false passport, one of many aliases he used, takes that
12 passport and he travels to Yemen and in Yemen he gets another
13 fake identity, a Yemenis passport, this one in the name of
14 Khalid Bin Rashed, the name Al-'Owahli would use to go on his
15 mission to go on the bombing in Nairobi. And when he gets the
16 Yemenis passport he goes back to Pakistan and in Pakistan he's
17 given a further briefing on his mission. He's told what his
18 role will be, to assist the driver, the driver of a bomb-laden
19 truck, the truck that will be driven into an American target.

20 And on July 31, Al-'Owahli take his fake Yemenis
21 passport. He gets on a plane and he travels to Nairobi. And
22 by the 4th of August he's down at the center of Nairobi,
23 center of the city, scouting out the embassy, scouting out his
24 target. And he's shown photographs, and he's shown sketches
25 of the target. He's preparing himself for August 7, 1998.

1 And that day he takes his stun grenades and he takes
2 his pistol, goes down to that area that he's familiar with,
3 familiar with because he saw it, familiar with it because he
4 saw sketches of it, and he goes down there and he helps Azzam
5 bring the bomb truck. Oh, yes, there was substantial planning
6 and training; fake names, documentation, passports, and
7 premeditation. He intended to kill as many people as
8 possible. His stated goal was terror to further the terrorist
9 goals of his organization. This wasn't a crime committed on a
10 sudden impulse. It wasn't done in the heat of any argument.
11 It was a long and it was a complex and detailed plan. It was
12 mass murder committed in cold blood. He prepared for it, he
13 studied for it, he trained for it, and he carried it out.

14 If we could go to the third factor. The defendant in
15 the commission of the offense in the particular capital count
16 knowingly created a grave risk of death to one or more persons
17 in addition to the victim or victims in that count.

18 Yes, he did. You heard the evidence of that during
19 both phases, in the guilt phase and in the penalty phase. You
20 saw how many people he placed in immediate threat of death in
21 that downtown Nairobi area on the morning of August 7. In the
22 guilt phase you heard from a witness called Frank Pressley
23 took the stand and told you that morning he was chatting with
24 a few of his colleagues in the office. Frank Pressley
25 survived, other people in that office like Jay Bartley, like

1 Michelle O'Connor, died. And Frank Pressley had part of his
2 jaw ripped off but he survived.

3 Lydia Sparks came at the penalty phase. She told you
4 she saw her colleagues Joe Kionga and Lydia Mayaka up by the
5 window. The bomb went off, they disappeared. They were
6 killed. Lydia Sparks she survived, but she was cut from head
7 to toe by flying glass.

8 Flying glass maimed Pinoma Muhuhu and Tobias Otenyo
9 who came and testified at the guilt phase, Moses Kanui who
10 testified had part of his head blown off in the blast. But
11 perhaps the story that most exemplifies the risk of death to
12 everyone in that area came from Sami Ingaga, who testified
13 here in the guilt phase. He told you that he was in the
14 Ufundi House and when the bomb went off and these floors
15 collapsed like a house of cards he was trapped in a small
16 space, four foot by four feet for two days, for two days while
17 he could see the bones sticking out of his pants leg and he
18 waited and he talked to his rescuers and he talked to somebody
19 else, he talked to a woman name Roslyn Huruwang, and he tried
20 to comfort Roslyn. He tried to steer rescuers towards her.
21 Sami was pull out of the rubble. Roslyn died. Some were
22 rescued, some were not.

23 There was a grave risk of death to all the people
24 that were in the vicinity of the downtown Nairobi area on the
25 morning of August 7th when al-'Owhali's massive bomb went off.

1 And you heard some of the witnesses who came in here and they
2 testified at the guilt, penalty phase, and they told you they
3 were far away from the downtown area, far away and the window
4 rattled or they heard a thud, they heard a bang, they heard
5 that massive bomb go off so far away from the site. And at
6 10:30 a.m. on August 7th the difference between standing two
7 feet this way or two feet that way could mean the difference
8 between life and death.

9 And the further factor that the defendant
10 intentionally killed or attempted to kill more than one person
11 in a single episode.

12 Well, you know he did that. You found him guilty of
13 213 murders, 212 murdered and look at the evidence, look at
14 that stipulation. They ranged in age from 16, 16 to 66, and
15 pretty much every age in between. 213 killed in one act.
16 It's a number that's difficult to comprehend. One way you got
17 an idea of the number of the carnage was when you heard from
18 the victim's relatives who testified here, and they talked to
19 you about trying to find the people that were killed, trying
20 to find their loved ones and finally they had to go to the
21 morgues, and they went to the morgue and they went down row
22 after row of bodies looking at socks, looking at clothes,
23 trying to look at faces. And many of those bodies were
24 mangled, many of them were burned beyond recognition.

25 Al-'Owahli killed multiple victims. He killed 213

1 and he attempted to kill many more. And these are the
2 statutory aggravating factors: Death during the commission of
3 another crime, substantial planning and premeditation, grave
4 risk of death to other persons, and multiple killings and
5 attempted killings, and the government submits that it has
6 proven all four beyond a reasonable doubt.

7 Now let's look at the nonstatutory aggravating
8 factors. The victims and intended victims of the particular
9 count included high-ranking public officials of the United
10 States serving abroad and the offense was motivated by such
11 status.

12 Well, you know from al-'Owhali's own statement that
13 he was targeting the ambassador, Ambassador Bushnell. You
14 know why. He said he targeted her because she was a woman and
15 because if she died it would bring more attention to the
16 story, bring more attention to his terrorist cause. He tried
17 to kill Ambassador Bushnell. He came close. He did kill
18 high-ranking public officials, and he killed Julian Bartley
19 the counsul general.

20 And the government is not suggesting in this factor
21 that one life is more valuable than another life. It's not
22 saying because some person holds a position that should count
23 more. We are saying that people like Julian Bartley, people
24 who you heard Sue Bartley testify was interested in building
25 bridges, and using his position to help people, that people

1 like that should be able to do that job in safety so that
2 others will follow, that others will follow his example of
3 service and dedication. And that should be a factor, it
4 should be an aggravating factor, that this defendant
5 Al-'Owahli would murder people like Ambassador Bushnell and
6 Julian Bartley just because their deaths would better serve
7 his terrorist mission, and he would hope to scare off the
8 Julian Bartleys, scare them from building bridges. In a world
9 as complicated and as dangerous as the one we live in we need
10 more Julian Bartleys, not less.

11 I'd like now to look at the second factor,
12 nonstatutory factor. That the defendant poses a continuing
13 and serious threat to the lives and safety of others with whom
14 he will come in contact.

15 Let's look at that. Let's look at it in two parts.
16 First, this defendant, his training, his intentions, and his
17 mind set, and next who it is he will come in contact with, who
18 it is that will be at risk. First al-'Owhali's own training.
19 What make him dangerous? Well, he had three rounds of
20 training. First when he went up to Afghanistan when he heard
21 about Bin Laden and answered the call the call for violence
22 against America, and he was such a good student in that first
23 round of training that he got to meet Bin Laden himself, and
24 then he went and he got more advanced training, more
25 specialized training in terrorist operations, in hijackings,

1 highjackings of every buses and planes, in kidnapping, in
2 taking hostages, in taking and holding buildings.

3 And then he had a third round of training in the
4 operation and management of terrorist cells, which even by his
5 own account was the most advanced training he had ever had.

6 Al-'Owahli was highly trained, highly motivated, and
7 at some level willing to give his life to achieve his goals to
8 strike at the United States. When he went to Nairobi and he
9 met Saleh and Harun, he heard about the Tanzania bombing, he
10 scouted his target in a busy downtown area and he bombed it.

11 And then after he bombed that embassy. After he
12 threw the grenade and saved himself, he went to get treatment
13 for his cuts and bruises, he went to get himself fixed up.
14 And where did he go? He went to M.P. Sha Hospital. He walked
15 into the MP Sha Hospital and he saw the carnage that he had
16 created and you heard Dr. Patel testify that this is a sample
17 of the types of injuries that he saw that day. And Dr. Patel
18 worked at M.P. Sha Hospital. This isn't a photograph of M.P.
19 Sha Hospital, but it's injuries, injuries like the ones he
20 saw, injuries that were so common that day.

21 In the middle of all that, in the middle of that
22 scene were Sandi Patel and M.P. Sha Hospital, was where Sandi
23 Patel is having his eye operated, where Sandi Patel's eight
24 year old brother sits on the floor and cries because as Sandi
25 Patel told you he had too much pain, too much pain from the

1 glass, and the gashes caused by al-'Owhali's bomb.

