

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

- v. -

MOHAMED RASHED DAUD AL-OWHALI

Defendant.

S(7) 98 Cr. 1023 (LBS)

Penalty Phase

Special Verdict Form

Section I: Gateway Factors

SECTION I. GATEWAY FACTORS

General directions for Section I:

- As used in this section, the term "capital counts" refers to Counts Five, Seven, 9 through 221, 233 through 273, 278, and 279.
- Please indicate which, if any, of the following gateway factors you unanimously find that the Government has proven beyond a reasonable doubt. For each of the four gateway factors listed in Part A below, you must mark one of the responses.

Part A.

1. **That the Defendant intentionally killed the victim or victims of the particular capital count you are considering.**

X

We unanimously find that this factor has been proved beyond a reasonable doubt with regard to all of the capital counts.

We unanimously find that this factor has been proved beyond a reasonable doubt with regard to the following capital counts only (identify each count by count number):

We do not unanimously find that this factor has been proved beyond a reasonable doubt with regard to any of the capital counts.

2. **That the Defendant intentionally inflicted serious bodily injury that resulted in the death of the victim or victims of the particular capital count you are considering.**

X

We unanimously find that this factor has been proved beyond a reasonable doubt with regard to all of the capital counts.

Section I: Gateway Factors

_____ We unanimously find that this factor has been proved beyond a reasonable doubt with regard to the following capital counts only (identify each count by count number):

_____ We do not unanimously find that this factor has been proved beyond a reasonable doubt with regard to any of the capital counts.

3. **That the Defendant intentionally participated in an act, contemplating that the life of a person would be taken or intending that lethal force would be used in connection with a person, other than one of the participants in the offense, and the victim or victims of the particular capital count you are considering died as a direct result of the act.**

X _____ We unanimously find that this factor has been proved beyond a reasonable doubt with regard to all of the capital counts.

_____ We unanimously find that this factor has been proved beyond a reasonable doubt with regard to the following capital counts only (identify each count by count number):

_____ We do not unanimously find that this factor has been proved beyond a reasonable doubt with regard to any of the capital counts.

4. **That the Defendant intentionally and specifically engaged in an act of violence, knowing that the act created a grave risk of death to a person, other than one of the participants in the offense, such that**

Section I: Gateway Factors

participation in the act constituted a reckless disregard for human life and the victim or victims of the particular capital count you are considering died as a direct result of the act.

 X We unanimously find that this factor has been proved beyond a reasonable doubt with regard to all of the capital counts.

 We unanimously find that this factor has been proved beyond a reasonable doubt with regard to the following capital counts only (identify each count by count number):

 We do not unanimously find that this factor has been proved beyond a reasonable doubt with regard to any of the capital counts

Part B. After reviewing your findings in Section I, Part A, please identify by count number those capital counts, if any, for which you have not unanimously found that the Government has proven beyond a reasonable doubt the existence of any gateway factor:

Directions:

- For each capital count, if you do not unanimously find that the Government has proven beyond a reasonable doubt at least one of the above gateway factors with respect to that count, then your deliberations are over as to that count. That is to say, you are not to consider in Section II (or thereafter until Section VI) any of the counts you have specified

Section I. Gateway Factors

above in Section I, Part B.

- If there is no capital count for which you unanimously find a gateway factor has been proved beyond a reasonable doubt, skip forward to Section VI and complete that section in accordance with the directions there. Then notify the Court that you have completed your deliberations.
- If you have found at least one gateway factor with regard to one or more capital counts, continue on to Section II.

Section II: Statutory Aggravating Factors

SECTION II. STATUTORY AGGRAVATING FACTORS

General directions for Section II:

- As used in this section, the term "capital counts" refers only to those counts for which you found at least one gateway factor in Section I. Do not consider statutory aggravating factors in this section with regard to any counts for which you have not found at least one gateway factor in Section I.
- In this section, please indicate which, if any, of the following statutory aggravating factors you unanimously find that the Government has proven beyond a reasonable doubt. For each of the four statutory aggravating factors listed in Part A below, you must mark one of the responses.

Part A. 1. The deaths, and injuries resulting in death, of the victim or victims of the particular capital count you are considering occurred during the commission or attempted commission of another offense, namely one of the following offenses listed under Title 18, United States Code: Section 844(f) (bombing of property leased to the United States Government); Section 1116 (killing or attempted killing of internationally protected persons); Section 2332 (terrorist acts abroad against United States nationals); or Section 2332a (use of a weapon of mass destruction).

