

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

3 UNITED STATES OF AMERICA

4 v.

S(7) 98 Cr. 1023

5 USAMA BIN LADEN, et al.,

6 Defendants.

7 -----x

8

New York, N.Y.  
October 18, 2001  
9:50 a.m.

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11

12 Before:

13

HON. LEONARD B. SAND,

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District Judge

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## 1 APPEARANCES

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3 Southern District of New York  
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13 FREDRICK H. COHN  
DAVID P. BAUGH  
14 Attorneys for defendant Mohamed Rashed Daoud Al-'Owhali

15 DAVID STERN  
DAVID RUHNKE  
16 Attorneys for defendant Khalfan Khamis Mohamed

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1 (Pages 81 to 83 filed under seal)

2 (In open court)

3 DEPUTY CLERK: United States of America v. Khalfan  
4 Khamis Mohamed, Mohamed Rashed Daoud Al-'Owhali, Wadih El Hage  
5 and Mohamed Sadeek Odeh.

6 Is the government ready?

7 MR. KARAS: Yes, the government is ready. Good  
8 morning, your Honor.

9 DEPUTY CLERK: Ready for defendant Khalfan Khamis  
10 Mohamed?

11 MR. RUHNKE: Ready.

12 DEPUTY CLERK: For defendant Al-'Owhali, ready?

13 MR. COHN: Ready.

14 DEPUTY CLERK: For defendant El Hage?

15 MR. SCHMIDT: Ready.

16 DEPUTY CLERK: For defendant Mohamed Odeh?

17 MR. RICCO: Yes, your Honor.

18 THE COURT: I understand that there are some victim  
19 witnesses who wish to be heard at this sentencing proceeding  
20 and we will hear from them. I understand the first is Susan  
21 Hirsch.

22 Ms. Hirsch, you wish to make a statement?

23 MS. HIRSCH: Yes, thank you.

24 THE COURT: You may proceed and do that.

25 MS. HIRSCH: Thank you.

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1           Thank you for the opportunity, Judge Sand, to appear  
2 before you to tell you about the impact of these terrible  
3 crimes on me and on those around me.

4           Up to now, because this was a capital case, my  
5 ethical beliefs precluded me from telling my story to the  
6 court. So now I appreciate the chance to let you know about  
7 my loss, my grief, and the devastating impact on my life as a  
8 result of the actions of those convicted and of others not  
9 present today.

10           On a beautiful sunny morning, just ten days shy of  
11 coming with my husband to the U.S. to start a new life here  
12 together, I was in the embassy in Dar es Salaam when the bomb  
13 exploded. I was near a back exit. I went downstairs and out  
14 and ran away from the building. I was not physically injured.

15           And then, as I realized where the bomb went off, my  
16 nightmare started. My husband, Abdurahman Abdulla, a Kenyan  
17 citizen, had been standing very close to the explosion, and  
18 eventually, after frantic searching through hospitals, I  
19 learned that he was killed.

20           I want to tell you a few things about my husband so  
21 you will understand the impact of his loss on me and on others  
22 who loved him and depended on him. He was well-known in  
23 Mombasa, Kenya and in Malindi, where he lived. His nickname  
24 was Jamal, which means beautiful.

25           Jamal had an amazing spirit and energy. He was known

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1 for his humor, his humility, and his patience. Jamal was a  
2 deeply religious Muslim, in the most admirable sense. His  
3 life was guided by the ideals of kindness, charity, faith,  
4 mercy and respect for life.

5           Jamal's death has been a terrible tragedy for his  
6 family and community. Permit me to speak on their behalf  
7 briefly, because they are in Kenya and are unable to be here.

8           The youngest of nine siblings, at 38, Jamal was the  
9 leader of the family. He was the motivator, the shoulder on  
10 which his elder siblings leaned. He was single-handedly  
11 holding the family above poverty, and with his death, the  
12 family is in very difficult circumstances.

13           Jamal was a loving father to three sons, Ali, Mohamed  
14 and Ichbal. The loss of his guidance is especially difficult  
15 for them.

16           In his community, Jamal was known as someone who  
17 could solve problems and heal troubles. Everyone treated  
18 Jamal as wise beyond his years. Since his death, so many  
19 people that he used to treat come to his family and to me to  
20 say that there is no one to help with marital problems, mental  
21 illness and spiritual confusion. Having lost a trusted  
22 counselor, his community is tremendously diminished by these  
23 crimes, and my American family, who had grown to love Jamal,  
24 was crushed by his death.

25           Let me mention something else that was lost with

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1 Jamal's death. Our relationship crossed continents, cultures,  
2 religions and languages. We shared a deep commitment to  
3 bridging differences and to making productive connections  
4 between our families and communities. We started charitable  
5 projects that drew on the generousities of Americans and  
6 inspired the hopes of Kenyans. By shadowing our efforts and  
7 efforts like ours to foster understanding, these acts of  
8 violence have promoted a terribly dangerous and distorted view  
9 of Islam.

10 I want to say a few things about the impact on me  
11 personally. Like other bomb victims, I have traumatic stress  
12 syndrome, which means that I cannot depend on myself in  
13 situations of shock or stress, even like this one today. That  
14 is not the person I used to be.

15 I have financial difficulties, as I try to help my  
16 husband's family, particularly his sons, whom I am determined  
17 will receive good educations.

18 I choose not to share with you now and with the  
19 public what it means to me emotionally to have lost my  
20 husband. The pain and emptiness that I feel is both deeply  
21 private and truly indescribable. But also I need not tell  
22 you, because I have come to believe that there is nothing that  
23 you, as the judge, or the state could do to these individuals  
24 that would sooth the sorrow that haunts me, having lost Jamal.

25 As a grieving widow, I look elsewhere for my solace,

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1 but as a citizen, I look to you and the state for justice.  
2 The impact of this crime on me will be lessened if I know that  
3 these individuals will be prevented from injuring others and  
4 will lose their liberty as an appropriate punishment for an  
5 appalling and devastating crime.

6 Thank you for this opportunity.

7 THE COURT: Thank you ma'am. I'm sorry.

8 Howard Kavalier.

9 MR. KAVALER: Your Honor, three years, two months and  
10 eleven days ago, I lost my wife Prabhi, the love of my life  
11 and mother of my daughters, in the despicable attack on our  
12 embassy in Nairobi. For the past three years, two months and  
13 eleven days, I have had to live with recurring flashbacks of  
14 the bombing and my vain attempts to locate my wife's remains.  
15 The clouds of dust, the dangling wires, the invisible cries  
16 for help that were muffled by mounds of concrete and twisted  
17 steel are still front and center in my mind with a degree of  
18 clarity that has not attenuated with the passage of time. In  
19 fact, the carnage of the 11th of September has only served to  
20 exacerbate these nightmarish memories.

21 It is very difficult for me to articulate in a  
22 dispassionate manner what it has been like to be deprived of  
23 the companionship of my wife of 16 years and to raise two  
24 young girls as a single father in the context of such a  
25 horrific tragedy.

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1           There was no one to assist me as I comforted Maya, my  
2 eight-year-old daughter, who cried all night last spring  
3 because her mother would not be present the next day to hear  
4 her sing at a school talent show. Tara, my 13-year-old, went  
5 to her first coed party without the loving encouragement and  
6 maternal advice that only Prabhi could have provided. In a  
7 letter to your Honor, you may recall that Tara wrote about her  
8 mother, and I quote: "I miss the time we spent together, I  
9 miss that she loved me like no one else could, and I miss her  
10 helping me with things that were hard. My heart hurts every  
11 day. I hope it will go away. A kid's heart shouldn't hurt  
12 every day. A kid shouldn't have to miss her mother every  
13 day."

14           As much as I try to be both a father and a mother, I  
15 will always, no matter how hard I try, come out more than a  
16 tad bit short in fulfilling the latter role. In fact,  
17 balancing the demands of working full-time as a Foreign  
18 Service Officer with the needs of my daughters became too  
19 overwhelming. In August, I retired from the Foreign Service,  
20 having decided to dedicate myself solely to ensuring my girls'  
21 welfare and happiness.

22           While the jury has spoken, albeit in a manner with  
23 which I respectfully disagree, as to the applicability of the  
24 death penalty, I urge your Honor to sentence the four  
25 convicted defendants to the maximum penalty now permitted by



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1 law -- that is, life imprisonment without the possibility of  
2 their ever being paroled. In so sentencing the four  
3 defendants, you would, in these troubling days, convey an  
4 unambiguous message to all future terrorists intent on  
5 destroying the lives of innocent Americans.

6           Incarcerating Wadih El Hage for life would also send  
7 a clarion signal to other would-be American citizens intent on  
8 betraying their country. As a naturalized American citizen,  
9 we welcomed him into our body politic. He, however,  
10 reciprocated this embrace with a loathsome act of treachery.  
11 As a traitor, he showed no mercy and, as such, is owed none in  
12 return.

13           I would also implore your Honor, if possible, to  
14 instruct the Bureau of Prisons to incarcerate the four under  
15 the most rigorous conditions allowed by statute and  
16 regulation. Justice, and our nation's security, would truly  
17 be served were these perfidious apostates directed to spend  
18 the rest of their natural lives in isolation reflecting upon  
19 the diabolical nature of their conduct.

20           Let them wake up every morning knowing that humanity  
21 is united in viewing them as cowardly infidels who are  
22 despised by all and respected by none. Let them sleep at  
23 night knowing that their atrocities only served to blaspheme a  
24 faith in whose name they acted but whose truthful followers  
25 espouse a world of tolerance. As the years pass and as their

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1 minds and bodies rot in prison, let them come to the  
2 realization that men and woman of good will and virtue will  
3 always triumph over the moral depravity and pure evil  
4 represented by Bin Laden and his fellow pariahs. Finally, let  
5 them die conscious of the fact that their souls will be  
6 condemned forever.

7 In conclusion, your Honor, I speak for myself and my  
8 daughters in thanking you for affording me an opportunity to  
9 address the Court today. I will return home this evening with  
10 the peace of mind that comes from witnessing the majesty of  
11 justice reigning supreme. For this, my girls and I are  
12 eternally grateful.