2 In the middle of that, in the middle of the scene at
3 M.P. Sha Hospital, and this is a photograph of a boy being
4 treated at M.P. Sha Hospital, and this is the intensive care
5 unit at that hospital, in the middle of all this, Al-'Owahli
6 walked in, walked into that hospital, and got himself patched
7 up. This is a very dangerous and a very cold blooded killer.

8 And even if you credit his later statement, the
9 statement that he only meant to kill Americans and the Kenyans
10 inside the embassy base, only those 200 people, he showed no
11 remorse, no remorse for the 213 that he did kill. And how do
12 you know that? Well, you've seen the photograph, the champ
13 photograph posing for the media, posing with that smile after
14 he's just killed 213 people, more than 200 Kenyans.

15 He showed no remorse for his victims, but he did shed
16 some tears after the bombing and you heard about that. When
17 he was being interviewed by Agent Gaudin he was shown a
18 picture of the bomber Azzam, the guy who blew himself up while
19 he killed 200 innocent people and Al-'Owahli cried for Azzam.
20 Al-'Owhali cried for him and Al-'Owhali kissed his photograph,
21 and he sang a little chant about maybe, maybe some day I'll
22 meet Azzam in Paradise, my friend. That's the emotion
23 Al-'Owahli showed after the bombing. He's fully committed,
24 he's fully trained.

25 And now let's talk about who al-'Owahli will come in

1 contact with. Now, the government's not here to say that
2 Al-'Owahli if he doesn't receive the death sentence will be
3 walking around on the street. No. Mr. Baugh told you that
4 he'll spend forty or fifty years in prison, forty or fifty
5 years in American prison with American guards, guards that he
6 views in his twisted way as the enemy, the representative of
7 his enemy the United States. Guards that are a way for him to
8 achieve the thing that Azzam achieved, and what does he have
9 to lose, he's already killed 200 people? He's trained in
10 hostage taking, he's trained in taking over buildings and
11 everyday, everyday for 50 years those guards are going to be
12 on the alert for Mr. Al-'Owahli. Those guards are going to
13 have to watch him because he's trained, and he's looking at
14 them, he's looking at them as the enemy.

15 Now, you heard some evidence about the special
16 administrative measures and let's take a second to talk about
17 those. They're good for 120 days, four months. Then they can
18 be renewed. They are subject to challenge. But most
19 important of all, as you just heard, they are not fool proof.
20 You've just heard a stipulation that of the few prisoners in
21 the Federal Bureau of Prisons system, the few prisoners under
22 those measures under that tight security that a guard was
23 badly maimed and permanently disabled in a cell shared by two
24 of those prisoners under those tight special administrative
25 measures. So much for the SAMs.

1 Al-'Owahli poses a serious and continuing threat in
2 prison, make no mistake about that, and that should carry
3 great, great weight in your deliberations, but there is more.
4 The final, and the government submits the most weighty and
5 compelling of all the aggravating factors in this case. As
6 demonstrated by the deceased victims' personal characteristics
7 as individual human beings and the impact of the deaths upon
8 the deceased victims' families, the defendant caused injury,
9 harm and loss to those victims and their families and the
10 defendant caused serious physical and emotional injury and
11 grievous economic hardship to numerous individuals who
12 survived the bombing.

13 That's an understatement, an understatement. Pain
14 and loss caused by Al-'Owahli to the victims and their
15 families, impact that continues to this day, impact that will
16 never end. I'm not going to summarize the testimony you heard
17 over that one day, over that afternoon and that morning. I
18 could never speak with the same eloquence as those witnesses,
19 I could never adequately express to you their feelings, their
20 pain, their suffering, their emotions. No one who heard that
21 testimony could ever forget it. The pain and the suffering
22 and the loss that you heard here almost three years later,
23 your impression of what those witnesses said, how they said it
24 should guide your deliberations.

25 You are asked to determine how much weight to give it

1 and as you do consider the importance of that factor.
2 Remember, remember that Fahat Sheikh should be raising his
3 sons today. His sons shouldn't be drawing pictures of the
4 embassy where their father was killed. Remember that Teresia
5 Karanja shouldn't have to come in here in a wheelchair to tell
6 her story, a wheelchair where this defendant put her, and
7 where she will spend the rest of her life, everyday, and Ellen
8 Bomer, Ellen Bomer shouldn't have to be afraid of the darkness
9 afraid of the darkness because she was blinded by this
10 defendant, and Deborah Hobson's daughter Abigail should see
11 her father rejoice. And Mordecai Onuno, he should be spending
12 Sunday afternoons in the family pew at church. He shouldn't
13 be carrying around his anniversary card and reading the last
14 message he wrote to his wife, and Nathan Aligana he should
15 still be carrying his country's flag, he should not have been
16 carried out of that embassy wrapped in one.

17 Remember those stories, remember the lives that were
18 shattered by this man, what he took away from each and every
19 one of these and of 200 others from communities, from friends,
20 from loved ones, because Al-'Owahli chose to kill them.

21 You heard testimony about other victims, other
22 victims who survived and who were blinded and who were maimed.
23 These are examples of the injuries he caused. You heard about
24 carnage in the hospitals people lying on floors, wards
25 overflowing. You heard about searches being done for loved

1 ones, searches through hospitals and later searches through
2 morgues. You heard about people going up to boards and trying
3 to find names. You heard one witness tell you unknown African
4 male. I'm looking for him. All I see is list after list of
5 unknown African male. It's not right. It's not right. These
6 families looking at a board trying to find the name of someone
7 they loved among the missing or among the dead. And you heard
8 about the identifications, the identifications that in some
9 cases had to be made through clothing, through a T-shirt that
10 said Thank God Jesus Loves Me, through DNA testing in one
11 case.

12 And these were hard-working people who came here,
13 working hard to get by under difficult conditions, and you
14 heard family members, they are asked tell us something about
15 your loved one and a lot of time they said, well, they were
16 good provider, they took care of us, the took care of the
17 family, and now we're lost, now we're lost, because of the
18 pain, because of the pain that Al-'Owahli brought into their
19 lives.

20 In an instant in the morning of August 7th the
21 defendant changed those lives forever. They came face to face
22 with the horror and with the terror that's difficult to
23 understand, even after you heard it told. That's impact.
24 That is victim impact. Impact that began that day with the
25 defendant's bomb and impact that continues to this day. And

1 there is no more weighty factor than that one measured by the
2 pain of 213 victims and their families. There must be justice
3 for the victims of this crime.

4 And when you are weighing those aggravating factors
5 you are also to consider any mitigating factors this defendant
6 has proved by a preponderance of the evidence and let's look
7 briefly at some of the mitigators that Al-'Owahli has
8 proposed.

9 He says that other members of the conspiracy who were
10 arrested are cooperating with the government who are guilty or
11 charged with planning, bombing embassies, and killing of US
12 nationals will not be punished by death. Cooperating.
13 Cooperating witness Al Fadl he walked into the Americans. He
14 hadn't been charged with the crime. He pled guilty. He came
15 in here and he testified. He doesn't face the death penalty.
16 Is that an injustice? Moma du Salim who is not charged in any
17 case with any capital counties in the getting the death
18 penalty. Usama Bin Laden, he's not here to face justice
19 neither his lieutenant Mohamed Atef. They may be some day.
20 That's not the issue.

21 The issue is responsibility for this defendant's
22 crimes and punishment for this defendant's crimes. In a
23 similar way Al-'Owahli says, well, he's less culpable, less
24 culpable than others that planned the bombing. That's an odd
25 argument to make. Less culpable in the murder of 213 people,

1 less culpable although he trained for it, he planned for it,
2 he wanted the mission, he asked for a mission to kill, he
3 scouted the target, he knew the entire plan, including the
4 Tanzania bombing. He helped deliver the bomb to the target.
5 Focus on his actions, on his crimes, on his active and central
6 role in this atrocity.

7 Next, al-'Owahli claims as mitigation that he has no
8 criminal record and that he was young in age when he bombed
9 the embassy. Well, we concede he has no criminal record.
10 Factually, that's not the issue here. The issue is how much
11 weight do you give that factor? He has no criminal record.

12 Well, the Judge will tell you it's not numbers, you
13 don't add up the numbers of the factors. It's the weight of
14 the factors and how much weight do these mitigating factors
15 get. Well, Al-'Owahli never been arrested before, never been
16 arrested before he bombed the embassy and killed 213 people
17 and injured 4,000 more.

18 But take a look what he was doing while he compiled
19 this exemplary record. He was in Afghanistan. He was going
20 to terrorist training and terrorist camps. He was getting
21 false documentation, false passport so he could travel and
22 bomb the US embassy.

23 And keep in mind when you think about this that
24 Al-'Owahli said he came from a privileged background in Saudi
25 Arabia. He said it was a very prominent and a very wealthy

1 family, and that he attended university in Rhiad. He was
2 young, he was wealthy, he was educated, young in age, he was
3 21. There is a stipulation to that. He was 21 when he
4 committed this act of mass murder. Not a sheltered 21, but an
5 educated and a hardened 21. And at some point you have to
6 take responsibility for your actions.