**** Recall that solely as to Count 5, you may not consider the commission of a violation of 18 U.S.C. § 844(f) as "another crime." Solely as to Counts 278 and 279, you may not consider the commission of a violation of 18 U.S.C. § 1116 as "another crime." Finally, solely as to Count 7, you may not consider the commission of a violation of 18 U.S.C. § 2332a as "another crime."**

- X We unanimously find that this factor has been proved beyond a reasonable doubt with regard to all of the capital counts.
- We unanimously find that this factor has been proved beyond a reasonable doubt with regard to the following capital counts only

Section II: Statutory Aggravating Factors

(identify each count by count number):

_____ We do not unanimously find that this factor has been proved beyond a reasonable doubt with regard to any of the capital counts.

2. **The Defendant, in the commission of the offense in the particular capital count you are considering, knowingly created a grave risk of death to one or more persons in addition to the victim or victims of that count.**

X _____ We unanimously find that this factor has been proved beyond a reasonable doubt with regard to all of the capital counts.

_____ We unanimously find that this factor has been proved beyond a reasonable doubt with regard to the following capital counts only (identify each count by count number):

_____ We do not unanimously find that this factor has been proved beyond a reasonable doubt with regard to any of the capital counts.

3. **The Defendant committed the offense listed in the particular count you are considering after substantial planning and premeditation to cause the death of one or more persons or to commit an act of terrorism.**

X _____ We unanimously find that this factor has been proved beyond a reasonable doubt with regard to all of the capital counts.

Section II: Statutory Aggravating Factors

_____ We unanimously find that this factor has been proved beyond a reasonable doubt with regard to the following capital counts only (identify each count by count number):

_____ We do not unanimously find that this factor has been proved beyond a reasonable doubt with regard to any of the capital counts.

4. The Defendant intentionally killed or attempted to kill more than one person in a single episode.

X _____ We unanimously find that this factor has been proved beyond a reasonable doubt with regard to all of the capital counts.

_____ We unanimously find that this factor has been proved beyond a reasonable doubt with regard to the following capital counts only (identify each count by count number):

_____ We do not unanimously find that this factor has been proved beyond a reasonable doubt with regard to any of the capital counts

Part B. After reviewing your findings in Section II, Part A, please identify by count number those capital counts, if any, for which you have not unanimously

Section II: Statutory Aggravating Factors

found that the Government has proven beyond a reasonable doubt the existence of any statutory aggravating factor:

Directions:

- For each capital count you are considering in this section, if you do not unanimously find that the Government has proven beyond a reasonable doubt at least one of the above statutory aggravating factors with respect to that count, then your deliberations are over as to that capital count. In other words, you are not to consider in Section III (or thereafter until Section VI) any of the counts you have specified above in Section II, Part B.
- If there is no capital count for which you unanimously find that at least one statutory aggravating factor has been proved beyond a reasonable doubt, skip forward to Section VI and complete that section in accordance with the directions there. Then notify the Court that you have completed your deliberations.
- If you have found one or more statutory aggravating factors with regard to one or more capital counts, continue on to Section III.

SECTION III. NON-STATUTORY AGGRAVATING FACTORS

General directions for Section III:

• As used in this section, the term "capital counts" refers only to those counts for which you have found at least one gateway factor in Section I and at least one statutory aggravating factor in Section II. Do not consider non-statutory aggravating factors in this section with regard to counts for which you have not found at least one gateway factor in Section I and at least one statutory aggravating factor in Section II.

• In this section, please indicate which, if any, of the following three non-statutory aggravating factors you unanimously find that the Government has proven beyond a reasonable doubt. For each of Parts A through C, you must mark one of the proposed responses.

A. The Defendant poses a continuing and serious threat to the lives and safety of others with whom he will come in contact.

_____ We unanimously find that this factor has been proved beyond a reasonable doubt with regard to all of the capital counts.

_____ We unanimously find that this factor has been proved beyond a reasonable doubt with regard to the following capital counts only (identify each count by count number):

X _____ We do not unanimously find that this factor has been proved beyond a reasonable doubt with regard to any of the capital counts.

B. As demonstrated by the deceased victims' personal characteristics as individual human beings and the impact of the deaths upon the deceased victims' families, the Defendant caused injury, harm, and

Section III. Non-Statutory Aggravating Factors

loss to those victims and their families, and the Defendant caused serious physical and emotional injury and grievous economic hardship to numerous individuals who survived the bombing.