13 Thank you.

14 THE COURT: Mr. Owens.

15 MR. OWENS: I thank the Court for the opportunity to  
16 express my views as to the sentence to be imposed upon the  
17 defendants who stand convicted of terrorism in the attacks  
18 upon the American embassies in Nairobi and Dar es Salaam. I  
19 believe that the privilege to address the Court implies a duty  
20 to accurately set forth not only my views but, to the extent  
21 possible, the views of the many fellow victims of these acts  
22 of terrorism who cannot be here today.

23 One of the defendants in this case, Ali Mohamed,  
24 described the organizational background which permitted these  
25 attacks to go forward in his plea hearing before this Court on

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1 October 20th, 2000. Mr. Mohamed set up a meeting between Bin  
2 Laden and the chief of Hezbollah, at which it was agreed that  
3 Hezbollah would provide explosives training. Sworn testimony  
4 last summer in the United States District Court for the  
5 District of Columbia indicated that much of this type of  
6 training is actually carried out at a training camp there Iran  
7 run by the Iranian Ministry of Information and Security.

8 At that plea hearing before this Court, Mr. Mohamed  
9 testified that Iran provided the explosives for the bombings  
10 which have brought us here today. Within the last week, the  
11 chief of Hezbollah was placed by the Federal Bureau of  
12 Investigation on the list of 22 persons designated as  
13 terrorists leaders wanted by the FBI. He has been widely  
14 reported to currently be a guest of the Iranian government.

15 The annual report Patterns of Global Terrorism  
16 published by the Department of State only six months ago once  
17 more noted that Iran is "the most active sponsor of terrorism"  
18 in the world. That report and prior annual reports detail  
19 terrorists actions undertaken by the order of Iran or with its  
20 support prior to September 11th, 2001 in which more than 1500  
21 Americans have lost their lives.

22 With this history of terrorism on the part of Iran, I  
23 and many other victims of their criminal actions were confused  
24 by the appearance of the United States Department of Justice  
25 on behalf of Iran two days ago in the United States District

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1 Court in Washington requesting that the Court vacate a  
2 judgment entered against Iran on behalf of the 52 Americans  
3 held captive by Iran. We only have to walk a few blocks from  
4 this courthouse to know that prosecution against individuals,  
5 without action against the supporting governments, has not  
6 deterred new terrorists acts. To the contrary, it has invited  
7 them.

8           Notwithstanding, I urge that this Court impose the  
9 maximum sentence upon each of these defendants. I make this  
10 request of the Court for two reasons. The first is that I  
11 believe that sooner or later our country must confront  
12 religious radicalism as a genuine threat to the principles of  
13 religious tolerance and peaceful resolution of conflicts,  
14 which must be embraced by all nations if we are to have peace.  
15 When that time comes, the sentencings imposed by the Court in  
16 this case might very well be the tool which will bring forth  
17 testimony from these very same defendants which will spread in  
18 detail the truth about these terrorist actions on the public  
19 record.

20           My second reason for urging that the Court take this  
21 action has to do with my own unique relationship with the  
22 people of Tanzania. I have over many years spoken about these  
23 wonderful people and their way of life. I note that no  
24 American died in the attack at Dar es Salaam, primarily  
25 because Tanzanian citizens employed in security at the embassy

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1 carried out their jobs effectively and with great courage in  
2 stopping the truck which carried the bomb and preventing entry  
3 of the truck into the area immediately adjacent to the embassy  
4 building.

5 It is in no way an exaggeration to say that I am here  
6 to speak today because of their courage. I am not a lawyer,  
7 but I have been told that this Court does not have the  
8 jurisdiction over the murders of these men, as they are not  
9 American citizens. However, it is my understanding that the  
10 Court may take into consideration in imposing sentence the  
11 surrounding circumstances of the offense. I would therefore  
12 ask the Court to consider that not only America and Americans  
13 were attacked at Dar es Salaam, but also Tanzania and citizens  
14 of Tanzania who suffered terrible casualties.

15 I believe that the horror of what was done to them  
16 alone would afford a sufficient basis for this Court imposing  
17 the maximum sentence on each defendant. Such an action by  
18 this Court will demonstrate to people around the world our  
19 concern not just for ourselves but for every victim of  
20 international terrorism.

21 THE COURT: Thank you, Mr. Owns.

22 MR. OWENS: Thank you.

23 THE COURT: Mr. Pressley.

24 MR. PRESSLEY: Thank you, your Honor. I came here to  
25 let you know that I was injured in the bombing in Nairobi.

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1 Injuries I suffered there, I guess if you compare the people  
2 that were killed, are small, but these three years have been  
3 nothing but hell.

4 I have had seven operations on my shoulder. I have  
5 had metal placed, replaced. I have a serious infection that I  
6 take antibiotics for every day. I take pain killers. I have  
7 had 28 teeth basically crushed. I have had four operations in  
8 my jaw, tongue, my neck. I have had tremendous nightmares for  
9 several years.

10 My wife also worked in the embassy. She was not  
11 hurt, thank God, and was pregnant. She came out of the  
12 embassy and saw me and in a most unbelievable condition.  
13 These three years for both of us have been nothing but a long  
14 nightmare.

15 These people deserve to be put away forever. They  
16 never need to see a sunrise, a sunset. They should never be  
17 allowed to touch another living human being. They should  
18 never be able to hold their wives, their relatives, their  
19 friends. They should realize what they have done. Possibly  
20 they never will. But if they are ever set free again, in my  
21 opinion, it will only go back to these ways of trying to hurt  
22 innocent people.

23 Our culture is based on laws. I'm not sure sometime  
24 the laws are always correct. That's why we have courts,  
25 that's why we have a system to go through. This was wrong.

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1 Many of my friends in Kenya, many of my American colleagues  
2 working, we have no political values, we have no religion that  
3 hates Islam. We do not hate anyone. We're living every day  
4 in society, trying to make a living, to be with our families  
5 and to be loved and give love in response.

6           These three years, we have no chance for that. One  
7 hospital after another, one doctor's office after another.  
8 Another four hours' medication, another doctor, another  
9 operation, another nightmare, another September 11. We have  
10 not been able to handle it very well. Yes, during the day we  
11 smile, we put on a good face, and then we go home and cry.

12           This is not the way it's supposed to be. These  
13 people will kill for no reason. These people need to be put  
14 away forever. And I ask the Court to please consider this.  
15 The people that are dead, I'm so sad. It makes me -- I mean,  
16 it has affected me a lot. In the same room as me two other  
17 people were killed. Your Honor, they weren't killed, they  
18 were ripped apart. My body was ripped apart, but by the grace  
19 of God I could get up and get out. Seven pints of blood. For  
20 the first year, I was so worried about having other diseases  
21 from blood transfusions.

22           You name it, everything in our mind has gone on. My  
23 office tells me I should get on with my life. Get on with my  
24 life? I'm sorry, it's not that simple. We don't get on with  
25 our life after something like this happens. We hold these

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1 things in and we try to seek help, but it's still there and  
2 it's going to be there forever.

3 I have six children, and I try my best to put on a  
4 good face for them and tell them that I'm fine. But, in fact,  
5 I'm not fine. My wife is not fine.

6 This is not right. And what we're asking from you,  
7 Judge, and the court system is for justice. We realize you  
8 can't change what happened. We realize that if you could, you  
9 would. But these people have to be punished.

10 Like my colleague said, the more accurate punishment  
11 would have been the death penalty, but the good citizens of  
12 New York, for whatever reason, decided that, no, we'll do  
13 otherwise. Okay. Otherwise, let them rot in jail for the  
14 rest of their lives, the most severe circumstances possible.  
15 They deserve this.

16 I ask the Court to please understand all the pain,  
17 the suffering we have gone through and will continue to go  
18 through. Recent events have made these pains recur. It made  
19 the wounds deeper, and every time I go into an operating room  
20 or a doctor, I think about what these people have done to  
21 myself, my wife, my children, my family, my mother, my father,  
22 all of my relatives.

23 I didn't bring paperwork. I have no speech. I'm  
24 hurt, and these people hurt us and it's not right. So I ask  
25 the Court to please, please put these people away forever.



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1 Thank you.

2 THE COURT: Thank you, Mr. Pressley.

3 Temina Dalizu.

4 MS. DALIZU: Good morning, Judge Sand, and thank you  
5 for letting me express myself.

6 I am one child of four of Jean Rose Dalizu, and I'm  
7 the baby, glad to say. There's always a special bond between  
8 a mother and her baby.

9 Beautiful, vibrant, patient, caring, gentle, sweet,  
10 loyal, forgiving, loving, on and on the list goes. But how  
11 does one describe a major part of their life? What words can  
12 I use to convey what my mother meant to me in every way? How  
13 can I capture that essence?

14 Do you know your mother? Do you remember your  
15 mother? Well, I do. She's the one who risked her life  
16 unselfishly, bedridden with a high-risk pregnancy, determined  
17 to give life to me. She fed me and clothed me, taught and  
18 molded me, and now she's gone.

19 Do you remember your mother growing up? I clearly  
20 do. For 17 years before college, she was a bright and cheery  
21 voice that woke me from my sleep. "Good morning, little lady.  
22 Time to get up. Rise and shine." To which I always growled  
23 and grumbled and turned my head the other side. Then, with a  
24 flick of the switch, bright lights turned on, much to my  
25 horror. Could anything be brighter than my mother at this

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1 ungodly hour?

2           She always prepared hot chocolate after a cold swim  
3 team day, special cakes and fruity shakes and little gifts  
4 galore for reasons just because. Cuts of my favorite flowers,  
5 they are all an expression of her love. When begging for some  
6 useless toy, she would start out strong, but easily give in to  
7 my monotone mantra of, "Please, mommy, please, mommy, please."

8           It all wasn't peachy keen. Do not be deceived. I  
9 also remember hot switches on my legs when in my head  
10 rebellion struck in. Getting into her clothes and makeup, I  
11 definitely misbehaved, and it was usually her perfume that  
12 always had me betrayed.

13           I remember her gentle presence and her soft hands  
14 upon my head, medicine and tender kisses as I lay sick in my  
15 bed. Now she's gone forever, removed totally from my life.

16           Did your mother inspire you? And did she ever guide  
17 you? Well, this is how mine did. Never by telling me what to  
18 do, but her living example showed me I always could. Every  
19 genuine interest that I expressed, she cultivated.