7 Sandi Patel was 12 when Al-'Owahli blinded him when
8 he stole his youth. His brother was eight when he was cut and
9 bleeding because of the bomb. Joyce Manguriu was 17 when she
10 was planning on going to the embassy, when she was planning on
11 going to the United States to study. She was young. She had
12 no choice about dying. Al-'Owahli was twenty-one and he had a
13 choice and he chose to kill. He chose to kill Joyce and he
14 chose to kill 212 others.

15 And remember although Al-'Owahli was twenty-one, he
16 had a will and he showed it. He wasn't brain washed. Yes, he
17 had training. Yes, he listened to lectures. He listened to
18 tapes. And after he had done with that training and after he
19 had listened to those tapes, what did he do? He said, no, and
20 who did he say no to? He said no to Bin Laden. He said no
21 I'm not going to pledge bayat. No, I'm not going to take an
22 oath. Why not? Because all he wanted was a mission. He
23 wanted a terrorist mission. He didn't want to get stuck out
24 of the action. He wanted control. He wanted to kill. And he
25 got what he wanted and 213 people died as a result terrible

1 and horrible deaths. Al-'Owahli made a choice and he should
2 be held responsible for that choice.

3 Al-'Owahli also points as mitigation that although he
4 intentionally committed this act contemplating that he would
5 kill Americans, he did not intend to kill or injure Kenyan
6 victims not employed in the embassy. Well, this is totally
7 unconvincing for three reasons. One, that's what he claimed
8 after he got caught after he learned he had killed 200
9 Kenyans. He claimed he didn't mean it.

10 (Continued on next page)

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1 He claimed he didn't mean it.

2 Two, assume there's some truth to it. Assume that he
3 just wanted to kill Americans, that's okay. He just meant to
4 kill Tom Shah. He just meant to kill Jay Bartley. He just
5 meant to kill the other people that you saw on that CD-ROM we
6 played during Mrs. Bartley's testimony. He just meant to kill
7 Lydia Sparks and Allen Bomer.

8 And finally, as Ambassador Bushnell told you, on any
9 given day in Nairobi there were 200 people in the embassy, 200
10 people, and most of them, most of them were Kenyans. So
11 Al-'Owhali only intended to murder those 200 people, those
12 Kenyans and those Americans who were inside the building.

13 He only intended to murder Americans and Fahat
14 Sheikh, Nathan Aliganga, Ken Hobson, Prabhi Kavalier, and if
15 Titus Wamai, who happened to be a foreign service national,
16 was working as a commercial specialist in the embassies, well,
17 if he was in there, he intended to kill him, too.

18 You know his concern for the Kenyans came after he
19 was caught, after he surveilled that embassy. He knew exactly
20 what the target was like. And, yes, he said to Saleh, well,
21 can we get the bomb closer to the embassy? Can we get it
22 underneath the embassy and kill more Americans? And Saleh
23 said no. He didn't change the plan.

24 And three days later, Al-'Owhali brought that bomb
25 back to the embassy, brought it down to the downtown area, and

1 watched Azzam position it outside the embassy. And then he
2 ran. And when he ran, he gave no warning to the Kenyans
3 outside. He didn't yell. He didn't shout. He just ran and
4 he saved himself.

5 And the stun grenades to warn, he threw those stun
6 grenades at the guards to get them out of the way. You know
7 what the effect was? They brought people to the windows,
8 people to the windows of the embassy and the buses, where they
9 were maimed and they were massacred.

10 What weight should you give this factor? Even seen
11 in the best light that he intended to kill only the 200 people
12 inside the embassy, the Americans and the Kenyans, and he made
13 a mistake and killed a hundred people outside the embassy, the
14 government submits this is no mitigation at all, zero.

15 Let's look at another proposed mitigator.
16 Al-'Owhali's motivation. He said he committed these murders
17 to save his religious community from genocide and from terror.
18 Well, on August 1998 he told Agent Gaudin what the conditions
19 would be to stop the acts of terror, and he never mentioned
20 protecting his community, his ummah. He said the U.S. had to
21 get out of Saudi Arabia, the land of the two holy places. He
22 said the U.S. had to stop supporting the enemies of Islam,
23 like Serbia and Israel, and he they should stop using its
24 influence to stop the spread of Islamic law around the world.

25 He didn't mention Iraqi children, he didn't mention

1 the oil embargo. That wasn't on his mind in August of 1998.
2 It isn't prominent in the fatwahs because of Bin Laden, the
3 Iraqi embargo. It's not a burning issue. It's to get people
4 out of Saudi Arabia, the holy place. Look at the claims of
5 responsibility. That's the primary goal.

6 But coming in here and showing you photos of American
7 troops stationed in the Arabian Peninsula would not have the
8 same effect as coming in here and showing Iraqi children. And
9 we heard a lot about Iraq and the Iraqi people and the U.N.
10 sanctions. And there's no doubt that those are very complex
11 issues and painful issues.

12 The issue of sanctions the United Nations and the
13 delegates and the leaders and the U.S. government is to
14 consider. They have to consider those issues, and Saddam
15 Hussein and biological and chemical weapons and the impact of
16 an embargo on the civilian population and why the U.S.
17 implemented no fly zones in the first place.

18 But this is not that forum. The government did not
19 join these issues. The government does not concede the
20 defendant's position on the history of these issues, of what
21 they mean, the position of Ramsey Clark, who came in here and
22 testified. No, those issues are important and they are
23 complicated, but they have no place here, not in this penalty
24 proceeding, where the focus and the purpose must be on the
25 appropriate penalty for this defendant and for the crimes that

1 he committed.

2 Al-'Owhali claims his crimes were mandated by his
3 religion. Don't believe that for a minute. One of his
4 victims, Fahat Sheikh, who was buried in the embassy, was one
5 of over 1 billion Muslims who peacefully practice their
6 religion in this world, a highly respected religion, defamed
7 by this defendant, who would use it as an explanation for
8 killing 200 people.

9 When you think about Islam, think about Fahat
10 Sheikh's son on the morning of August 8th, 5:00 a.m. He wants
11 to go to the mosque and he wants to sing the call to prayer
12 because he thinks it will call his father home. That's an
13 example of a boy using his religion to show love for his
14 father.

15 And later you heard that the religion teachers, that
16 boy's religion teacher said, why does he hate religion? He
17 hates religion because this defendant would twist it, because
18 this defendant would use it as an excuse to kill, would use it
19 as an explanation for killing.

20 And when you look at the pages of that book that was
21 put in by Mr. Baugh, the pages of the book on Islam, you won't
22 find a call to violence, you won't find a call to bomb
23 embassies or murder innocents. No. You will find the
24 religion of Fahat Sheikh and his sons, not the murderous and
25 cowardly conduct of this defendant.

1 And lastly, Al-'Owhali claims that he attacked the
2 embassy in a belief it was an intelligence and military
3 target. Al-'Owhali did say if you hit the embassy, you hit
4 the ambassador, you hit the military attache, the press
5 attache, and, yes, you hit intelligence officers. He said
6 that. This isn't a military goal. He didn't strike at a
7 military target. Yes, he killed a marine. He killed Nathan
8 Aliganga, who was going in to cash a check to go shopping. He
9 killed Ken Hobson, who was in the Army.

10 He didn't kill them on a battlefield. Al-'Owhali is
11 too much of a coward. He attacked them with a huge bomb in
12 the middle of the day, without warning, in downtown Nairobi,
13 where civilians -- men, women and children -- were. This is
14 not a military operation, as he would say, it's murder. It's
15 a crime and he's responsible.

16 In the end, the penalty phase is about Al-'Owhali,
17 about his actions, about the defendant and about his bomb --
18 what that bomb did to flesh and bone and what that bomb did to
19 the lives of the survivors. They have to keep going. They
20 have to keep going even if they are maimed by that bombing and
21 even if they lost a loved one. Whatever mitigation he has
22 proven has little weight.

23 This is the rare case of a death penalty. Here,
24 beyond any reasonable doubt, the aggravating factors outweigh
25 the mitigating factors, overwhelmingly outweigh and justify a

1 sentence of death.

2 Think for a moment of the morning of August 7th,
3 1998, the moment before the bombing, when Howard Kavalier said
4 good-bye to his wife for the last time, when Surendra Patel
5 was riding on his school bus after his last day of school,
6 when Teresia Rungu walked into her office in the co-op
7 building, when Ruth and Peter Rungu went to the Ufundi House
8 so she could register for her first day of secretarial school
9 and when Nathan Aliganga ran into the embassy to cash his
10 check, where Fahat Sheikh was a cashier on duty that day.