 X

We unanimously find that this factor has been proved beyond a reasonable doubt with regard to all of the capital counts.

We unanimously find that this factor has been proved beyond a reasonable doubt with regard to the following capital counts only (identify each count by count number):

We do not unanimously find that this factor has been proved beyond a reasonable doubt with regard to any of the capital counts

C. The victims and intended victims of the particular capital count you are considering included high-ranking public officials of the United States serving abroad and the offense was motivated by such status.

 X

We unanimously find that this factor has been proved beyond a reasonable doubt with regard to all of the capital counts

We unanimously find that this factor has been proved beyond a reasonable doubt with regard to the following capital counts only (identify each count by count number):

We do not unanimously find that this factor has been proved

Section III. Non-Statutory Aggravating Factors

beyond a reasonable doubt with regard to any of the capital counts.

Directions:

- After you have completed your findings in this section (whether or not you have found any of the above non-statutory aggravating factors to have been proved), continue on to Section IV

Section IV: Mitigating Factors

SECTION IV. MITIGATING FACTORS

General directions for Section IV:

- As used in this section, the term "capital counts" refers only to those counts for which you found at least one gateway factor in Section I and at least one statutory aggravating factor in Section II.
- In this section, please indicate which, if any, of the following seven mitigating factors you find that the Defendant has proven by a preponderance of the evidence.
- Recall that your vote as a jury need not be unanimous with regard to each question in this section. A finding with respect to a mitigating factor may be made by one or more of the members of the jury, and any member of the jury who finds the existence of a mitigating factor may consider such a factor established in making his or her individual determination of whether or not a sentence of death shall be imposed, regardless of the number of other jurors who agree that the factor has been established.
- In the space provided, please indicate the number of jurors who have found the existence of that mitigating factor to be proven by a preponderance of the evidence with regard to each of the capital counts.

A. **That other members of the conspiracy, previously arrested or presently cooperating with the United States, guilty of or charged with planning and facilitating the bombings of United States Embassies and the killing of United States nationals will not be punished by death.**

Number of jurors who so find 8

B. **That the Defendant is less culpable than those conspirators who planned and facilitated the bombing of the United States Embassy in Nairobi, Kenya and continue to plan and execute similar acts in the future.**

Number of jurors who so find 0

C. **That the Defendant does not have a prior history of criminal conduct.**

Number of jurors who so find 6

Section IV: Mitigating Factors

- D. That, although having intentionally participated in an act, contemplating that the lives of Americans be taken, the Defendant did not intend that the Kenyan victims not employed by the United States Embassy be injured or killed.

Number of jurors who so find 0.

- E. 1. That the Defendant intended, by the commission of the offenses of which he has been convicted, to save members of his *ummah*, his religious community regardless of nationality, from imminent death, injury, terrorism and genocide. 1
2. That the Defendant committed the offenses for which he has been convicted based upon his sincere belief, whether or not you agree with that belief, that his conduct was mandated by his religion. 7
3. That the Defendant believed that United States Embassies were legitimate military targets because he had the sincere belief, as proposed by Usama Bin Laden, that embassies fulfilled military and intelligence surveillance functions which furthered the aims of the United States Government and opposed the aims and objectives of Usama Bin Laden. 10

Number of jurors who find E.1, E.2 or E.3 10.

- F. That the Defendant committed the offenses for which he has been convicted while young in age.

Number of jurors who so find 0.

- G. That the Defendant was indoctrinated in conservative Muslim teachings which promoted jihad and martyrdom during his early and formative years.

Number of jurors who so find 5.

The law does not limit your consideration of mitigating factors to those that can be articulated in advance. Therefore, you may consider during your deliberations any other factor or factors in Mohamed Rashed Daoud Al-'Owhali's background, record, character, or any

Section IV: Mitigating Factors

other circumstances of the offense that mitigate against imposition of a death sentence.

The following extra spaces are provided to write in additional mitigating factors, if any, found by any one or more jurors. If more space is needed, write "CONTINUED" and use the reverse side of this page.

H. Executing al-'Owhali could make him a martyr for al Qaeda's cause.

Number of jurors who so find 10.

I. Executing al-'Owhali may not necessarily alienate the victims' or victims' families suffering

Number of jurors who so find 9.