20           She never pushed, but steadily encouraged my hobbies,  
21 which became my dreams of zoology and then reality with a  
22 degree in marine biology and a side of compassion and empathy  
23 evident at FEMA, where I am currently employed.

24           After my father's retirement, she became our sole  
25 wage-earner. She planned to retire at 62, time enough to

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1 build a house for two and finance me for my Ph.D., to be done  
2 in England so instead of five years, I would only have three.  
3 But on that fateful day in '98, at 60 she was murdered and  
4 this had nothing to do with fate.

5 Now my Ph.D. plans are stalled and my father's life  
6 is empty and dull because we have both lost half of our soul.  
7 And not only must he learn to live again, but now he is forced  
8 to come out of retirement.

9 Now that my mother has left me, who can I give a  
10 call? For in times of trouble, I would pick up the phone and  
11 definitely give her a long-distance call. When just hearing  
12 her voice, she began to calm the turmoil within my soul. As I  
13 poured out my heart, she always patiently listened. Then, as  
14 only a mother could, she began to pour out her wisdom, whether  
15 I was wrong or whether it was my friend's wrong. As a  
16 finality, she would quote scripture to me and pray with me,  
17 and I would hang up the phone, full of peace.

18 Now she's been ripped from my life. Since I was  
19 five, I sat at her feet in our sanctuary known as the kitchen,  
20 where mostly I would listen, but, most importantly, I learned  
21 all her wisdom. And somewhere in between the love and the  
22 laughter, I also picked up many a cooking lesson.

23 Who can understand the mother/daughter bond? And now  
24 she's snatched from me. I'm a daughter all alone. Who will  
25 dress me and dance for me on that wedding day? And who will

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1 guide me in pregnancy and hold my first born child? Is that  
2 not my mother's job?

3 She was a virtuous woman, and so will I be, for in  
4 living what she preached, she beautifully fashioned me. Mom,  
5 I miss you more than anyone will ever know, and no amount of  
6 words or speeches will ever convey so. When they took you, I  
7 was left with an empty space, but now the holy spirit has  
8 filled that space.

9 She taught me life and she taught me love. She  
10 taught me you can go on with faith in God above. So I lean on  
11 my Lord and each day take a stronger step, for there is no  
12 greater reminder of my mother than everything that makes me  
13 myself.

14 I am only one of the four children that my mother  
15 had. This does not convey the loss that my father has  
16 incurred financially, emotionally and physically. This does  
17 not convey the lives of all of her friends and the rest of her  
18 family who are suffering her loss. And she is only one of the  
19 214 who were murdered on that day, and, Judge, I only ask that  
20 you can proceed and justice will come our way.

21 Thank you.

22 THE COURT: Thank you.

23 The Court is advised that there are six other victims  
24 present who I understand do not wish to make any statements.

25 The Court also notes that it has received numerous

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1 letters from victims, and they have been marked as Court  
2 Exhibit A of yesterday's date and have been filed.

3 The Court will proceed with the sentencing, and we  
4 will proceed first with K.K. Mohamed.

5 Mr. Mohamed, have you read the pre-sentence report  
6 and gone over it with your attorney?

7 DEFENDANT MOHAMED: Yes.

8 THE COURT: You nodded your head, but did you -- the  
9 court record requires something audible to occur.

10 MR. RUHNKE: He said "yes" very quietly, your Honor.  
11 He said "yes."

12 THE COURT: Okay. Are there any errors or  
13 corrections you wish to have made in the pre-sentence report?

14 MR. RUHNKE: There are no errors or corrections, your  
15 Honor.

16 THE COURT: Mr. Ruhnke, the Court will hear you with  
17 respect to the sentence.

18 MR. RUHNKE: Yes, your Honor. On Mr. Mohamed's  
19 behalf, we simply wish to express gratitude to a jury which  
20 spared his life. He has no statement he wishes to make. He  
21 is prepared to be sentenced.

22 THE COURT: Mr. Mohamed, is it the fact that you do  
23 not wish to make a statement at this time? You understand you  
24 have the right to make a statement?

25 THE DEFENDANT: Yes.

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1           THE COURT: This is a time not for eloquence but for  
2 justice. Even were I tempted to engage in rhetoric, I  
3 certainly could not match the eloquence and the poignancy of  
4 the witnesses we have just heard.

5           Mr. Mohamed, the jury has found you guilty of crimes  
6 which mandate a life sentence, and I will of course impose  
7 such sentence.

8           A word about the jury which has unanimously and  
9 beyond a reasonable doubt found you guilty of these horrendous  
10 crimes.

11           The jury was painstakingly selected for a period of  
12 about a month, and you could not equal the jury in terms of  
13 diversification and representation of the community. No  
14 matter what criteria one evokes -- race, gender, ethnicity,  
15 socioeconomic status, education -- the jury was indeed a cross  
16 section of the community.

17           Another word about the jury and the five-month trial.

18           Everyone who has witnessed or been involved in these  
19 proceedings knows that this was a jury which did not  
20 reflexively react to the nature of this crime or the  
21 perpetrators. This is a jury which carefully, maticulously  
22 scrutinized the evidence. We know not only from the length of  
23 their deliberations but the questions that were asked that  
24 they performed their task conscientiously.

25           This jury deliberated on two occasions. On the first

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1 occasion, Mr. Mohamed, had found you guilty of all crimes  
2 charged. At the second trial with respect to penalty, this  
3 jury reported that: "We are unable to reach a unanimous  
4 verdict either in favor of a life sentence or in favor of  
5 death sentence for any of the capital counts. We understand  
6 the consequence of this is that Khalfan Khamis Mohamed will be  
7 sentenced to life without the possibility of release."

8 And we know, to an unusual extent, the reasoning of  
9 the jury because they answered certain interrogatories. Three  
10 of the jurors believed that life imprisonment is a harsher  
11 punishment than being put to death. And if in fact that is  
12 true, it is appropriate.

13 It is the judgment of this Court that you be  
14 sentenced to a term of life imprisonment on Counts 4, 8 and  
15 10. You are further sentenced to a term of life imprisonment  
16 on Counts 3, 5, 224 to 234, 277 to 279 and 283.

17 As required by statute, I impose the mandatory  
18 ten-year sentence on Count 284 and the mandatory 30-year  
19 sentence on Count 286. The sentence on Counts 284 and 286 are  
20 to be served consecutively to each other and to the other  
21 counts.

22 The mandatory conditions of probation are moot in  
23 light of this sentence. The mandatory drug testing is  
24 suspended because there appears to be low risk of that.

25 The Court further orders, as mandated by statute,

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1 that you pay a total special assessment of \$2,300.

2 (Pause)

3 THE COURT: My deputy mentioned that I did not  
4 mention Count 1. I had intended to say that you are to be  
5 sentenced to life imprisonment on Counts 1, 3, 5, 224 to 234,  
6 277 to 279 and 283, in addition to the mandatory consecutive  
7 sentences of 10 years on Count 284 and 30 years on Count 286.

8 The Court will enter an order of restitution which  
9 provides for payment of restitution of a total of some \$33  
10 million, and has provided a mechanism for the determination of  
11 the monetary amount of damages by individual victims as well  
12 as \$26,300,000 to the United States. Restitution payments are  
13 made to the United States only after restitution has been made  
14 to individual victims.

15 The order attaches a list of persons who died as a  
16 result of the bombings and has a restitution award of some  
17 approximately \$7 million. That too will be filed, but the  
18 addresses contained on that attachment will be redacted.

19

20 (Continued on next page)

21 THE COURT: Mr. Mohamed, the court advises you that  
22 you have a right to appeal your conviction and your sentence,  
23 and if you wish the Clerk of the Court to file a notice of  
24 appeal of sentence on your behalf, if so instructed he will do  
25 so.



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1           Is there anything further with respect to

2 Mr. Mohamed?

3           MR. RUHNKE: No, your Honor, there is not.

4           THE COURT: The court will take a brief recess.

5           (Recess)

6           THE COURT: With respect to the defendant K.K.

7 Mohamed, all open counts and all of the various superseding

8 indictments are dismissed.

9           Mr. Al-'Owhali, have you read the presentence report  
10 and gone over it with your attorney?

11          MR. COHN: Your Honor, as set forth yesterday in  
12 yesterday's hearings, it was provided to him in Arabic and we  
13 have been over it with him.

14          THE COURT: Yesterday, I should state that we had a  
15 three-hour session yesterday in which we reviewed some of  
16 these matters. Have all of the suggested changes and  
17 corrections to the presentence report been noted as of  
18 yesterday?

19          MR. COHN: We made no suggestions because there were  
20 none that were material. As I pointed out yesterday, there  
21 was one minor matter.

22          THE COURT: I would like to have Mr. Al-'Owhali  
23 acknowledge that he has read the presentence report. Have you  
24 read the presentence report?

25          DEFENDANT AL-'OWHALI: Yes, I did.

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1 THE COURT: Very well. Mr. Cohn, I will hear you  
2 generally with respect to sentence.

3 MR. COHN: Your Honor, we have no statement to make.  
4 Sentencing is statutory and we rely on the statute.

5 THE COURT: Very well. Mr. Al-'Owhali, you are  
6 before this court convicted of the various crimes that are set  
7 forth in the indictment and in the presentence report. Is  
8 there anything you wish to say to the court before sentence is  
9 imposed?

10 No.

11 As your attorney has stated, the sentence is  
12 mandatory here. The jury returned a verdict which states that  
13 they do not unanimously find that the death sentence is  
14 appropriate and we understand the consequence of this is that  
15 you will be sentenced to life imprisonment without the  
16 possibility of parole.

17 Four of the jurors stated that lethal injection is  
18 very humane and the defendants will not suffer, which is an  
19 indication of the views of some of the jurors.

20 The court will of course impose the sentence mandated  
21 by law with respect to those counts which call for a mandatory  
22 sentence. The court imposes a term of life imprisonment on  
23 Counts 1, 3, 4, 5, 7, 9, 11 through 223, 235 to 276, and 280  
24 to 282, to be followed by the mandatory 10 years' imprisonment  
25 on Count 284, to be served consecutively to the above counts,

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1 followed by a mandatory minimum of 30 years, to be served  
2 consecutively to the previously stated counts.