11 Freeze that moment and the lives of all those people,
12 and then there's a noise, a noise, a popping sound. That's
13 probably the last sound those 213 people will hear. It's the
14 sound of this defendant's grenades going off and it's the
15 first sign that something is wrong.

16 And people come to the windows at the embassy, at the
17 Ufundi House, at the bank and the buses, and the bomb goes
18 off. And the bomb brings death and blindness and paralysis,
19 and in that violent moment, the lives of 213 people end.
20 Al-'Owhali ended their lives without warning, without giving
21 them time to say good-bye to their loved ones, without giving
22 them time, like he had time, like he made his good-bye video.
23 He didn't give them that same time. They never got a chance
24 to say their last good-bye.

25 You heard from a small number of relatives of those

1 killed in the bombing, 20 witnesses about one day. Twenty
2 witnesses. And for each one of those witnesses you heard
3 from, there are ten more behind them that you didn't -- ten
4 more victims that were killed, ten more families.

5 Now that you have heard those victims, those
6 representative victims, you have heard the pain in their
7 voices, now you should see, really see the list of names, the
8 names and, where there is one available, a photo. Three
9 seconds. Three seconds for each one. Some you will
10 recognize.

11 Mary Khahenzi told you about her identifying her
12 husband, Thomas, from the t-shirt; Doreen Ruto's husband,
13 Wilson, and she said he was a handsome man, a courageous man;
14 Joyce Ng'ang'a's passport photo; Amos Karimi's wife, who was
15 killed in the Ufundi Building.

16 But the photo and a name is all you are going to know
17 for some. Three seconds. Three seconds to capture those
18 lives, to honor those victims. And when you see those
19 photographs and when you see those names, think about the
20 families behind those names and those photos, the lives, the
21 children, the parents. And they were killed only because they
22 were near this defendant's bomb when it went off on August
23 7th. Think of the lives lost when the defendant killed each
24 and every one of them.

25 (The name and/or photograph of each victim is

1 displayed on the monitor)

2 MR. GARCIA: Those are Al-'Owhali's victims, and he
3 didn't know a single thing about any one of them. He didn't
4 know a single thing about the 213 people that he murdered.

5 On that day, on August 7th, 1998, Al-'Owhali ran
6 away. He escaped with cuts on his back, and now it's time,
7 it's time for him to face justice. He must now be sentenced,
8 as justice cries out he be sentenced, a punishment he deserves
9 for the pain he has inflicted and for the suffering by those
10 whose lives have been scarred by his murderous act.

11 The crime, Al-'Owhali's crime, is mass murder, murder
12 of 213 individuals with families, with lives, with hopes, with
13 dreams, and the penalty, the penalty that does justice for the
14 victims of those crimes, the only penalty that fits those
15 crimes is the death penalty.

16 Thank you.

17 THE COURT: We'll take a very brief recess.

2 (Jury present)

3 THE COURT: Mr. Baugh.

4 MR. BAUGH: Thank you, your Honor.

5 May it please the Court, counsel.

6 This is a really scary case. It's really scary
7 because its implications go beyond any case I have ever done
8 in my life. Twelve of you, who will determine what happens in
9 the next few days, are literally going to make a statement, an
10 individual statement, to the entire world.

11 In all probability, your decision will be in the
12 headlines of every newspaper in the world. To a certain
13 extent, I guess you should feel lucky that you had this thrust
14 upon you, but I assure you, from the seriousness I have seen
15 and we have seen for the last few days, I know you appreciate
16 the seriousness of what's going on here.

17 Also, to a certain extent it's kind of scary. It's
18 also scary, because, one, as I got into this case and as the
19 evidence developed, I realized how ignorant I was about an
20 entire portion of the world, and to divorce what has happened
21 in this case from what goes on in that portion of the world is
22 hypocrisy.

23 You have heard fatwahs. I know you have had them
24 read to you. We have introduced some again. In every one of
25 those fatwahs, from every organization, there is a list of

1 things about which the Middle Eastern population, Middle
2 Eastern people, Bin Laden, specifically, is opposed. They
3 mention Qana, you have heard that enough times, Shattila, they
4 mentioned Libya. I know in the defendant's statement he
5 mentioned Libya. They mentioned Iraq. They mention the
6 occupation of the land of the two shrines. They mention the
7 United States control of oil and oil prices and puppet
8 governments. It's throughout all of those statements. And
9 that is the canvas upon which this is painted and you have to
10 look at it.

11 Also, you have to look at it because, unlike every
12 death case I have ever done before, most death cases, a person
13 is motivated to commit the crime for passion, greed, crazy,
14 somebody is in love with somebody, somebody is making money,
15 something like that. This is the first crime I have ever been
16 involved in where the purpose given is to stop killing.
17 Killing to stop killing. It's just a living example that
18 killing always makes more killing. It always does, and you
19 can't get around it.

20 Why did we choose Iraq versus Libya or Chechnya or
21 anything else? Iraq, I tell you, is the one that you can find
22 the most information on. When you go in the U.N. websites,
23 you go to UNICEF, you can find evidence. You can't get over
24 there to investigate, so therefore you are dependent upon what
25 information you can get. So, we chose that one.

1 I will concede by your verdict that the defendant
2 voluntarily chose to do that which he did. He voluntarily
3 gave up his life in Saudi Arabia and went to Afghanistan to
4 fight that government as a member of the mujahadeen. He
5 risked his life to defend his religion and his community and
6 to fight the influences in Afghanistan.

7 While he was there, he obviously met people who
8 impressed him. He listened. He had been reading since he
9 was -- at a young age -- we stipulated to that -- writings and
10 books and listening to tapes about conservative fundamental
11 Muslim teachings. The sacrifice of martyrs, dying in Jihad,
12 the attainment of paradise, and -- you ready for this?
13 According to Mr. Al-Fadl, there are hundreds, even thousands
14 like him. He is one of thousands. He is one of thousands of
15 young men, and sometimes women, who are so offended by what
16 they perceive is happening in that part of the world that they
17 are willing to kill themselves.

18 Now, again, as I did during my opening, when we
19 mention Iraq, it is not offered as a justification. And I
20 don't want anyone to think for a moment that that evidence
21 means that what happened in Kenya on August the 7th, 1998 was
22 excusable. And it wasn't. Every one of those people who died
23 in Kenya, as I said during my opening, died as an innocent.
24 They died as an innocent because, no matter what personal
25 traits or attributes they might have had, they did not die

1 because of them. They did nothing personally that led to
2 their deaths.

3 However, I do want you to understand, and I want you
4 to appreciate, that there is a lot of sorrow over there and
5 there are a lot of deaths, and how anyone can stand up here
6 and look at the suffering of these people, that these victims,
7 realizing the suffering they are going to go through from this
8 day forward, and not appreciate the children we are killing is
9 a hypocrite.

10 It doesn't make sense to pour any more blood on all
11 that which has already been spilled, and that's what I'm
12 trying to show. When I talk about these victims, I want you
13 to know, and believe me, how anyone cannot understand their
14 pain, how anyone who's ever raised a child, anyone whoever
15 loved a spouse, anyone whoever missed a loved one cannot
16 appreciate what they are going through, they're a very shallow
17 person. It hurts, and it will hurt in the future.

18 One thing you should learn from this case, from
19 listening to argument of counsel, Madeleine Albright on
20 television, everybody has a good, logical reason why they
21 should be allowed to kill people. Everybody always has a good
22 reason why they, why when they kill people, it's not bad.
23 Everybody does. Oh, no, you killed one of us. We can kill
24 one of you. You killed ten of us. We can kill a hundred of
25 you. You killed eight of us. We can kill 200 of you.

1 Everybody has always got a good reason to kill, but it only
2 makes more killing, period.

3 In fact, each of you individually today is going to
4 be asked to kill. That's right, to kill. Now, I will tell
5 you this. You will debate it amongst yourselves, as you have
6 with every other issue. You will discuss it. I pray you will
7 show respect for each other, because my client is entitled to
8 12 individual jurors debating his life, not six real strong
9 ones and overpowering six real quiet ones, not one real big
10 muscle-bound person who makes everybody else do what they want
11 to do, each person in this box. No place else in the world is
12 there more equality than this box.

13 And the reason it is, is that unless each one of you
14 vote to kill, individually, it can't happen. The judge can't
15 make it happen. These gentlemen can't make it happen. No one
16 can. In fact, if 11 of you -- well, only you can do that.

17 We've not been able to offer you any direct evidence
18 about the defendant's life. However, you do understand some
19 things. One, he's deeply religious, and that is a given.
20 Now, there are people in his own religion who disagree with
21 his interpretation of his religion. Well, there are people in
22 my religion who disagree with my interpretation of my
23 religion. That's not a big thing.

