

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

- v. -

KHALFAN KHAMIS MOHAMED

Defendant.

July 10, 2001

11-a.m.

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 6, 8, 222 through 232, 275, and 276.
- 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 6, you may not consider the commission of a violation of 18 U.S.C. § 844(f) as "another crime." Also, solely as to Count 8, 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 (identify each count by count number):

## Section II: Statutory Aggravating Factors

\_\_\_\_\_ 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.

\_\_\_\_\_ We unanimously find that this factor has been proved beyond a

## Section II: Statutory Aggravating Factors

reasonable doubt with regard to the following capital counts only  
(identify each count by count number):

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\_\_\_\_\_ 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):

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\_\_\_\_\_ 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 found that the Government has proved beyond a reasonable doubt the



## Section II: Statutory Aggravating Factors

existence of any statutory aggravating factor:

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**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

**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.
- There are two factors urged by Mr. Mohamed as mitigating factors which involve matters of law not in dispute. You should consider these mitigating factors in the weighing process:
  - D. The law mandates that if Khalfan Mohamed is not sentenced to death, he will spend the rest of his life in a United States prison without any possibility of release.
  - K. As a matter of South African law, Khalfan Mohamed should not have been released to American officials without assurances that he would not face the death penalty in the United States.
- As to the other alleged mitigating factors which are listed below, please indicate which, if any 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.
    1. Khalfan Mohamed was not a leader or organizer of the conspiracy which lead to the bombing of the Dar es Salaam embassy. 10
    2. Although Khalfan Mohamed is guilty of the murders, his

## Section IV: Mitigating Factors

participation was relatively minor. 0

3. Khalfan Mohamed was recruited by others as someone who was an expendable member of the conspiracy. 8

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

- B. Others of equal or greater culpability in the murders will not be sentenced to death.

Number of jurors who so find 11.

- C. Khalfan Mohamed's post-arrest statement:

1. Was complete and truthful. 1
2. Demonstrated acceptance of responsibility. 9
3. Provided the interviewing agents with valuable information. 8

Number of jurors who find C.1, C.2 or C.3 9.

- E. Khalfan Mohamed has no prior history of criminal behavior.

Number of jurors who so find 9.

- F. Executing Khalfan Mohamed will cause his family to suffer grief and loss.

Number of jurors who so find 12.

- G. Khalfan Mohamed is remorseful for the deaths, injuries and other consequences of the bombing of the embassy and would not participate in such a crime in the future.

Number of jurors who so find 0.

## Section IV: Mitigating Factors

**H. Khalfan Mohamed acted out of sincere religious belief.**

Number of jurors who so find 9.

**I. At the time of the offense, Khalfan Mohamed was 25 years old.**

Number of jurors who so find 12.

**J. If Khalfan Mohamed is executed, he will be seen as a martyr and his death may be exploited by others to justify future terrorist acts.**

Number of jurors who so find 7.

**L. Khalfan Mohamed's personal characteristics as an individual human being include the following:**

1. **Khalfan Mohamed has exhibited responsible conduct in other areas of his life.** 10
2. **Khalfan Mohamed has shown himself to be a person capable of kindness, friendship and generosity.** 8
3. **Khalfan Mohamed lost his father at an early age, and worked to help his family, which struggled financially after the death of the major breadwinner.** 9

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

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 Khalfan Khamis Mohamed's background, record, character, or any 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,

## Section IV: 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.

M. Khalfan Ibrahim's last psychological report (March 2001)  
judged his potential of harm to others to be low.

Number of jurors who so find 9.

N. Life imprisonment is a harsher  
punishment than being put to death.

Number of jurors who so find 3.

\_\_\_\_\_  
\_\_\_\_\_  
Number of jurors who so find \_\_\_\_\_.

\_\_\_\_\_  
\_\_\_\_\_  
Number of jurors who so find \_\_\_\_\_.

**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

**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 at least 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, at least 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 Khalfan Khamis Mohamed for any of the capital counts. We, therefore, return a decision that Khalfan Khamis Mohamed 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 Khalfan Khamis Mohamed. We vote unanimously that Khalfan Khamis Mohamed 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 Khalfan Khamis Mohamed 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 Khalfan Khamis Mohamed 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.

X We, the jury, are unable to reach a unanimous verdict either in favor of a life sentence or in favor of a death sentence, for any of the capital counts. We understand that the consequence of this is that Khalfan Khamis Mohamed will be sentenced to life imprisonment without the possibility of release.

## 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 Khalfan Khamis Mohamed 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.



The foreperson shall indicate the date of signing:

Date: 7-10-01

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.