3 It is appropriate that I indicate, although it is  
4 academic, that there will be a five-year term of supervised  
5 release on Counts 1, 3, 4, 5, 7, 9, 11 to 223, 235 to 275,  
6 276, 280, 281, 282 and 285, and a three-year term of  
7 supervised release on Count 284, all terms of supervised  
8 release to run concurrently.

9 The court imposes the mandatory special assessment of  
10 \$26,600.

11 The court signs the restitution order which I  
12 previously described and which names you as a defendant  
13 obligated to make restitution payments as indicated in that  
14 report.

15 The court imposes no fine on you, as it imposed no  
16 fine on K.K. Mohamed, because of the restitution obligations  
17 which take precedence.

18 The court advises you that you have a right to appeal  
19 your conviction and sentence, and if you wish the Clerk of the  
20 Court to enter a notice of appeal on your behalf, he will do  
21 so.

22 The court dismisses all open counts and any  
23 superseding indictments insofar as you are named as a  
24 defendant.

25 Is there anything further with respect to defendant

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1 Al-'Owhali?

2 MR. COHN: No, sir, except to advise you that we will  
3 file a notice of appeal in his behalf.

4 THE COURT: The court will take a very brief  
5 adjournment.

6 (Defendant Al-'Owhali excused)

7 (Recess)

8 THE COURT: The court will proceed with the  
9 sentencing of the defendant Odeh. Mr. Odeh, have you had the  
10 opportunity to review the presentence report and go over it  
11 with your attorney?

12 DEFENDANT ODEH: Yes, I did.

13 THE COURT: I believe yesterday we went over all of  
14 the suggested changes to the presentence report. Is that  
15 correct?

16 I will hear from counsel.

17 MR. RICCO: Your Honor, we have two very brief  
18 remarks to make.

19 THE COURT: Yes.

20 MR. RICCO: The first are the legal arguments that  
21 relate to a downward departure and the other just general  
22 remarks that relate to sentencing.

23 THE COURT: Very well.

24 MR. RICCO: Your Honor, first and foremost, I will  
25 have to say with respect to the issue of downward departures

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1 that as counsel for defendant in Mr. Odeh's circumstance, the  
2 guidelines themselves put us through a mechanical endeavor to  
3 see to it that his due process rights are raised at the time  
4 of sentence. The issue of departure is in no way raised as an  
5 offense to the powerful statements that the victims have made  
6 here this morning.

7           There are three grounds that have been raised with  
8 respect to Mohamed Odeh's request for downward departure. We  
9 primarily rely on the papers that have been submitted. Most  
10 notably, we would indicate to the court that what we have  
11 asked the court to do is to look at a confluence of  
12 circumstances. Those circumstances individually may not be  
13 sufficient to support a downward departure, but perhaps in  
14 confluence with each other they would. We have submitted what  
15 we think is authority for the court to consider a downward  
16 departure, but of course we are aware that ultimately it is  
17 this court's determination as to whether or not that departure  
18 is appropriate in this case.

19           We would ask the court to view the departures from  
20 the perspective of Mohamed Odeh. We have requested that in  
21 our papers. The second prong of our downward departure, that  
22 is, the assistance that he gave to other law enforcement  
23 authorities in connection with his prosecution was one ground  
24 that was highlighted. The third ground that was highlighted  
25 was a very unusual ground, and it was a ground that reflected

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1 the defendant's state of mind, because we believe that the  
2 grounds do permit a downward departure based upon the  
3 defendant's intent when that intent is different from that of  
4 a defendant who is in a typical circumstance, typical  
5 circumstance on the crime for which he was convicted. For  
6 that we would rely on the Second Circuit case of Broderson,  
7 and I think Judge Scheindlin had a case in this district, I  
8 think Nachamie, that supports such a departure. Mr. Wilford  
9 will address the court with the substance of the third prong,  
10 which deals with the victim provocation, which is an issue  
11 that the defendant wanted raised here in the court.

12 MR. WILFORD: Your Honor, it is important that we  
13 view this departure request, as Mr. Ricco stated, with respect  
14 to the mind set and the state of mind of Mr. Odeh. Your  
15 Honor, Mr. Odeh was a soldier in the military wing of Al  
16 Qaeda, and it is clear from the evidence that was adduced at  
17 trial that the United States government was and remains the  
18 target of the actions of Mr. Bin Laden and Al Qaeda. As a  
19 result, under the analysis for a departure on the grounds set  
20 forth in 5K2.10 of the United States Sentencing Guidelines, we  
21 must identify the victim that we speak of in terms of that  
22 particular guideline as the United States rather than the  
23 individual victims for purposes of this particular departure  
24 request, your Honor. The perception of the victim's conduct  
25 must be viewed objectively from the defendant's perspective,

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1 and for that we rely on United States v. Morin. However, that  
2 conduct must be real, it must not be imagined, and it must  
3 also be more than provocative, it must be wrongful. Speaking  
4 with respect to Mohamed Sadeek Odeh --

5 THE COURT: With respect to his state of mind, what  
6 is it that you rely on as furnishing the court any insight  
7 with respect to the defendant's state of mind?

8 MR. WILFORD: Government's Exhibit 6, your Honor,  
9 which is the report of the statements that were taken from  
10 Mr. Mohamed Odeh in Kenya over the 11-day period of  
11 interrogation, and the testimony that accompanied them by  
12 Agent Anticev.

13 THE COURT: And that is the totality of the evidence  
14 with respect to his state of mind insofar as he is concerned?

15 MR. WILFORD: That is correct, your Honor, and, your  
16 Honor, if I may, with respect to Mr. Odeh's state of mind,  
17 your Honor -- I am speaking now on behalf of Mr. Odeh solely,  
18 your Honor, and it says, so the court is clear, it is  
19 Mr. Odeh's view that the United States' support of Israel,  
20 both financially, politically and militarily, presence of  
21 United States military in the holy lands of Saudi Arabia, the  
22 Persian Gulf and the Horn of Africa, constitutes provocation  
23 on the part of, as I said, the victim being the United States.

24 Indeed, based on that, as we stated in our papers,  
25 the defendant satisfies the five prongs of 5K2.10, and based

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1 upon that, your Honor, we would submit to the court that the  
2 victim's conduct, as we detailed in our papers, becomes the  
3 basis for a downward departure if it is viewed in conjunction  
4 with the other grounds which Mr. Ricco mentioned and which we  
5 mentioned in our papers, and these grounds combined provide  
6 the opportunity, should the court deem it appropriate, to  
7 grant a downward departure.

8           Additionally, your Honor, Mr. Ricco will be  
9 addressing the court on some general remarks with respect to  
10 sentence.

11           THE COURT: Does the government wish to respond to  
12 the downward departure request?

13           MR. KARAS: Yes, your Honor. In addition to what we  
14 mention in our papers, which is that there is no basis for  
15 downward departure because the defendant faces mandatory life,  
16 that there is no basis for downward departure by virtue of  
17 alleged cooperation because no one was arrested or prosecuted  
18 with respect to the information Mr. Odeh, with respect to the  
19 alleged misconduct, the argument is offensive. The attack may  
20 have been intended to attack American foreign policy, but the  
21 victims were innocent people: Innocent Americans, innocent  
22 Kenyans and innocent Tanzanians. There is no basis under any  
23 reading of the law that the people who were killed did  
24 anything to deserve the attacks that Mr. Odeh was involved in.

25           THE COURT: The court denies the application fore a



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1 downward departure. Assuming arguendo that the court would  
2 have the power to downwardly depart, there is no grounds which  
3 have been urged which would in any way suggest to the court  
4 that a downward departure is appropriate. To try to make the  
5 victims appear to be an abstraction may ease the conscience of  
6 the defendant, but does not mitigate the fact that 214 people  
7 were killed as a result of the two bombings and the suffering  
8 which was inflicted not on abstractions but on human beings.

9           The application for a downward departure on the  
10 grounds that the defendant's state of mind is predicated on  
11 the fact that he told somebody who was interrogating him in  
12 Kenya that he was sorry so many civilians were killed is  
13 grossly inadequate basis for any downward departure.

14           The court has read the papers and all of the grounds  
15 urged for a downward departure and finds them to be without  
16 merit and, as stated, assuming arguendo that the court would  
17 have the power to downwardly depart, it declines to do so.

18           Mr. Ricco.

19           MR. RICCO: Your Honor, generally with respect to the  
20 sentencing of Mohamed Odeh, your Honor, Mohamed Odeh stands  
21 before the court today for sentencing. He is a foreign  
22 national convicted of participating in extreme acts of  
23 violence against people of the United States and of other  
24 nations. Today Mohamed Odeh reasserts his innocence to  
25 committing crimes against the people of the United States and

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1 other nations. He is and remains a member of Al Qaeda who in  
2 his view, in his faith of God, brought him from the Middle  
3 East to the Philippines to Afghanistan, to participate in an  
4 organization to change oppressive circumstances. Mohamed  
5 Odeh's hope is that some day the conditions of oppression will  
6 be removed from the parts of the world in which he lives. He  
7 was a member of the military wing of Al Qaeda and was prepared  
8 to fight and did fight for change. He participated, as the  
9 court is aware from the testimony at trial, in combat in  
10 Afghanistan and in Somalia. However, Mohamed reasserts now,  
11 as he did then, that he did not join Al Qaeda to follow  
12 Mr. Bin Laden or take orders from anyone blindly.

13 He is now prepared to face the sentence that the  
14 court must impose here. He is very much aware of the  
15 substantial human loss that occurred here. He is not  
16 oblivious to the fact that many people were injured and many  
17 people died here who were innocent. He acknowledged that very  
18 early on in the case when he was interrogated. He has remorse  
19 about the loss of life. He has always expressed that. He  
20 does not have remorse, your Honor, about his participation in  
21 Al Qaeda. That's a difference in his mind.

22 He is a very deeply religious man who has complete  
23 and utter faith in God. Like other people who have come  
24 before the court, he believes that God will ultimately judge  
25 him some day. Some day many years from now Mohamed will be

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1 laid to rest by the Bureau of Prisons long after many of us  
2 are gone. Mohamed will live a very long and lonely life here  
3 in a United States prison. As the court is aware, he has no  
4 family, no friends, no relatives, nothing in this country.  
5 However, Mohamed wants the court to know that he has complete  
6 and total faith in God. It is his hope that God will not  
7 abandon him and will continue to be a part of his life while  
8 he serves his sentence here in the United States.