24 You know he's concerned with his nation. You know
25 he's concerned with the plight of his community. You know

1 that because of when he was 14, he was reading this. When
2 he's 18, he's on his way to Afghanistan to fight and get shot
3 at.

4 You know that his motive for killing doesn't involve
5 greed or amorous or any of those things. Perhaps the
6 attainment of paradise, but there's no lust for blood. In
7 fact, when the government says, well, after he was caught he
8 said he didn't want to kill the Kenyans. No, we know when
9 this plan was hatched, he suggested the bomb be placed
10 differently.

11 And also, remember that when he threw the grenades,
12 not one lab person came in and said they found fragmentation
13 parts from the grenades. There are two different types of
14 grenades. There are grenades with fragmentation that blows
15 out and kills people, and then there are things that are just
16 explosives that make noise. That's what he had.

17 Also, it's strange in a death case because of this:
18 If I am able to convince you to think about those issues and
19 help you to vote not to kill, not to make the individual
20 decision to kill, my client will spend the rest of his life in
21 prison. He's going to miss things that he doesn't even know
22 he's going to miss.

23 I know that and you know that because he's 25, and I
24 used to be, he's not going to smell that new baby. He's not
25 going to be there to see his children walk, just like those

1 victims are not going to be able to see it. Everything that
2 makes life worth living will be gone. There will be no
3 difference from day-to-day.

4 When you get a chance, do the math. Do 60 years
5 times 365 and realize how many sunrises and sunsets it is.
6 And that's if I'm able to convince you not to kill him.

7 I'm not going to use Power Point. I'm not going to
8 show you any pictures of any dead children. I'm not going to
9 show you any videotapes. And I know you got tired of
10 videotapes, but believe me, those videotapes saved you weeks
11 of extremely boring lectures by some very boring people and I
12 think it's important that you do understand the background of
13 the case.

14 For instance, for the government to stand up and say
15 that one of the reasons for Mr. al-'Owhali to die is that he's
16 been trained in terrorist techniques, remember the last tape
17 when you saw people like Stansfield Turner talking about how
18 did Bin Laden's people get terrorist training; we taught them.
19 We sent CIA people there to teach them, and then they in turn
20 taught others. The reason he knows those tactics is because
21 we opened the bottle and gave them to them. So, yes, he knows
22 it. He knows as much as probably the people in the CIA do
23 because they were his teachers.

24 Another reason I'm not going to show you any pictures
25 is, on a situation like this, it's very easy to get involved

1 in emotion and I'm making a conscious effort not to. When you
2 talk about victims and you talk about children, even as old
3 and grizzled and experienced as I am, you do sometimes kind of
4 mist up, you do want to cry. But understanding the sorrow of
5 the victims does not mean that that emotion that you have is
6 license to make your decision based on emotion, and I don't
7 plan to ask you to base a decision on emotion.

8 One of the advantages you have in this case is that,
9 as I told you in opening, there are very few factual
10 disagreements on the aggravators and the mitigators, the
11 gateways. For instance, as Mr. Garcia pointed out, the
12 gateway that the defendant intentionally killed the victim or
13 victims of the particular capital offense charged in the
14 respective count of the indictment. Well, by finding him
15 guilty, you've sort of proven that. You sort of found that
16 and there's nothing I can say about it.

17 That the defendant intentionally inflicted serious
18 bodily injury that resulted in the death of the victim or
19 victims of particular capital charges or offense charged in
20 the respective count of the indictment.

21 Number three, that the defendant intentionally
22 participated in an act contemplating the life of a person
23 would be taken or intending that lethal force would be used in
24 connection with a person other than one of the participants in
25 the offense, and the victim or victims of the particular

1 capital offense charged in the respective count of the
2 indictment died as a direct result.

3 And four, that the defendant intentionally and
4 specifically engaged in an act of violence, knowing that the
5 act created a grave risk of death to a person other than one
6 of the participants in the offense, and it reads on.

7 By finding the defendant guilty of these charges, you
8 found that he did those, and I don't even plan to try to tell
9 you that didn't happen. However, in weighing the impact of
10 this, and you're going to have to -- once you decide this
11 exists, you are going to have to go to the next step.

12 The next step, and I'll come back, are the
13 aggravators. Now, first are the statutory aggravators. First
14 one: That the deaths and injuries resulting in death occurred
15 during the commission or attempted commission of another
16 offense. And they're spelled out.

17 Two, that the defendant, in the commission of the
18 offense, knowingly created a grave risk of death to one or
19 more persons in addition to his victims.

20 Three, that the defendant committed the offense after
21 substantial planning and premeditation; and, four, the
22 defendant intentionally killed or attempted to kill more than
23 one person in a single episode.

24 Now, according to Mr. Garcia, these factors determine
25 whether or not this case is a rare exception and qualifies for

1 that narrow range of cases that are so egregious and so evil
2 that death -- that citizens should be asked to kill someone,
3 12 ordinary citizens.

4 Once, if you find that these aggravators did occur,
5 you must weigh them, and the only thing I will say on weighing
6 is this: In understanding this offense and understanding the
7 background of it, and that's why we put on that evidence,
8 "that the deaths and injuries resulting in death occurred
9 during the commission and attempted commission of another
10 offense," the death of many of those children in Iraq occurred
11 during the commission of violations of the Geneva Convention.
12 So if it's that important, why haven't these people indicted?

13 That the defendant in the commission of the offense
14 knowingly created a grave risk of death to one or more
15 persons: Somewhere in this world there is a man in the
16 military in the basement of the Pentagon who wrote a memo in
17 1991 stating that if we do what I suggest we do, we can start
18 epidemics in a country. That later turned out to kill over a
19 million people out of a population of 22 million. That's
20 about five percent of every man, woman and child in that
21 nation. Somewhere there's a man sitting in a room who came up
22 with this plan.

23 The defendant committed the offense after substantial
24 planning and premeditation: That same man started a plan
25 that's lasted ten years.

1 The defendant intentionally killed or attempted to
2 kill more than one person: Anytime you sit down and talk
3 about epidemics starting, to say nothing of the fact --
4 remember this. We've also embargoed insulin, medicine.
5 Mr. Clark talked about, during the Gulf War, watching an
6 11-year-old have her leg amputated without benefit of
7 anesthesia because we had embargoed the anesthesia back in
8 August of 1990. And our tax dollars knew this was going on
9 and our press didn't tell us about it.

10 Now, I don't believe that justifies what happened,
11 but does it make it a little more understandable? Imagine
12 having to look at a loved one die over the course because of
13 diabetes or cancer because you can't have medicine. And by
14 the way, affording medicine. Among the documents we filed was
15 a document that says Iraq. It's from the Central Command. It
16 talks about the effect on the economy of that country so
17 people can't buy medicine.

18 In 1990, the rate of exchange was one dinar equals
19 \$3, which means that -- say you are getting ready to retire,
20 like Dr. Dalizu. He testified he lost his wife. They were
21 going to buy a piece of property in California. If you had
22 been good and you saved up a million dinars, that's worth 3
23 million U.S. dollars. That's a nice little nest egg.

24 THE COURT: No. Did you say, I think you transposed.
25 If you save -- say it again.

1 MR. BAUGH: One million dinars is worth \$3 million in
2 1990. That's the rate of exchange.

3 THE COURT: It's the other way around.

4 MR. BAUGH: No, it's not. I did that, too. Trust
5 me. But you can check my math. If I had better math grades,
6 I would have been a doctor instead of a lawyer. But they can
7 check. 1 dinar equals \$3. That means if you had a million
8 dinars, you had \$3 million tucked away. The rate of exchange
9 now, according to that document, is 150 dinars to the dollar;
10 which meant that if you had a million dinars tucked away, it's
11 now worth a little more than 650 bucks. That's how you
12 destroy an economy.

13 When weighing these aggravators, weigh them in
14 relation to the world that exists in this offense and
15 determine whether or not these actions in this case require
16 you to make a personal decision to kill someone, because when
17 you put Juror No. 1 or Juror No. 2 on that form, it's going to
18 be like firing the bullet. Because if one signature doesn't
19 go on there, there's no death penalty.

20 By the way, I also want to tell you this. If --
21 well, I'll come back to that point. Forgive me.

22 Then, after we go through the statutory aggravators,
23 we go to the non-statutory aggravators: The defendant poses a
24 continuing and serious threat to the lives and safety of
25 others with whom he shall come in contact.

1 This young man has been in prison since August of
2 1998. Did anybody come in here and say that he yelled at a
3 guard? Did anyone -- I mean, you have seen him sit here in
4 court all this time next to his lawyers. Does anyone look
5 scared to be in his presence? He's small.