J. Lethal injection is very humane and the defendant will not suffer.

Number of jurors who so find 4.

K. Life in prison is a greater punishment since his freedom is severely curtailed

Number of jurors who so find 5.

L. Al-'Owhali was raised in a completely different culture, society and belief system.
4

Directions:

- After you have completed your findings in this section (whether or not you have found any mitigating factors in this section), continue on to Section V.

SECTION V. DETERMINATION OF SENTENCE

General directions for Section V:

- As used in this section, the term "capital counts" refers only to those counts for which you found one gateway factor in Section I and at least one statutory aggravating factor in Section II. You may not impose a sentence of death on a particular capital count unless you have first found with regard to that count, unanimously and beyond a reasonable doubt, one gateway factor in Section I and at least one statutory aggravating factor in Section II.
- In this section, enter your determination of the Defendant's sentence with regard to each of the capital counts. Your vote as a jury must be unanimous with regard to each question in this section.

After considering the information presented by both sides during the penalty phase and individually balancing the aggravating factors found to exist against the mitigating factors found to exist:

_____ We, the jury, unanimously find that the Government has failed to prove beyond a reasonable doubt that death is the appropriate sentence for Defendant Mohamed Rashed Daoud Al-Owhali for any of the capital counts. **We, therefore, return a decision that Mohamed Rashed Daoud Al-Owhali will be sentenced to life imprisonment without the possibility of release, separately as to each count.**

_____ We, the jury, unanimously find beyond a reasonable doubt, for all of the capital counts, that the aggravating factor or factors found to exist sufficiently outweigh the mitigating factor or factors found to exist - or, in the absence of any mitigating factors, that the aggravating factor or factors are themselves sufficient - so that death is the appropriate sentence for Defendant Mohamed Rashed Daoud Al-Owhali. **We vote unanimously that Mohamed Rashed Daoud Al-Owhali shall be sentenced to death separately as to each count.**

Section V: Determination of Sentence

We, the jury, unanimously find beyond a reasonable doubt, for some of the capital counts, that the aggravating factor or factors found to exist sufficiently outweigh the mitigating factor or factors found to exist - or, in the absence of any mitigating factors, that the aggravating factor or factors are themselves sufficient - so that death is the appropriate sentence for Defendant Mohamed Rashed Daoud Al-'Owhali with regard to each of the following capital counts only (identify each count by count number):

With regard to the above listed capital counts, we vote unanimously that Mohamed Rashed Daoud Al-'Owhali shall be sentenced to death separately as to each count. With regard to each of the remaining capital counts, we sentence the Defendant to life imprisonment without the possibility of release separately as to each count.

Each juror must sign his or her juror number below, indicating that the above sentence determination reflects the jury's unanimous decision:

Juror 2 _____
Juror 3 _____
Juror # 5 _____
Juror # 4 _____
JUROR # 6 _____
7 _____

Jur # 8 _____
Juror # 9 _____
JUROR # 10 _____
JUROR # 11 _____
Juror 12 _____
Juror # 1 _____
Foreperson (Juror No. 1)

The foreperson shall indicate the date of signing:

Date: 6/12/01

X

We the jury do not unanimously find that the death sentence is appropriate. We understand that the consequence of this is that al - 'Owhali will be sentenced to life imprisonment without the possibility of release.

Section V: Determination of Sentence

Directions:

- After you have completed your sentence determination in this section (regardless of what that determination was), continue on to Section VI.

Section VI: Certification

SECTION VI. CERTIFICATION

By signing your juror number below, each of you individually certifies that consideration of the race, color, religious beliefs, national origin, or sex of Mohamed Rashed Daoud Al-Owhali or the victims was not involved in reaching your individual decision. Each of you further certifies that you, as an individual, would have made the same recommendation regarding a sentence for the crime or crimes in question regardless of the race, color, religious beliefs, national origin, or sex of the Defendant, or the victims.

Juror 2
Juror 3
Juror #4
Juror 5
JUROR #6
#7

Jur #8
Juror #9
JUROR #10
Juror #11
Juror 12
Juror #1
Foreperson (Juror No. 1)

The foreperson shall indicate the date of signing:

Date: 6/12/01

After you have completed this form, you will each be given a new certification, headed Juror No. __, and an envelope which bears your juror number on the outside. Please sign that certificate using your real name, place the certificate in the envelope, seal the envelope and give the envelope to the Marshal. All of the certificates bearing your real name will be kept by the Court under seal.