9           Mr. Odeh also wanted to express, notwithstanding his  
10 bitterness at being prosecuted here, his gratitude to this  
11 court for providing him, a person who is a stranger to this  
12 country, with an opportunity to work with the lawyers and an  
13 opportunity to present a defense before this court.

14           I just would end by saying, in the place where I  
15 started when we did opening statements here, there was a  
16 tremendous loss of life here. I don't think there is anything  
17 anyone could ever say that would ever change the tragedy of  
18 that loss. Mohamed Odeh has always stated that he was not a  
19 part of the execution of the bombing. He continues in that  
20 position today, but that does not mean, your Honor, that he is  
21 a person who is oblivious to the great loss of human life and  
22 the great injury that was inflicted upon people here.

23           These are the remarks that Mr. Odeh wanted to be said  
24 on his behalf by me here at sentencing today. He does have a  
25 very brief statement that he wants to make, your Honor.

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1           THE COURT: Mr. Odeh, you stand here before the court  
2 convicted of the crimes set forth in the indictment. Is there  
3 anything you wish to say to the court before sentence is  
4 imposed?

5           DEFENDANT ODEH: Yes.

6           THE COURT: The court will hear you.

7           MR. HERMAN: It is in Arabic, Judge.

8           THE COURT: The interpreter -- I wonder whether it  
9 would be -- yes.

10          MR. RICCO: The interpreter is coming forward, your  
11 Honor.

12          THE COURT: You want a hand mike? Mr. Codouni, you  
13 will interpret for the defendant, please.

14          MR. CODOUNI: Yes, your Honor.

15          DEFENDANT ODEH: In the name of God, the  
16 compassionate and merciful. In truth, during the last three  
17 years there are many things that I have experienced and that I  
18 could be talking about for many hours. But I know that the  
19 opportunity I have is a short one here. Suffice it to say two  
20 things. It is a question that I pose, and I present to the US  
21 government. I ask myself too, how can the government claim  
22 justice and that it allows itself to try a person twice with  
23 the same charges? My personal opinion is that the trial  
24 happened and the verdict is of the past and the execution of  
25 the sentence has been done a month ago, since -- I mean to

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1 say -- correction -- since the last -- the end of the month of  
2 August in 1998, when the US government sent missiles against  
3 those the government claimed had a relationship who does not  
4 have such relationship in the embassy incident, including  
5 dozens of civilians that have nothing to do and are not guilty  
6 of anything here and who do not have anybody to represent them  
7 here in this place and at this time.

8 My question here is, if this is what the trial is  
9 about, if this is a trial, what is it that happened since the  
10 beginning of the year until the middle of it, and if what  
11 happened since the beginning of the year until the middle of  
12 it is the trial, what can what happened in 1998 be called?

13 The second issue is question whether what happened in  
14 that period of time between the month of February until the  
15 month of May, if it is a true image of what American justice  
16 is. In that case I would not have anything but to say that to  
17 Allah we belong and to him we return. God help me in my  
18 calamity and replace it with goodness. On God I rely. In him  
19 I put my trust. Thank you.

20 THE COURT: Mr. Odeh, I confess that I am not sure  
21 that I understand what you are saying insofar as American  
22 justice is concerned. Your attorney on your behalf expressed  
23 your gratitude at having been furnished with very able  
24 counsel, who very zealously looked after your interests. I  
25 have already commented on the jury and how it was selected and

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1 the time, effort and money that has been expended in an effort  
2 to give you, I believe a successful effort to give you a fair  
3 trial in accordance with principles of American justice. I  
4 think it has been extraordinary.

5 It is not unusual for perpetrators of horrendous  
6 crimes to point to other events or other circumstances to try  
7 to deflect the enormity of their own acts. When you talk  
8 about America firing missiles at persons it believed were  
9 involved in the bombing and that there was death to innocents,  
10 that would suggest that your system of values would not allow  
11 or condone the killing of innocents. But you know that the  
12 crimes for which you have been found guilty involved the  
13 killing of innocents.

14 I recognize, as the jury, I think, indicates in its  
15 findings with respect to the defendants who were subject to  
16 possible death penalty, that your motivation was not the  
17 motivation of a criminal who acts out of greed or lust, but  
18 that is true of most terrorists. And the law recognizes, and  
19 appropriately recognizes, that terrorism, which causes the  
20 death of innocent persons regardless of whether it is based on  
21 sincerely held but terribly misguided views or any other  
22 reason, is one of the most serious crimes, threats to our  
23 society, threats to the society of any civilized nation.

24 It is the judgment of this court that you be  
25 sentenced to a term of life imprisonment on Counts 1, 3, 4, 5,

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1 7, 9, 11 through 223, 235 to 275, 276, 280 to 282, to be  
2 followed by a mandatory 10 years' imprisonment on Count 284,  
3 and a mandatory 30 years imprisonment on Count 285, to be  
4 served consecutively to each other and to the life terms.

5 The court imposes the mandatory special assessment of  
6 \$26,600.

7 The court includes you in the restitution order, a  
8 restitution order which takes into consideration your present  
9 economic situation so far as we know it, and the fact that you  
10 will be incarcerated. The court imposes no fine because of  
11 the amount of the restitution ordered.

12 The court dismisses any open counts in which you are  
13 named as a defendant and any superseded indictment.

14 The court advises you you have a right to appeal your  
15 conviction of sentence, and if you wish the Clerk of the Court  
16 to enter a notice of appeal on your behalf, he will do so if  
17 so advised.

18 Is there anything else with respect to Mr. Odeh?

19 MR. RICCO: No, sir. I will file a notice of appeal  
20 on his behalf. Thank you very much.

21 THE COURT: Very well. The court will take a brief  
22 recess.

23 (Defendant Odeh and his counsel excused)

24 (Recess)

25 THE COURT: Which brings us to the matter of sentence

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1 for the defendant El Hage. At a three-hour hearing yesterday,  
2 we resolved all questions relating to the content of the  
3 restitution order, of the presentence report and all legal  
4 issues, deferring until today not only the sentence but  
5 requests made on behalf of El Hage for downward departure.

6 Before we do that, although we did cover it  
7 yesterday, Mr. El Hage, have you read the presentence report?

8 DEFENDANT EL HAGE: Yes, I did.

9 THE COURT: Has your attorney yesterday, a hearing at  
10 which you were present, stated all of the objections or  
11 corrections you have to the presentence report?

12 DEFENDANT EL HAGE: Yes, he did.

13 THE COURT: Very well. Mr. Schmidt, I will hear you  
14 then.

15 MR. SCHMIDT: Your Honor, the way we intend to  
16 proceed is, Mr. Dratel is going to deal with the issues  
17 relating to the downward departure application. Then I will  
18 speak briefly on behalf of Mr. El Hage and Mr. El Hage will  
19 read a statement that he has prepared for your Honor.

20 THE COURT: Very well, Mr. Dratel.

21 MR. DRATEL: Mr. El Hage specifically does not join  
22 in the departure request with respect to victim conduct. It  
23 is Mr. El Hage's conviction that victim has nothing to do with  
24 either downward departure or the embassy bombings.

25 THE COURT: The court understands that the defendant



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1 Odeh was speaking for himself and speaking his views and not  
2 the views of anyone else.

3 MR. DRATEL: Your Honor, we have submitted several  
4 grounds for downward departure. I want to focus on one in  
5 particular, which is the conditions of confinement, both  
6 presentence and continuing from here on. The Second Circuit  
7 has recently recognized the validity of downward departure  
8 based upon conditions of confinement in the United States v.  
9 Cardi case.

10 THE COURT: That is a case in which the defendant  
11 fled to the Dominican Republic and was held in the Dominican  
12 Republic under conditions described in that opinion which were  
13 not the result of any conduct on his part other than being in  
14 the Dominican Republic. It was not a question of restrictions  
15 or sanctions imposed upon him because of his conduct in  
16 confinement.

17 MR. DRATEL: Your Honor, there are two responses is  
18 to that. While the incident of June 1999 occurred, Mr. El  
19 Hage was held in solitary confinement for nine months before  
20 that. There were no acts alleged against him personally. In  
21 Cardi, I think the defendant argued -- and also in Francis --  
22 not outside the country, in the United States, where Judge  
23 Patterson departed downward based on conditions of  
24 confinement.

25 I think the court also recognized in this case prior

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1 to June 22, 1999, and I think the court said it would take  
2 judicial notice of the fact that solitary confinement has an  
3 impact on mental health that is obviously not beneficial. We  
4 have that now for basically a three-year period going forward  
5 for as long as the court sentences Mr. El Hage. Those issues,  
6 we believe, warrant a downward departure.

7 In addition, particularly in light of not knowing  
8 where the designation of Mr. El Hage would be, the issue of  
9 family contact, Mr. El Hage's wife and seven children, their  
10 ability to have contact with him on any kind of meaningful  
11 basis is also part of that. While we obviously can't quantify  
12 the equivalent in terms of the normal conditions of  
13 incarceration, we believe that the difference is substantial  
14 enough to warrant a departure from the guideline sentence.

15 In addition, with respect to the other grounds for  
16 departure -- I just want to say about the conditions of  
17 confinement, I think everyone is in agreement that they are  
18 stringent as are possible under our system.

19 With respect to the other grounds for departure --  
20 this also goes to the conditions of confinement -- to the  
21 extent that alone they do not constitute a grounds for  
22 departure, I think altogether they do. I am not revisiting  
23 the substance of the arguments yesterday, but the Second  
24 Circuit has found in a string of cases -- Gigante, Cordova,  
25 and even Salameh, a case more similar, involving the World

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1 Trade Center -- that the court did authorize a downward  
2 departure to the extent that even if the court found as a  
3 matter of law the applicability of certain adjustment, that  
4 the way to remedy the possible inequitable application of that  
5 adjustment was through a downward departure, and we believe  
6 that in many of the instances with respect to the  
7 enhancements, whether they be offense-related enhancements but  
8 also the criminal-history-related enhancements in particular,  
9 the arbitrary enhancement to level 6, that all of those should  
10 be remedied by downward departure.

11 In addition, the extraordinary family  
12 circumstances --

13 THE COURT: Tell me about them. The family  
14 circumstance is that Mr. El Hage has seven children.

15 MR. DRATEL: Yes, your Honor.

16 THE COURT: One of them is three years old? The  
17 court should note that it has received a letter from Mr. El  
18 Hage's wife.