6 As demonstrated by the deceased victims' personal
7 characteristics as individual human beings and the impact of
8 the deaths upon the deceased victims' families, the defendant
9 caused injury, harm and loss. I will concede that one. He
10 has and there's nothing we can do. And if I could, I would.

11 The victims and intended victims included
12 high-ranking public officials of the United States serving
13 abroad: Yep.

14 So I concede all of these except future
15 dangerousness. So you don't even have to decide the rest of
16 them really. You have to vote on them. You have to debate
17 them. Just because I said it doesn't make it true.

18 However, again, if you're going to think about -- I
19 mean, no offense, it is the epitome of bigotry to come in here
20 and say that the suffering of Americans or the suffering of
21 American allies is any different from the suffering of someone
22 we don't like.

23 A mother who loses her child anywhere has the --
24 remember Mr. Clark talking about walking through a ward and
25 hearing a mother's wail because the child just died? You saw

1 the pictures in the 60 Minutes tape. We're going to get off
2 of that. You heard Mr. Clark talk about the amputation.
3 Imagine if you are a parent what the parent of that child is
4 going through while their daughter was being held down and her
5 limb, her leg, was being amputated. That is suffering. That
6 is suffering, just like these people.

7 And it's all wrong. It's not comparative. It's all
8 wrong. It is all wrong. When you see these victims and you
9 understand what they are going through, you must understand
10 what all victims are going through, and what is happening to
11 them shouldn't happen and what is happening to the others
12 shouldn't happen. We must stop it.

13 The aggravators, as I said, must be proven beyond a
14 reasonable doubt. Now, in determining whether or not the
15 defendant should die, whether or not you should kill him, as
16 far as the aggravators, you are limited to the statutory and
17 non-statutory aggravators that are alleged in the
18 instructions.

19 You can't sit back and say, well, boy, Mr. Garcia
20 should have said this one. I mean, we ought to think -- you
21 can't do that. That's cheating. You are limited to those
22 which are -- if he didn't say what's going to happen in the
23 Middle East by this verdict or anything, you can't consider it
24 in determining aggravators, in determining beyond a reasonable
25 doubt whether or not the aggravators exist.

1 However, in determining mitigators, where the burden
2 is only by a preponderance -- more likely true than not -- you
3 are permitted under the law that if you think there are
4 reasons why he should not be executed that I didn't bring up,
5 you can bring them up, even if it's only one of you who does
6 it. All right?

7 Now, so any issue you feel is appropriate -- and
8 again, he has 12 jurors. If just one of you thinks this is a
9 factor, you should bring it up so we can know if it was
10 considered.

11 You will notice, by the way, when I say that, no one
12 has introduced you, but you know that everyone in this
13 courtroom has been trained to do what they do except you
14 all -- I'm sorry, except you. I mean, we all went to law
15 school. The judge went to law school. He's a judge. The
16 court reporter is writing down just about every word I say.
17 The bailiffs, the clerks, the deputies, they're all trained in
18 this.

19 You will notice, however, that when you go back in
20 that room to deliberate, none of them go with you. Nobody
21 knows what you do back there. We all assume that ordinary
22 citizens will follow the law and do what is required to do.
23 And that's not that amazing, because the idea of democracy is
24 the idea that ordinary people are capable of extraordinary
25 acts.

1 You could go back there and arm wrestle or pitch
2 pennies and we wouldn't know, and we assume that you're not.
3 And I say that so that you understand -- I think you do, but I
4 want you to really appreciate some day how different it is to
5 live in this country and how powerful a citizen is supposed to
6 be and how there's nothing wrong with assuming that a citizen
7 is more powerful than the government, because we are.

8 Now, once you have determined the aggravators and the
9 mitigators and you have determined that the aggravators exist
10 beyond a reasonable doubt, unanimously, you have decided which
11 mitigators exist by a preponderance -- and it doesn't have to
12 be unanimously, now, first -- you then have to decide whether
13 or not the aggravators outweigh the mitigators. Yes.

14 Now, that means are you convinced that when you look
15 at these aggravators and you look at these mitigators, are you
16 convinced that this case is so unique and that these
17 aggravators are so strong that they're outweighed, they
18 outweigh their mitigators. If you say no, if you say I don't
19 think the government has alleged everything they should, I
20 think based on the facts we have in this case the impact of
21 these aggravators has been lessened, if you find that, it
22 stops. If you find that the aggravators do not outweigh the
23 mitigators, it stops.

24 Then, however, if you do, then you find that death is
25 available and then you have to determine whether or not death

1 is the appropriate sentence -- whether death is the
2 appropriate sentence. That's the law. That's what the judge
3 will tell you.

4 The question is, appropriate to what? And no one
5 tells you that. Appropriate to what? Appropriate to the
6 magnitude of the suffering that has been sustained by these
7 victims? No suffering you can do to the defendant would do
8 that. It couldn't happen. You have victims who are suffering
9 a loss the defendant never even knew existed because he hadn't
10 even lived through that yet. So that can't be it.

11 Appropriate to what? Appropriate to the best
12 interests of society and to the world at large? I would
13 submit, yes.

14 Back up for a second. The government says that one
15 of reasons you should kill the defendant is that he has a lack
16 of remorse. If you think you are doing what's right or you
17 think you're doing what's necessary, even if you're wrong, you
18 don't have a lack of remorse. And I would also hesitate to
19 show you this, going back, when Madeleine Albright was on that
20 tape on 60 Minutes and she sat there and said, we know; in
21 response to the death of 500,000 children: We know. We think
22 the price is worth it. Does she think she was right? Yes.
23 Does she show remorse for the death of one-half million
24 children? No.

25 And Mr. Clark said what's going on over there is

1 freely discussed every day. Not just in the Arab world, but
2 in Europe. People talk about the impact of these sanctions.
3 Do you see remorse? And the answer is no. Is he correct not
4 to be remorseful? Maybe not. And perhaps in the next 50 or
5 60 days he will come to understand what he did.

6 But based on the numbers that you have heard from the
7 tapes and from Mr. Clark, 250 children are dying every day.
8 That's one child every ten minutes since 1991, and that
9 doesn't include the old people and the diabetics and the
10 people with terminal illnesses. Since yesterday, when I saw
11 you last, 250 children have died. Now, how long should he
12 wait before he tries to do something? I don't know.

13 Appropriate to what?

14 I would suggest that you consider this in your
15 deliberations: By using my verdict to kill, if I decide I
16 want to sign that paper, if I want to have this young man put
17 to death, if I wish to become a killer -- and by the way,
18 that's what it is. People say you're not being a killer,
19 you're executing. That's different.

20 What's the difference between killing and executing?
21 Well, "executing" means it's approved by the government. It's
22 state-sanctioned. That makes it okay. Well, I will tell you
23 that if state sanctions makes killing okay, I want you to know
24 that the Holocaust was state-sanctioned.

25 So killing, because the state says it's okay, is

1 still killing. But if you wish to use your verdict to take
2 another life, what is your verdict accomplishing? That
3 determines whether or not it's appropriate, what is your
4 verdict going to accomplish?

5 Now, you can't consider factors that are not alleged
6 in the list of aggravators, statutory or non-statutory, by the
7 government, and they haven't listed any. What are you going
8 to pull off by becoming killers? What kind of message are we
9 going to send in?

10 And that's the question, because asking to kill
11 somebody when there is no message, or just because you're
12 angry or just because you want these people to feel better --
13 and by the way, when someone has hurt you badly, when someone
14 has hurt you, you feel that if you can hurt them back, you
15 will feel better. But when you get gray hair like I have, you
16 know that's not true. You think your pain turns into anger,
17 your anger turns into hate, and you realize if I can hurt the
18 person I hate, my sorrow will go away. And it won't. And it
19 won't.

20 And by the way, another victim, another victim that
21 no one talks about that Mr. al-'Owhali generated are all those
22 people who look at what he did and now hate; people who say,
23 look what Mohamed Al-'Owhali did. I hate them. The last tape
24 you saw, that little child holding the AK-47,
25 rat-tat-tat-tat-tat, rat-tat-tat-tat-tat, is he learning hate?

1 We're making people hate more with this killing.

2 Now, I'm fortunate in this case. I'm fortunate and
3 Mr. Cohn and my co-counsel, we're fortunate, because we get to
4 come in here and argue for life. We get to argue for peace.
5 We get to argue for reconciliation. No one else does. If you
6 vote to kill, the judge has to sign the order, period. He has
7 to. So he will sign a death order. The only people who can
8 walk out of here without killing anybody is counsel. Well,
9 you could if you vote the wrong way -- if you vote the way I
10 think you should.

11 I can tell you that by arguing against violence, by
12 arguing against killing, because I'm opposed to it, I'm
13 opposed to it in this case, I'm opposed to it always, anybody
14 can kill.

15 THE COURT: Personal views of counsel are irrelevant.

16 MR. BAUGH: You're right.

17 Anybody can kill. It's easy. It's amazingly easy
18 sometimes. Sometimes it's harder to live with it afterwards,
19 but not all the time. Anybody can kill.

20 What is appropriate? Is it appropriate that we make
21 another martyr? Please notice, I'm not going through all
22 these mitigators, because I think you will concede that the
23 majority of them, I mean, he did learn this stuff at a young
24 age. And he was told by Bin Laden that, you know, those
25 places are spy shops, and you did see the model and you saw

1 the photographs of the embassy and you saw antennas on top of
2 it. And so if you thought it was a spy shop, you're getting
3 evidence that it is, so both mitigators are there, no problem.
4 I'm not talking about those, though. I'm assuming you have
5 already found that.

6 What is the appropriate sentence? Remember that when
7 I sit down, by the way, Mr. Fitzgerald gets the last word. He
8 does. I don't get to say anything in rebuttal to it. But
9 what is most appropriate? Now, of course we could say, well,
10 it's appropriate to the victims that they get justice. What
11 is the difference between justice and revenge? I'm serious.
12 When you go back there ask that question, because they can't
13 be the same thing. What is the difference between justice and
14 revenge, because that's the decision you are going to have to
15 make because each of you is going to have to decide whether or
16 not to kill somebody.

17 So we make another martyr. But I will tell you this,
18 that if you believe that death is the appropriate sentence, if
19 you are convinced of that, putting emotion aside, if you are
20 convinced of that, then you have sworn an oath to consider
21 death. You haven't said you will give it, because you can
22 refuse to give death no matter what, but you have said you
23 will consider it.

24 But if you have a reasonable doubt as to the
25 appropriateness of death, if you have a only doubt, remember

1 that, if you are not convinced beyond a reasonable doubt that
2 death is what must happen in this case, you cannot vote for
3 death without violating your oath.

4 I hope that each of you here appreciate the
5 opportunity you have been given. I can't overly emphasize
6 that. In determining what is appropriate, whenever your
7 verdict comes back, there could be headlines that
8 Mr. al-'Owhali got the death penalty. And there also could be
9 headlines that Americans returned a life sentence. And I
10 would trust -- and if you have a question about it, I would
11 suggest you add it in your mitigators -- that if that were
12 your verdict, it would be a prayer for peace.

13 Too many people have died. Now, can I guarantee or
14 can anyone guarantee that it will have any impact on stopping
15 this killing? Probably not. But can it hurt? Could it
16 possibly change one mind that thinks that America is
17 indifferent to the suffering of those people? Yes. Could it
18 make the mother of that child in the video with the AK-47 say:
19 Look at this, son. The Americans didn't kill. It might
20 change.

21 When you have to make difficult decisions, sometimes
22 you have to divorce yourself from the emotion, the anger, the
23 passion. And some people say, well, you can't do that, but
24 yes, you can. There are people who do. There are people who
25 make decisions based on the facts and upon the law every day.

1 I know that sometimes if you don't know what to do,
2 one of the good reasons about having heroes is if you don't
3 know what to do, you think about what your hero would do. Oh,
4 there are lots of heroes. I mean, there's Martin Luther King.
5 I think he was a hero. I think Gandhi was a hero. I think
6 Jesus was a hero. I do. I think the Pope -- I'm not even
7 Catholic. I think the Pope is a hero.

8 I think "Pee Wee" Reese is a hero. "Pee Wee" Reese
9 was a man, a Southerner, who said that he wanted Jackie
10 Robinson on his team. That's bold. He stood up against his
11 friends and said this is right. That's a hero. A hero is
12 somebody who goes against their friends to do what's right.
13 That's a hero.

14 And you say, what would your hero do? Are heroes
15 capable of feeling the sorrow and suffering of the victims?
16 Yes, they are. But what would your hero do? If you did not
17 have the weakness that all of us have of sorrow, anger,
18 hatred, if you were one of those people, what would your hero
19 do? Seriously, in this situation, what would your hero do in
20 this situation, making the decision you have to make as
21 individuals?

22 It's going to be hard for you to make the decision,
23 and it should be, because just as you have the benefit of
24 being citizens and just as you have the presumption of being
25 able to fulfill those obligations as a citizen, you also have

1 a duty; and the duty is to make hard decisions. And as a
2 citizen, that's a sacrifice we must all make.

3 When you go back there, if you -- now, I don't want
4 you to think that I am appealing to your sense of sympathy or
5 I'm trying -- and I'm not. I am not, because I don't think I
6 can take the situation in Iraq and overcome this. And beside
7 that, it would be wrong. You know, I'm not going to show you
8 any more pictures. None.

9 I want you to base this decision, I want you to
10 contemplate the decision with seriousness. Anytime there's a
11 death case, it's serious, but this case is probably more
12 serious. In fact, to a certain extent -- and I may pay for
13 this statement one day -- in many ways the verdict in this
14 case is more important than my client. The ramifications go
15 way beyond him and way beyond this courthouse. Literally, you
16 have the power to speak to the world, and you're not even
17 elected. You don't have to worry about getting reelected.

18 It may be hard. It will be hard. We know that. I
19 think you can do it. Why do I think you can do it? Because
20 I'm getting old. We've all been doing this a long time.
21 Jurors are remarkable people. You ask any lawyer, any lawyer,
22 criminal lawyer, they will tell you jurors are remarkable.

23 We know that you were back there deliberating. We
24 sat out here waiting for your every word. We knew that you
25 would come out of that room. You all looked whipped. You all

1 did. I assume you weren't back there running; you were
2 working back there in a very orderly and logical manner. And
3 believe me, it is appreciated. No one in this case thinks
4 for a moment that you are running slipshod over anyone's
5 rights. You have always, everything we have seen -- and I'm
6 not just talking for the defense now. I mean, even the
7 prosecution has commented. And that's wonderful. It means
8 the system works.

9 It feels funny to argue to give my client a sentence
10 of life in a room until he dies, and that's what we're asking
11 for -- not on emotion, but on good logic. What is
12 appropriate, appropriate to what? Appropriate to what? And
13 what's the answer? I don't know. I've given you some
14 suggestions, but you have to come up with it.

15 Give me just one second.

16 (Pause)

17 MR. BAUGH: To a certain extent, I envy you, your
18 role. To a certain extent, I pity you. But I have every
19 confidence, and I'm sure everyone else in this courtroom does
20 as well, that when you go back there to deliberate, each of
21 you, individually, will give these issues the consideration
22 they deserve. And no matter what your verdict is, everyone
23 will know that you really worked at it, and you should take
24 pride in that. Other than that, I can think of no better
25 group of people to make this decision.

1 Thank you.

2 THE COURT: Thank you, Mr. Baugh.

3 We'll break for lunch. Remember you have not heard
4 the government's rebuttal and the Court's charge, so please
5 refrain from discussing the case.

1 A F T E R N O O N S E S S I O N

2 2:15 p.m.

3 (In open court; jury present)

4 THE COURT: Good afternoon. We're now at the stage
5 in the proceeding where the government is permitted to make a
6 rebuttal argument. Mr. Fitzgerald.

7 MR. FITZGERALD: Thank you, Judge.

8 THE COURT: Before he does that, ladies and
9 gentlemen, during the closing arguments made on behalf of the
10 defendant Al-'Owahli reference was made with respect to the
11 subject of future dangerousness to his behavior while he was
12 in custody and in the courtroom, and those remarks are
13 stricken from the record.

14 MR. FITZGERALD: Thank you, Judge.

15 Good afternoon. In dealing with the most serious
16 question you could imagine, the question of the appropriate
17 punishment, I suggest to you that Mr. Baugh took three tacks
18 this afternoon or this morning with you. First, he tried to
19 distract you from the real issue. Second, he tried to blame
20 other people for the situation that Al-'Owahli has put
21 everyone in, and, third, I submit he was inviting you not to
22 follow your sworn oath to follow the law and vote for or
23 against the death penalty if the circumstances justify it.

24 Let's talk about the distraction. The main
25 distraction Mr. Baugh pointed to was Iraq, and what is

1 happening in Iraq with the embargo and the food for oil
2 program and the sanctions. Let us talk about what that issue
3 is and what it is not.

4 What it is is a serious issue that ought to be
5 addressed in the appropriate forum, in the United Nations in
6 the congresses, in the legislatures of countries they should
7 bring forward the people with those points of view to explain
8 why they think there should be no embargo or why some of the
9 embargo should be lifted. They should bring forward those
10 other people with a different point of view who are worried
11 about the countervailing interests, the poison gases,
12 biological weapons, chemical weapons, nuclear weapons, what
13 we've done to the Kurds and Iraq and treat the issue
14 seriously. No one is taking that lightly. But that issue has
15 nothing to do with the issue of what is the just punishment
16 for the crime that Al-'Owahli committed on August 7th, 1998.