19 MR. DRATEL: Yes.

20 THE COURT: How old is the youngest child?

21 MR. DRATEL: Three, your Honor.

22 THE COURT: And you urge that Mr. El Hage have an  
23 opportunity to participate in the raising of that child?

24 MR. DRATEL: Your Honor, in addition, the downward  
25 departure grounds are more related to the potential, or the

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1 actual difficulties that the children have with respect to --

2 THE COURT: Being separated from their father.

3 MR. DRATEL: Yes, exactly.

4 THE COURT: And how long a sentence do you think  
5 would obviate that?

6 MR. DRATEL: Your Honor, I think that --

7 THE COURT: I won't require you to quantify that, but  
8 isn't it the fact that any reasonable downward departure from  
9 the guidelines which were established yesterday would have the  
10 consequence of Mr. El Hage being separated from his children  
11 until their maturity?

12 MR. DRATEL: Your Honor, I think there are two  
13 questions that raises. One is whether the difference in the  
14 sentence might also precipitate a difference in the conditions  
15 of confinement and the security --

16 THE COURT: Conditions of confinement are determined  
17 by the Bureau of Prisons, not by this court, and they are  
18 determined considering the factors such as nature of the  
19 crime, past conduct of the defendant while incarcerated -- I  
20 don't understand the number of children or ages of children as  
21 a factor with respect to conditions of confinement.

22 MR. DRATEL: The length and character of the sentence  
23 is one that the Bureau of Prisons takes into account with  
24 respect to a security designation for a defendant. There are  
25 certain eligibilities for certain types of facilities that are

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1 related to the length of the sentence.

2 THE COURT: What I am really suggesting to you is --  
3 the court has the power to downwardly depart. That should be  
4 clear. I recognize that I have that power. But that no  
5 reasonable downward departure would significantly impact on  
6 either family circumstances or conditions of confinement.

7 MR. DRATEL: Your Honor, when we talk about  
8 conditions of confinement, we are also talking about the type  
9 of -- in other words, what an appropriate sentence and  
10 appropriate punishment is in the longer context, not that a  
11 downward departure would alleviate the conditions of  
12 confinement when he is serving but in terms of what the  
13 equivalent is, in the sense that the type of sentence that he  
14 is serving --

15 THE COURT: I don't think that is the case. I hope  
16 that is not the case. I assume that the Bureau of Prisons  
17 will read the presentence report, will read the other material  
18 that will be furnished to him with respect to Mr. El Hage's  
19 conduct and that it will determine conditions of confinement,  
20 place of confinement, based on all of that, not whether the  
21 court downwardly departs or not. Unless, you know, unless you  
22 were to make an extraordinary finding of how Mr. El Hage's  
23 conduct was aberrational, that there is no likelihood of  
24 repetition, that there was complete remorse, all things which  
25 are really totally irrelevant to this case.

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1           MR. DRATEL: Your Honor, I don't think that was what  
2 the court was doing in Cardi. They weren't saying because the  
3 conditions of confinement would be alleviated there was that  
4 was a reason for downward departure. It was because the  
5 incarceration that the defendant endured under conditions that  
6 were so much more onerous than ordinary, that that should take  
7 time off the end of the sentence, and that was the nature why  
8 it should reduce the sentence and not how it was served.

9           THE COURT: I am fully familiar with the case and  
10 indeed I have it on the bench.

11          MR. DRATEL: The other issues we raised in terms of  
12 downward departure in addition to the criminal history  
13 enhancement was also the proportionality aspect in terms of  
14 the sentences among the defendants.

15          THE COURT: What is that now? Defendants subject to  
16 the death penalty argued proportionality before the death  
17 penalty jury. You are not prohibited from arguing  
18 proportionality to me. I just don't understand what the  
19 deprivation is that you allege with respect to  
20 proportionality. Do you want me to find that El Hage is the  
21 least culpable of the four defendants? I would not make such  
22 a finding. Do not press me as to whether I think he is the  
23 most culpable of the four.

24          MR. DRATEL: Your Honor, we have made our argument  
25 that in terms of the conduct at issue, that based on that,

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1 based on a reasonable proportional imposition of sentence,  
2 that he would get less time, your Honor.

3 THE COURT: Anything else?

4 MR. DRATEL: No, your Honor. Thank you.

5 THE COURT: Does the government wish to be heard?

6 MR. KARAS: Not beyond what is in our papers.

7 THE COURT: The court recognizes that it has the  
8 power to grant a downward departure but declines to do so  
9 because it believes that a downward departure here, based on  
10 conditions of confinement, would be entirely inappropriate.  
11 Conditions of confinement as predicated here will be  
12 determined by the Bureau of Prisons in light of the nature of  
13 the crimes, in light of the defendant's history while  
14 incarcerated, and other facts and circumstances. There is  
15 simply no basis for a downward departure on the basis of  
16 conditions of confinement.

17 With respect to family circumstances, Mr. El Hage has  
18 seven children who I believe he loves and I believe love him.  
19 Incarceration is always a hardship for one's family, but in  
20 this case of all cases, hardly provides a basis for a downward  
21 departure. It must be obvious to everyone in this courtroom,  
22 having heard today from victims, how incongruous it is for  
23 Mr. El Hage to seek leniency because he has a family.

24 With respect to proportionality, the notion that the  
25 facilitator, to use a term which I believe was first used in

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1 the government's summation and has been repeated in the  
2 papers, to suggest that the facilitator is less culpable than  
3 the low-level individual who ground up the explosive powder is  
4 not a set of values that I would subscribe to. Facilitator of  
5 what? Facilitator of the conspiracy to kill Americans.

6 The motions for downward departure are denied. The  
7 applications for downward departure are denied. Recognizing  
8 that the court has power, the court believes that it would be  
9 inappropriate to exercise that power.

10 Mr. Schmidt.

11 MR. SCHMIDT: Your Honor, may I have one moment to  
12 speak with government counsel?

13 THE COURT: Yes.

14 (Continued on next page)

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1           MR. SCHMIDT: Your Honor, in my October 16th, 2001  
2 submission, I included the documents. The government has made  
3 it clear that it proposed that the documents be immediately  
4 publicly filed and available. Those documents include the  
5 letter that was prepared by April Ray, Mr. El Hage's wife, a  
6 draft of a letter that he wrote back in 1997 before his arrest  
7 to his father, and a letter or statement to the Department of  
8 Probation in preparation of the pre-sentence report.

9           Mr. El Hage will be speaking to your Honor at greater  
10 length than counsel, and I think that he will be able to  
11 better express his feelings, his desires better than I  
12 possibly can. So I will try to limit my discussions in areas  
13 that Mr. El Hage will not discuss.

14           One of those areas that he is going to be limiting  
15 his discussion is of his family and his friends and his  
16 community, for a number of reasons. As was expressed in the  
17 pre-sentence report, it is very difficult for Mr. El Hage to  
18 talk about his family without breaking down because he has  
19 been separated from his family, his children, and his wife  
20 longer -- for a very long period of time, under the  
21 circumstances where his contact is limited and not private and  
22 infrequent. And in fact, he has not had the opportunity to  
23 speak to his wife for many months prior to today. This does  
24 not --

25           THE COURT: He has not had the opportunity recently,

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1 because as a the result of the events of September 11th,  
2 telephone service in the MCC was impaired. And in that  
3 respect, you wrote me a letter and you spoke to me about  
4 Mr. El Hage has not been able to speak to his wife or family.  
5 And I made inquiry of the warden and was advised by the warden  
6 that that was true, that it was true for every inmate in the  
7 MCC.

8 MR. SCHMIDT: And I am aware of that, your Honor.  
9 Prior to the tragic events of September 11th, Mr. El Hage had  
10 not spoken to his family for over a month also. I am also  
11 aware that it includes all of MCC. However, all of MCC are  
12 not facing sentences that clearly are going to be life  
13 imprisonment without parole after a five-month trial.

14 I have spoken to Mr. El Hage. We obviously have  
15 facilities to have attorney telephone calls. I know that it  
16 is difficult, but I'm sure that there is going to be problems  
17 in the future and difficulty with Mr. El Hage speaking to his  
18 family, and that affects him greatly. What I was saying was  
19 that --

20 THE COURT: We went out of way our way yesterday in  
21 the restitution order to make sure that there is not a  
22 deprivation of funds necessary for telephonic communication.

23 MR. SCHMIDT: I understand. I understand. Raising  
24 the closeness of Mr. El Hage's relationship with his family,  
25 and the difficulty that it has been for him, we do not mean to

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1 diminish the pain, the suffering caused by victims and the  
2 family of victims of the embassy bombings. We understand that  
3 and we are here and my job is to reflect the needs of Mr. El  
4 Hage.

5 One thing that Mr. El Hage will address to some  
6 extent, and I wish to address briefly, is that Mr. El Hage,  
7 while understanding the suffering of the victims of the  
8 Nairobi and Dar es Salaam bombing, has always maintained that  
9 he did not participate in any manner or approve in any manner  
10 or join in any manner of that conduct.

11 Mr. El Hage has been honest and straightforward as to  
12 his strong religious and political beliefs, and he will  
13 continue to do so, as he will explain shortly.

14 He will be treated, it is clear, based on letters  
15 that we received or information that we received from the  
16 Bureau of Prisons, as an "embassy bomber," though in his  
17 background he has no history of any violent activity.

18 He wants to express, the government has called Mr. El  
19 Hage a facilitator, and in the manner that both the government  
20 and your Honor and the Department of Probation has portrayed  
21 Mr. El Hage is that he was a facilitator of the embassy  
22 bombing, and as we have made clear, we disagree very strongly  
23 with that portrayal.

24 THE COURT: One may accept the proposition that the  
25 al Qaeda, like most clandestine gangs, operates on a

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1 need-to-know basis, and there is no evidence that Mr. El Hage  
2 knew of the embassy bombing, knew when or the details of the  
3 embassy bombing. But you know, I asked in colloquy, what was  
4 he facilitating when he was obtaining these false passports  
5 and arranging all these other things? What did he think that  
6 was for? Why did he think it was of value to have an American  
7 citizen who could travel freely about? Was he totally  
8 oblivious of the nature of the organization that he was  
9 working for?

10 I don't think he is willing to say that.

11 MR. SCHMIDT: He is not going to say that. I think I  
12 can address it as Mr. Kherchtou addressed it, is that the  
13 nature of the organization is clear to be assisting indigent  
14 rebellions in Muslim countries against the powers that were in  
15 existence then, whether it was in Chechnya, whether it was in  
16 Tajikistan.

17 And as your Honor indicated, the fact of the need to  
18 know, there was not a need to know and we don't even know when  
19 it was decided that civilians became a proper target of al  
20 Qaeda. And I think that really becomes the issue, and Mr. El  
21 Hage will address, to a limited extent, his belief and  
22 religious feelings.

23 THE COURT: This is really not the time to quarrel  
24 with the jury's verdict, but the jury found Mr. El Hage guilty  
25 of a conspiracy to kill the United States nationals and made

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1 that finding based on sufficient evidence to do that.

2 MR. SCHMIDT: I don't mean to quarrel. Your Honor  
3 made certain comments where I believe that the jury verdict  
4 doesn't reach as far as the comments that your Honor made.

5 The documents that were included in my letter show  
6 Mr. El Hage's strong religious beliefs, and I believe that it  
7 shows that he uses his beliefs as strength for himself, not a  
8 sword against others who do not believe in the same thing that  
9 he does, and he will express himself in that way.

10 Mr. El Hage, from the point that I began representing  
11 him in March of 1999 -- I was not his first lawyer -- and when  
12 Mr. Dratel began representation of Mr. El Hage, I believe it  
13 was September, August of 1999, has steadfastly insisted in the  
14 way he has dealt with us and what he has said about the case.

15 He will obviously, your Honor, receive a life  
16 sentence at this time. He will continue to remain a religious  
17 and devout person, and he would like this opportunity right  
18 now to attempt to give your Honor a better understanding of  
19 the person that you are about to sentence, Wadih El Hage.

20 THE COURT: Very well. Mr. El Hage, you are before  
21 the Court convicted of various counts in the indictment. Is  
22 there anything you wish to say to the Court before sentence is  
23 imposed?

24 DEFENDANT EL HAGE: Good afternoon, Judge Sand. Good  
25 afternoon, ladies and gentlemen. I have prepared a word that

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1 I will read in front of you.

2 THE COURT: May I suggest you use the microphone?

3 DEFENDANT EL HAGE: Thank you for giving me the  
4 opportunity to do so.

5 First, I will speak about my beliefs because the  
6 persons beliefs form his identity and character.

7 This courtroom, with its walls, arrangements,  
8 decorations, audio and video systems, et cetera, if we ask who  
9 built it and who has been maintaining it all these years, and  
10 someone answers, it just happened to be there, no one made it,  
11 no one to take care of it. Then we probably think this person  
12 is either kidding or he is insane. We know for sure that  
13 someone must have made it and someone is taking care of it  
14 every day.

15 So, when we look at this vast universe, with its  
16 zillions of stars, plants and other systems, the earth, with  
17 its oceans, mountains, substances inside of it and on top of  
18 it, creatures of all kind, each has its own features,  
19 performance, place and life span. And finally, when we look  
20 at ourselves, organs, blood, sensations, our life and our  
21 death, all that, could it have existed on its own and  
22 continuing to exist and do its duties without a director,  
23 controller or maintainer?

24 No doubt that there is a creator for everything in  
25 this universe, and he is the sustainer and controller of that,

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1 who knows what are the needs of every single creature to  
2 continue its life and existence. Everything performs and acts  
3 according to God's will and his system, and have no choice but  
4 to follow this system reluctantly, except for humans, whom God  
5 has given them free will to choose their actions.

6           This was a great honor given to mankind. God, the  
7 most merciful, most wise, sent His prophets and messengers to  
8 teach mankind who is their creator and also how to deal with  
9 each other and with everything around them according to the  
10 best methods and manners, which, if man chooses to follow,  
11 will enable him to live a good life, harmonious and consistent  
12 with everything around him, which all are governed by God's  
13 rules.

14           Through the history, humans were two parts. One  
15 chose to follow God's rules and guidance, therefore lived a  
16 good life in correlation with everything around them. The  
17 other party chose to invent their own rules and systems of  
18 life, thus living in conflict with everything around them,  
19 experiencing high rates of crime, family crisis, unwanted  
20 children, high rate of rape of women and children, suicide,  
21 mental illnesses, and much more.

22           All that, whenever existed among the first party, it  
23 was in negligible rates because they are following the maker's  
24 guidelines. Yes, humans have been making their own laws, but  
25 they also change, delete or alter them every now and then.

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1           But in this process people are being subject to  
2 unfair rules, rights are being violated, and individuals are  
3 being oppressed. Not only that, but corruption and damage  
4 will also affect the other creatures around us, the  
5 environment, air, and oceans. All that because man wants to  
6 apply his own self-created rules, in spite of all his  
7 weaknesses, shortcomings, limited ability to see, hear, speak,  
8 judge and make decisions. Man also has desires, tendencies  
9 and whims. All those limitations hinder man's ability to  
10 establish a complete and fair system.

11           On the other hand, following the rules and guidelines  
12 of God, the creator and maker, who knows what He made, who  
13 knows what is good for His creations and what is bad, the one  
14 who possesses unlimited abilities, wisdom, mercy, might and  
15 knowledge, following his rules will never cause any harm or  
16 injustice for any of his creatures.

17           Where do we find our creator's rules and guidance?  
18 If we put aside our self-deceit, arrogance, traditions,  
19 habits, ego and prejudice, I believe we will come to find that  
20 the message of Islam is the last and final message God sent to  
21 mankind, which has this complete set of rules and guidelines  
22 for a successful, prosperous and happy life on this earth and  
23 a better life in the hereafter.

24           Now, even though the Islamic system and way of life  
25 is for the best of all humanity, devout Muslims, as I believe,



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1 are not asking to apply it here in the U.S., where Muslims are  
2 less than 7 million. They are a minority. The fact is that  
3 they want to apply it in the Islamic countries where the  
4 majority are Muslims. But in those countries, today's  
5 selfish, arrogant and self-deceived kings, presidents and  
6 rulers want to apply their own self-invented rules only to  
7 serve their own interests and desires, denying their people  
8 the right to choose the system they all want.

9           Devout Muslims, as I believe, are not asking to try  
10 or test the Koranic rules to see if it works for this society  
11 or not. Those rules, as I read in history, were implemented  
12 and applied from the time of the prophet Muhammed, peace be  
13 upon him, and for over 13 centuries, a government very  
14 successfully, almost half the known world then, during which  
15 the Islamic state was the strongest and most prosperous. For  
16 13 centuries, the constitution was the one from our creator,  
17 the Koran.

18           To make the long story short, by the 20th century,  
19 the rulers started to neglect the Koranic laws, substituting  
20 them with manmade laws. The result is what we see today.  
21 Muslim nations are the weakest, poorest and most miserable.  
22 That is why, in my opinion, we find devout, committed Muslims,  
23 individuals and groups, working actively to reimplement God's  
24 rules and guidance.

25           For many years they tried to advise their rulers,

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1 urging them to apply God's rules in peaceful ways, but those  
2 rulers responded by using force and cruelty because they want  
3 to protect their positions as rulers while the whole nation is  
4 in misery.

5           Ultimately, some of those individuals and groups  
6 chose to have a conflict with those rulers. Others chose to  
7 migrate to other countries, such as the U.S., where they can  
8 spread the message of Islam freely and in the same time  
9 support their brothers and sisters who are continuing their  
10 efforts to apply God's rules in the Islamic countries.

11           All that was done while recognizing, as devout  
12 Muslims, that even in time of conflict, they should not exceed  
13 certain limits, harming innocent people or noncombatant ones.  
14 This is very stressed upon in the Koran and the teachings of  
15 the prophet Muhammed, peace be upon him, who even prohibited  
16 destroying crops, animals or property at time of war.

17           Here, I would like to emphasize, as I did in the  
18 past, that committed Muslims follow God's rules and course,  
19 not individuals or groups. Those who chose to come to the  
20 U.S. were able to live and follow the teachings of their  
21 religion freely, spreading those teachings also freely, until  
22 Islam became the fastest growing religion in the U.S., as it  
23 is in the whole world, all praise be to God first, and to the  
24 tolerant, open society here.

25           I was one of those, came here first to go to college,

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1 and I admired the educational system here very much,  
2 graduated, got married, and got my citizenship. During all  
3 that time, I joined Islamic activities to spread the teachings  
4 of our creator, and also to support our brothers and sisters  
5 in Islamic countries in their efforts to apply the rules of  
6 God there.

7 I also did all that freely, without any objections  
8 from the government here. Moreover, on several occasions I  
9 had the chance to criticize our government's foreign policy  
10 towards Islamic countries. During all that, I maintained  
11 clean records everywhere I went.

12 Devout Muslims in Afghanistan, as in many other  
13 Islamic countries, were in conflict with the secular  
14 government there until they almost toppled it. At that point,  
15 the Russians invaded Afghanistan to prevent the establishment  
16 of an Islamic government.

17 I went to Afghanistan, as did thousands of committed  
18 Muslims from all over the world, to support our brothers and  
19 sisters in their efforts to repel the Russian invaders, and  
20 which was also the policy of my adopted country here. My role  
21 was mainly in the relief and humanitarian field, considering  
22 my physical disability.

23 Ultimately, the Russians pulled out. But for several  
24 reasons, the Afghan leaders did not rule by Islamic laws. The  
25 result was four more years of civil war and misery in

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1 Afghanistan.

2           Finally, the Afghan scholars moved to contain the  
3 deteriorating situation and were supported by the majority of  
4 Afghan people in their efforts to establish an Islamic  
5 government. The result was peace, security and prosperity in  
6 most of Afghanistan.

7           I mentioned the Afghanistan experience as an example  
8 for what I believe to be the demand of the majority of Muslims  
9 in the world, that is, to be ruled by the constitution of our  
10 creator.

11           After having lived over 20 years in this country, I  
12 believe that God's rules, if adopted, can solve many problems  
13 that are devastating the American society.

14           Bottom line, God created, so he knows what is the  
15 best for all his creations. It is all in the Koran. Study  
16 it, know your creator, and follow his guidance. This is the  
17 way for a good life on this earth and the hereafter.