17 In fact, if you recall al-'Owhali's statement he
18 mentioned nothing about the embargo, nothing about the food
19 for oil program.

20 The other distraction is to talk about someone who
21 wrote a report about water treatment and predicted what the
22 consequences would be if things did not change. The report
23 does not advocate destroying water treatment plants. It talks
24 about what will happen if nothing is done. Distract by
25 focusing on Madeline Albright brief question and answer and

1 accuse her of genocide. Blame the CIA for the fighting in
2 Afghanistan. No showing Al-'Owahli was ever trained by anyone
3 from the CIA. Al-'Owahli went a decade later to Afghanistan
4 for training. No showing that the CIA trained people how to
5 blow up embassies.

6 What I submit to you, America's actions are not on
7 trial here. We are on trial here because this man committed a
8 crime. This man made a cold blooded calculated decision to
9 kill 213 people and felt no remorse about it. And when you're
10 in a courtroom and you realize that the law says that some
11 murders are so horrible, some crimes are so evil that the
12 death penalty is justified, when you look and you compare this
13 person convicted of murder to all of those other murderers,
14 that David Baugh told you about, who do it for greed or
15 something like that, and you recognize that the thought that
16 comes to mind is if there is a law that says that some crimes
17 deserve a death penalty, if not this case, then when? And
18 when you realize that you seek to distract.

19 Think about this. In trying to numb all of us to the
20 pain that al-'Owahli caused, Al-'Owahli can't point to another
21 human being committing a crime. He has to assert war crimes
22 by nations, war crimes on such a scale that he alleges nations
23 carried them out in order to have a comparison to the awful
24 things he did, mass slaughter.

25 Mr. Baugh talked to you about hypocrisy. Hypocrisy

1 is handing up a copy of the Geneva Convention on behalf of a
2 defendant who committed genocide by truck. What I submit to
3 you is you learned something about Iraq. Keep that with you,
4 but Iraq does not have to do with this defendant's motivation.
5 What we have to focus on is the circumstance of this crime.

6 Other distractions, bring up the opposite. Bring up
7 Martin Luther King and Pee Wee Reese, hide behind them. Well,
8 what do you your heroes do? You're asked to think what your
9 heroes would do in the jury room. Your heroes, he or she
10 would stand up at the beginning of the trial, during jury
11 selection and say, can I follow my oath? Can I vote for or
12 against the death penalty as appropriate? And the hero would
13 say, if I can, I'll tell the Judge yes, and I'll follow
14 through. And that's what we ask you to do, follow your oath.

15 You've been told here that Al-'Owahli is a youth.
16 Well, he had a free will, he had a choice, he made a decision,
17 he sought out a mission, he made sure that in his role he got
18 to do a violent mission and kill people. He didn't want to
19 wash cars or clean the tables at a training camp. He traveled
20 internationally to carry out that mission. He saw what was
21 going to happen and carried out the bombing.

22 You've heard he used a stun grenade. There is no
23 fragmentation. I submit to you the stun grenade was to get
24 the guard away to get it closer to the embassy, closer to the
25 building. If he wanted to scare away Kenyans why not yell out

1 bomb, run for your life, bomb. The only person's life that he
2 sought to protect when he ran was his.

3 Mr. Baugh told you that everybody has a good reason
4 to kill. The only person's reasons to kill who is on trial
5 here is Mr. Al-'Owahli. He had no good reason. He had no
6 reason to put Teresia Rungu in a wheelchair he. Had no reason
7 to blind Ellen Bomer. He had no reason to kill Julian Bartley
8 or his son or some of the other people. And that's what this
9 trial is about.

10 Remember one thing when you focus on justice in this
11 case. The one thing that's clear, this defendant is clearly
12 guilty. The evidence was overwhelming, he admitted it. You
13 are looking at a person who is so guilty, and what Mr. Baugh
14 tells you is, well, if he's sent for life imprisonment think
15 about it, sixty years times 365 days. And I submit to you
16 think 60 years times 365 days times three eight hour shifts
17 for all the guards who have to guard him for those 60 years,
18 for all the guards who are going to have to guard someone who
19 hates America so much he kills with no remorse, for all the
20 guards who will be viewed from his eyes as the enemy, for all
21 the guards he thinks should die. Sixty times 365 times 24,
22 times 3. You have to get through all those shifts to make
23 sure that an innocent man, a guard, does not die.

24 You heard reference to the fact that he wished to be
25 a martyr. Now I think for a moment, well, if he wanted to be

1 a martyr although he ran away, you give him what he wants or
2 what he doesn't want. Let me make a suggestion. Give him no
3 vote. He killed 213 people. You do justice for the crime he
4 committed, and for the victims he killed, so mercilessly.

5 And also remember something; we talk about the word
6 revenge. Mr. Baugh would like you to think that a sentence of
7 death is revenge and let's stop the killing. Revenge is when
8 you kill someone else for something that someone around them
9 did. Retribution is legitimate. 213 people had their lives
10 snuffed out. All their family lives around them were ruined.
11 The four thousand injured, included maimed, blinded, crippled
12 people who have to deal with life. Their lives are ruined.

13 There are two 213 people who never lived another day
14 after that bombing. Mr. Al'-Owahli being sentenced to death
15 he'll be given a sentence no worse than a sentence he imposed
16 on 213 people without any sense of due process, without any
17 right, without any decency.

18 You've been told that if you vote for death you want
19 to be a killer, and I submit to you by saying that no one
20 wants to be a killer. No one is asked to be a killer. We are
21 sitting here in a system of law that says some crimes are so
22 horrible, some murders are so egregious, sometimes the cause
23 is so great, the person should face the death penalty and you
24 agreed to fairly weigh that, and if you fairly weigh that in
25 this case with this crime committed, I submit to you that the

1 only punishment that does justice for the victims is the death
2 penalty. The person who is responsible for Al-'Owahli's death
3 is Al-'Owahli. He knew what he was doing. He had a free
4 choice, and he went ahead and did it, and don't let anyone put
5 that weight on you.

6 When you look at the mitigating factors and you see
7 discussion of other persons more culpable or equally culpable
8 not facing death, think about the persons who have no
9 culpability, Nathan Algana, buried beneath the rubble and they
10 all face death and they had no choice. Mr. Baugh said to you
11 you have to think at the end as to what is appropriate, and
12 then he said, appropriate as to what? I submit to you your
13 verdict should be appropriate as to the law, as to justice,
14 and to your oath, an oath you gave and you can vote for or
15 against the death penalty.

16 Let's be frank. It's not easy to ask you to vote for
17 the death penalty. It's not easy to vote for the death
18 penalty. No one claims it is. It's extremely hard. It
19 should be hard. Thank God it's hard. But sometimes in life
20 the hard things are what you have to do. Sometimes the hard
21 things are difficult, but the answer is clear. I submit to
22 you when you go in the jury room bring in a sense of
23 Al-'Owahli, bring in a sense of the prison guards, and bring
24 in a sense of the victims, and when you look at al-'Owahli
25 recognize that he's the one who put himself here. He had a

1 free mind, he had a free will, he had a choice. He made that
2 choice. He killed. He must be held accountable.

3 Think about the prison guards who will have to guard
4 him for those 60 times 365 times eight, times three, and don't
5 tell them he's small. Don't tell Ellen Bomer he's small.
6 Don't tell Howard Kavalier's children he's small, because if he
7 proved anything in this case, he proved that small people
8 kill.

9 Think about the victims. We submit to you the single
10 most important factor in this case are those victims. What
11 they went through, their pain, their loss, and their
12 suffering. We won't show you any pictures, videotapes. You
13 know what they said. You know what they said and you saw the
14 pain, and Mrs. Bartley who lost a husband and a son. The
15 pride, the carriage of Teresia Rungu to wheel herself in here
16 with so much dignity after what was done to her. For the
17 people, the hundred bodies, people who died beneath the
18 rubble, from Mordecai Thomas Onuno who carries around that
19 anniversary card, because that's all that he has left to hold
20 on to. For Clara Aliganga who has nothing to hold on to, no
21 Nathan, because Al-'Owahli decided to steal all these people
22 from their loved ones to kill them brutally.

23 I submit to you when you look at the law, the law
24 that says certain crimes are evil enough to deserve the death
25 penalty, if ever there is a crime, it's this one, the brutal

1 murder of 213 people.

2 I ask you to follow your oath. I ask you to remember
3 that the only justice that can be done for the victims of this
4 case, the only sentence that fits the horrible crime is a
5 sentence of death. It's not easy to say that. It's not easy
6 to vote for it, but I submit you must.

7 Thank you.

8 THE COURT: Thank you, Mr. Fitzgerald. We'll take a
9 very brief recess.