18           In Islam, as I have learned and believe, ends do not  
19 justify means. They both have to be legal and in accordance  
20 with God's rules and teachings.

21           When the bombings happened in Africa in '98, my  
22 opinion was that that action was extreme and not in accordance  
23 with the beliefs that I learned. I made my opinion clear well  
24 before I was arrested or charged. Today, my opinion is still  
25 the same towards what happened in Africa and what happened

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1 here last month. The killing of innocent people and  
2 noncombatant is radical, extreme and cannot be tolerated by  
3 any religion, principles, beliefs or values.

4 Today I can stand here and say that I did not  
5 participate or support any extreme conduct or any act that  
6 violates my beliefs as a devout Muslim, but please understand  
7 that my beliefs form my opinion that many American policies  
8 towards Muslim countries and people are wrong, such as the  
9 embargo on the Iraqi Muslim people which led so far to the  
10 death of over one million child and thousands of innocent  
11 people. Also, the unconditional support of the American  
12 government to the Israeli government that is killing innocent  
13 Palestinians, taking their land, expelling them and destroying  
14 their homes.

15 Perhaps the secular world do not understand the  
16 impact of having non-Muslim troops on the land of Muslims'  
17 holiest sites, its negative impact on Muslim masses around the  
18 world and specifically on those in the Arabian Peninsula.

19 Such policies, in my opinion, are wrong and end up  
20 breeding unjustified extremism. Those views of mine, I have  
21 expressed them publicly, not in secret, even in my interviews  
22 with government agents and the Grand Jury.

23 Many Muslims and non-Muslims have expressed the same  
24 views. That includes the American Muslim community, which I  
25 am a member of, which is free to voice its criticism to the

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1 American policy but without committing or supporting any  
2 extreme acts.

3 Now I will go to the last part of my word.

4 On September 16, '98, I was taken into custody after  
5 a Grand Jury testimony. As a citizen with clean records,  
6 family ties, and sound social relations, I was expecting to be  
7 released on bail so that I can prepare my defense against the  
8 tremendous charges in the comfort of my home with my family,  
9 friends and members of my community, as the law provides.

10 Even though I was considered by the law to be  
11 innocent, I was treated from day one like any other convicted  
12 killer, rapist, drug dealer or child molester, and even worse.  
13 I was put under conditions that convicted prisoners who break  
14 the rules inside the prison are subject for.

15 This kind of treatment continued for 28 months before  
16 the trial date. During that whole time and under such cruel,  
17 inhumane conditions, I was expected to prepare for my defense,  
18 away from my home, family and community.

19 When an innocent person is treated worse than  
20 convicted criminals for such a long period, how do we expect  
21 his physical, mental and emotional condition to be? How do we  
22 expect his preparation for the trial to be? How do we expect  
23 him to be when he reaches the trial date?

24 Yes, the law says you are presumed innocent, but we  
25 will treat you worse than convicted criminals. That is

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1 exactly how I was treated since I was arrested.

2 In their representation, my counsel spent a great  
3 deal of their time and effort to get me out on bail so that I  
4 can be under normal conditions as the law provides. They knew  
5 from their extensive experience that this kind of legal case,  
6 that covers more than ten years of my life and extends to  
7 several continents, that they needed every proportion of  
8 assistance their client can provide.

9 During those 28 months, at times I was able to  
10 provide them with some assistance, other times it was too  
11 difficult to do so.

12 It is not fair, and I hope it will not happen to any  
13 other people, it is not fair to ask anyone to prepare his  
14 defense against such tremendous charges while being away from  
15 his family and loved ones and under onerous, unprecedented  
16 conditions for 28 months and another 5 months of trial time.

17 The government opposed my right for bail, saying that  
18 I was a danger to the community and that they will prove their  
19 allegations at the trial. Well, my records in the U.S. since  
20 1978 shows the opposite of what they alleged then, and at the  
21 trial they did not bring one evidence or action showing me to  
22 be a danger to the community.

23 The jury found me guilty on every charge depending on  
24 what they saw and heard in court, but this does not change the  
25 fact that I am innocent and that I was not given a fair or

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1 just chance to prepare my defense.

2 Today, while I am here in front of you, I am not the  
3 same person who was arrested three years ago. No one can be  
4 the same after three years of unfair treatment. Yet, I am  
5 still and remain the devout Muslim who is following the rules  
6 of our creator, who can see and hear us all the time. I am  
7 still the person who avoids radical solutions and acts, as I  
8 did in the past. I am still the loving and caring son of my  
9 parents, husband of my wife, and father of my children who is  
10 trying to keep family relations through letters and phone  
11 calls.

12 Finally, I would like to thank my family, who  
13 supported me during the past three years and continuing to do  
14 so, to thank my counsel, who were very sincere and active in  
15 their representation in spite of the unusual limitations they  
16 were facing from the system, to thank all my friends, brothers  
17 and sisters in the Islamic society in all the United States  
18 who supported me and my family and continuing to do so, to  
19 thank the one witness who, in spite of the government agent's  
20 harassment to him, as to many other potential witnesses, he  
21 still took the witness stand in my behalf.

22 Again, I would like to thank the Court for giving me  
23 the opportunity to speak on my behalf. And for those who  
24 brought me to the Grand Jury under stressful, unusual  
25 conditions and those who lied on the witness stand at the



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1 trial, for all those I say that God will show them that they  
2 were wrong.

3 One last word. There is nothing wrong or shameful  
4 that I did to apologize for, and I hope that one day the truth  
5 will come out clear. If not in this life, then the day of  
6 judgment is the true court of justice, where the judge is God  
7 who knows what everyone hides in his or her heart.

8 We all are going back to God after death, so let us  
9 seek his teachings and guidance for a successful end.

10 Thank you.

11 THE COURT: Thank you.

12 (Continued on next page)

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1 THE COURT: Does the government wish to say anything?

2 MR. FITZGERALD: Yes, your Honor. Your Honor, it has  
3 long been a practice in this court that most times prosecutors  
4 do not speak at sentencing, and I did not intend to. I think  
5 most of the time we let people, no matter what they have done,  
6 pretend to love their country, pretend to love their god,  
7 pretend to be devoted to their family, and bite a lip and let  
8 it go quietly through the night. But in this case it is  
9 different, because in this case the crime, the horror of what  
10 Mr. El Hage and his associates did is beyond imagination, and  
11 the method by which Mr. El Hage did it was his pretense, his  
12 fraud, his pretension to being an American citizen and to  
13 following the rules.

14 He has talked today about choice, and I think one  
15 thing we should remember about choice is, Mr. El Hage made a  
16 lot of choices. He chose to work with Al Qaeda, he chose to  
17 work with a terrorist group, and he chose to lie to his  
18 government. In September of 1997, before Mr. El Hage ever  
19 went to the grand jury, he was brought to the government's  
20 office with an agent and myself. I recall quite clearly, the  
21 choice was put to him. He was told then that he was involved  
22 with Usama Bin Laden and the government knew it, that he knew  
23 the secrets of Usama Bin Laden, that Usama Bin Laden would  
24 kill Americans, would kill men, women and children, and it was  
25 up to him as an American, as a father and as a Muslim to help

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1 stop that. He was told that if he didn't cooperate, some day  
2 he might face jail. He would be separated from the family he  
3 now claims he wishes he could be with and he does, but he  
4 chose terror and hatred over his family. He chose to lie. He  
5 lied repeatedly. He lied that day. He lied in the grand  
6 jury. And he even lied under oath after the bombings in  
7 August of 1998.

8 We have heard here today from his counsel that he is  
9 honest and straightforward. We have heard that he is  
10 religious and devout. We have heard him just say now that he  
11 is a devout Muslim. I submit to you that though he does love  
12 his family, he chose hatred and terror over his family  
13 repeatedly. He had a choice, and he chose to go with those  
14 who would kill rather than to help himself, his family, his  
15 country. He claims to be a citizen but he is not an American.  
16 He claims to be a religious man, but he is not a true Muslim.  
17 The true Americans, the true Muslims, the true family men, he  
18 has seen. He saw them on the witness stand at the trial, he  
19 saw them testify here today, and, frankly, those are the  
20 people he helped to kill.

21 He has come into court today the way he came into the  
22 grand jury and into the trial, with no remorse, no shame, and  
23 no conscience. But he should leave without pretense. The  
24 world has now seen, from the evidence in this courtroom, what  
25 the jury saw, and what he did is, he betrayed his country, he

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1 betrayed his religion, he betrayed humanity by his behavior  
2 for so many years, and he should walk out of this courtroom,  
3 he should go to a jail cell that is really of his creation,  
4 and he should recognize that the world knows exactly what he  
5 did.

6 THE COURT: Thank you, Mr. Fitzgerald.

7 Mr. El Hage, I won't say anything with respect to  
8 your continued protestations of innocence because there was a  
9 five-month trial and the jury, after very careful  
10 deliberations, the nature of which I have already described,  
11 unanimously found you guilty beyond a reasonable doubt, and  
12 they did so based on evidence.

13 The court imposes a sentence of life imprisonment on  
14 Counts 1 and 3; 20 years' imprisonment on Count 5, concurrent  
15 to Counts 1 and 3; five years' imprisonment on each of Counts  
16 20, 287 through 289 and 291 to 305, to run concurrently to  
17 Counts 1, 3 and 5.

18 Although the sentence is of life, I nevertheless  
19 impose five years' supervised release on Counts 1 and 3 and  
20 three years' supervised release on Counts 5, 287 to 289, and  
21 291 to 305. The terms of supervised release are to run  
22 concurrently.

23 I order payment of a special assessment fee of  
24 \$2,100, which is a mandatory assessment. I include you in the  
25 restitution order the contents of which we have already

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1 discussed today and yesterday. I impose no fine because of  
2 the restitution order.

3 I advise you that you have a right to appeal your  
4 sentence, your conviction and sentence, and if he is so  
5 instructed, the Clerk of the Court will enter a notice of  
6 appeal on your behalf.

7 I order dismissed any open counts in which you were  
8 named in any superseded indictments.

9 Is there anything further with respect to El Hage?

10 MR. KARAS: No, your Honor.

11 MR. SCHMIDT: No, your Honor.

12 THE COURT: We are adjourned.

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